

## Government Sector Employment Legislation Amendment Bill 2016 (Proof)

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Business	Bill, Second Reading, Motion

**GOVERNMENT SECTOR EMPLOYMENT LEGISLATION AMENDMENT BILL 2016**

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**Second Reading**

**The Hon. CATHERINE CUSACK** (Parliamentary Secretary) [12.14 p.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

We expect a lot from the women and men who work in the myriad roles across the New South Wales public sector. Whether they are educating our children to be highly skilled and competitive in a global economy, meeting the health and other needs of our ageing population, keeping our communities safe or developing innovative solutions to significant policy challenges, their work is vital to the fabric of our society. Because we expect much of our public sector employees, this Government is determined to create workforce arrangements that: provide opportunities, provide choices in career path, ensure that people get properly developed to make the best contribution that they can, develop quality leaders, encourage innovation and support people to take risks.

In short, we want the best arrangements in place to support the kind of public sector people want to work in and the kind of public sector that can do its best for the elected government of the day and the people of our State. In October 2015, the Premier gave the Garran oration at the Institute of Public Administration's national conference in Sydney—the first State Premier to do so in 20 years. Addressing a large gathering of public sector leaders from around the country, the Premier made the point that the public sector is a great jewel of this nation, the potential of which we must unleash.

I can only agree that there is a great depth of talent and capacity within the public sector, with enormous potential to play a leading role in grappling with the challenges we face. The Premier also said that to play that role we need a public sector filled with people who have a passion for what they do. They must be prepared to take risks. They must be supported in taking risks. They must understand that building a workforce made up of the right people with the right capabilities is a critical task for all. We need to invest in our people. We need to encourage them to develop and contribute their knowledge and talents.

It is in this context of building the right foundations for excellence in public service that I bring forward the Government Sector Employment Legislation Amendment Bill 2016. This bill continues this Government's program of bold reform and continuous improvement of workforce management in the public sector. This Government's process of supporting the public sector to realise its full potential began in 2011 when, newly elected, we established the Commission of Audit. As a key part of that exercise, Dr Kerry Schott closely examined the way people had been managed in the New South Wales public sector.

Kerry Schott was very positive about the commitment and achievements of public servants, but she was critical of many of the characteristics of the system of workforce management that she observed—a system at the time characterised by: a lack of focus on capability, ad hoc leadership arrangements, no focus on performance management, multi-layered executive structures with long decision-making chains, poorly developed strategic human resource management capability and a marginalised role for the human resources function within many departments and agencies, and poor use of workforce data. This Government's establishment of a public service commission to lead the sector on workforce management has allowed for an energetic and focused response to the problems Kerry Schott identified.

Since 2011, we have been transforming the way we manage people in the public sector. Performance management is now mandated by legislation. Recruitment is now based on capability rather than just technical knowledge, and streamlined executive structures provide better accountability and flexibility. We have focused attention on talent management, with the establishment of a leadership academy. Our new legislative settings support people to be mobile across the sector, bringing their skills, knowledge and experience to new areas and building their careers. For the first time, the public sector runs a regular survey to find out how people feel about every aspect of workforce management, giving a sound basis for future policy development. Our public servants have responded well to this change program. How do we know this? Well, in 2012 and 2014 the Public Service Commissioner surveyed people across the sector about every aspect of workforce

management. I am pleased to report that over the first two years of our reforms there was an improvement in positive responses to 80 per cent of the survey questions. The next survey will be conducted later this year and annually after that so we can continue to monitor the situation.

In January, the NSW Audit Office completed a performance audit on the implementation of the public sector management reforms to date. I am again pleased to report that it concluded the Public Service Commission had made good progress and the reforms, when fully implemented, aim to provide the foundation for a modern, high-performing government sector. The performance audit highlighted that the public sector management reforms are ambitious in nature. They cover a substantial workforce and require a lot to be done in a short time. The performance audit concluded that the Public Service Commission had developed a robust case for action in response to the NSW Commission of Audit recommendations, with all the reforms underpinned by a sound evidence base. The logic of the reform architecture was not questioned.

As with any ambitious piece of reform, the report identifies areas for improvement, including the need to more clearly communicate the overarching reform agenda plus better integration and optimisation of the benefits across the public sector. As part of this Government's commitment to continuous improvement to workforce management, implementation of the bill will incorporate the insights and recommendations made by the Audit Office regarding the public sector management reforms to date.

The Government Sector Employment Act 2013 is one of the foundation reforms we introduced. It fundamentally overhauled and modernised the government sector employment and management framework in New South Wales. The passage of that Act was a significant achievement and created the structural foundations for a strategic, responsive and effective workforce that was able to meet the expectations of the taxpayers of New South Wales. The Act introduced a range of reforms to the structure and management of the New South Wales government sector both for executive and non-executive employees that enhanced public sector values, merit, mobility, capability development, workforce diversity and performance management. In particular, the Act provided the foundation for a single, leaner, flatter and more mobile executive structure for the public service senior executive group.

