

Public Sector Employment and Management Amendment Bill 2008

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* as follows:

- (a) to facilitate the appointment of long-term Departmental temporary employees to officer positions in the Public Service by removing the requirement that such a temporary employee can only be appointed to such a position if the position has substantially the same duties as those performed by the person during the period of temporary employment,
- (b) to enable public sector employees who are on long-term secondments (ie for at least 2 years) to be appointed to new positions in the agencies to which they are seconded without having to advertise the position or requiring the person to serve a period of probation, but only if the person has been selected on merit at some stage for a similar graded position,
- (c) to enable an eligibility list that is created for a particular Departmental position to remain current for 12 months and to be used in relation to other similar positions (including similar positions in other Departments),
- (d) to require vacant Public Service positions to be advertised on the NSW Government's recruitment website rather than in the Public Sector Notices,
- (e) to make other amendments of a minor or consequential nature.

This Bill also amends the *Government and Related Employees Appeal Tribunal Act 1980* (**the GREAT Act**) to enable notices of appointments to positions in the public sector to appear on the NSW Government's recruitment website and makes amendments of a minor or consequential nature to the regulation made under that Act.

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 Act and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act on the day after the date of assent. 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

At present under section 18 of the Act, if it is proposed to make an appointment to a vacant position in a Department, the Department Head must advertise the vacancy in the Public Sector Notices. **Schedule 1 [2]** provides instead for the vacancy to be advertised on the NSW Government's recruitment website. **Schedule 1 [1]** removes the definition of **Public Sector Notices** as that term will no longer appear in the Act.

Schedule 1 [3] enables an eligibility list for any Public Service position (being a list of the persons who applied for appointment to the position and who are eligible for appointment, but were not selected for appointment) to remain current for 12 months after the list was created instead of, as is the case at present for positions other than a base grade or entry level position, for only 6 months.

Schedule 1 [4] enables an eligibility list to apply not only to the relevant position for which it was created but also to any other position that is substantially the same as the relevant position. The other position may be a position in another Department.

Schedule 1 [5] is a consequential amendment.

Schedule 1 [7] removes a provision that refers to the requirement, under section 19 of the GREAT Act, for notice of a proposed appointment to be published in the Public Sector Notices if the appointment is subject to an appeal under the GREAT Act. **Schedule 1 [6]** replaces this provision with a note drawing attention to the requirement under the GREAT Act for notice of proposed appointments to be published and distributed to employees.

Schedule 1 [8] makes it clear that the provision requiring persons to serve a period of probation when they first enter the Public Service is subject to exceptions contained elsewhere in the Act and not just the Part in which the provision appears. Section 31 of the Act currently provides for the appointment of long-term Departmental temporary employees (ie persons who have been employed on a temporary basis in a Department for a continuous period of at least 2 years) to officer positions in the Department. Such an appointment may only be made if the duties of the position concerned are substantially the same as those performed by the employee at the time the employee was selected on merit to perform those duties.

Schedule 1 [9] removes the requirement that the officer position to which the temporary employee is appointed must have substantially the same duties as those performed by the person as a temporary employee. Instead of this requirement, it is made clear that the employee must have been performing duties at the same or similar grade to the officer position to which the employee is being appointed and that the employee was, at some stage during the temporary employment, selected on merit to perform duties at that grade.

Schedule 1 [10] is a consequential amendment. At present under section 86 (6) of the Act, a public sector employee who has voluntarily transferred from one agency to the service of another public sector agency (*the host agency*) becomes an employee of the host agency if the transfer (or the secondment as it is otherwise known) has continued for at least 2 years and the employee decides to remain with the host agency.

Schedule 1 [11] enables the head of the host agency to appoint the person to a new position in the agency without having to advertise the position or requiring the person to serve a period of probation. Such an appointment is subject to certain requirements (such as the new position must not be above Grade 12 level). Also, if the new position is graded higher than the person's original position in the home agency and the new position is not advertised, the person may be appointed to the new position only if the person has at some stage been selected on merit to perform duties at that higher grade in the host agency.

Schedule 1 [12] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act.

Schedule 1 [13] makes it clear that the amendments made by the proposed Act extend to existing eligibility lists, persons who are currently employed as Departmental temporary employees and persons who are on existing voluntary secondments.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends section 19 of the *Government and Related Employees Appeal Tribunal Act 1980* to provide that the notice of appointment that a public sector employer is required to publish can appear on the NSW Government's recruitment