New South Wales public service agencies have until February 2017 to transition to these new senior executive employment arrangements. Agencies must clearly demonstrate that they have reduced bureaucratic reporting layers in order to streamline decision-making and provide clearer lines of accountability and broader spans of control in line with best practice. The New South Wales public service has embraced the senior executive reforms. The executive reform program is on track to meet the three-year transition deadline set out in the Government Sector Employment Act 2013.

As at this time, I am advised that over 1,000 executive roles have transitioned to the new Government Sector Employment Act 2013 employment arrangements, representing approximately 50 per cent of the public service executive roles covered by the Act. By 30 June 2016 most departments, executive agencies related to a department and separate agencies will have largely completed the review of their executive structures, completed transition and implemented the executive reform program. The transition to the new arrangements will establish structures with agility and flexibility hard-baked into their DNA, thereby allowing the flexible deployment of executives across the public service to meet the service delivery needs of the people of New South Wales. Mobility is fundamentally important to the New South Wales public sector.

The Government Sector Employment Act 2013 and now this bill create a framework that encourages career movement across government, develops broad capability, sparks innovation and the cross-fertilisation of ideas, and builds a collaborative community of practice that is better able to deliver government services and meet the needs of the people of New South Wales. At the same time, this mobile executive cohort is benefitting from this Government's stronger emphasis on performance and career development. Bringing to life the Premier's vision to create the best public sector in the world, the new New South Wales Leadership Academy is a whole-of-government initiative to identify and develop a succession pipeline of leaders, skilling them with the important capabilities required for leadership.

In January 2012, the NSW Commission of Audit report entitled "Public Sector Management" noted that "a single sector-wide executive structure brings benefits including cross-fertilisation between clusters, encouraging fresh thinking and ability to develop a leadership cadre". During the passage of the Government Sector Employment Act 2013 in June 2013, this Government indicated that a second stage bill to align the police, transport and health executive services with that of the public service would be introduced in 2013.

In October 2013, the Government Sector Employment Legislation Amendment Bill 2013 was passed by the Legislative Assembly but did not complete all stages of the legislative process in the previous Parliament. Subsequent statute law amendments made some of the minor, technical amendments that had been in the 2013 bill. These amendments updated references in other legislation to reflect the language and terminology of the Government Sector Employment Act 2013 and made minor amendments to align employment arrangements for certain statutory officers who were previously subject to the Public Sector Employment and Management Act 2002. This new Government Sector Employment Legislation Amendment Bill 2016 gives effect to the policy settings in the 2013 bill while also addressing further technical adjustments and new matters.

I will now describe the main thrust of the bill concerning the changes to executive arrangements for the health, transport and police services and then come to the bill's other important provisions. The bill amends the Health Services Act 1997, the Police Act 1990 and the Transport Administration Act 1988 to align the employment model for executives in the health executive service, the transport senior service, and the Police Force senior executive service with the senior executive

employment model in the Government Sector Employment Act 2013, the model that now applies to public service senior executives.

The bill will achieve the Government's original intent of aligning the executive employment arrangements of the Police Force, health and transport with those of the New South Wales public service. This alignment means that the executives in police, health and transport will share the benefits of the Government Sector Employment Act 2013 reforms, which are designed to create a more agile, mobile executive with enhanced career opportunities, and will be able to deliver better front-line services to the people of New South Wales. The bill separately aligns the employment arrangements of the non-executive employees of the Police Force with those contained in the Government Sector Employment Act 2013, thus continuing employment arrangements applying to those employees which mirror those of the public service.

The Public Service Commissioner, the secretaries of health and transport and the Commissioner of Police have all collaborated to develop this cross-sector legislation. The Government thanks them for their assistance in completing its vision for executive leadership and employment in the government sector. When this legislation has been fully implemented, an additional 700 executive roles will be covered by the reforms, bringing the total to over 2,700 executive employees across the government sector. It should be noted that all of the executives covered by these reforms are already in contract-based employment, apart from NSW Police unsworn senior officers who will be included in the executive reforms in the same way as former senior officer roles have been included in the executive reform program across the public service.

Importantly, the bill recognises the unique operating environments of the health, police and transport services and provides for variations to support special operational arrangements, where required. The bill aligns the core concepts of the senior executive reforms in the Government Sector Employment Act 2013 across the transport, health and police services but recognises that a one-size-fits-all approach to transitioning to the new arrangements would not work. Each service has transitional arrangements which reflect their particular, unique operating environments. The bill also enables the Public Service Commissioner to make rules that apply to health, police, and transport senior executives. Before making these rules the commissioner will be required to consult with the relevant secretary or the Commissioner of Police. The bill provides that the amendments to the health, police and transport legislation will not commence before 1 January 2017, which will ensure that those three services can make a smooth transition to the new arrangements.

Schedule 2 to the bill amends the Health Services Act 1997 to align the provisions applying to NSW Health senior executives under the Health Services Act with those under the Government Sector Employment Act 2013. The bill also introduces changes to further devolve responsibility and accountability and return decision-making closer to the local level, as far as practicable. Local health districts and specialty networks will control and be responsible for their own health executive workforce, including the deployment of that workforce locally. The chief executive of a local health district or specialty network will be the employer of health executives of the local health district or specialty network.

In relation to a chief executive, the employer function will be exercised by the local health district or specialty network board. The health secretary will be the employer of health executives in other statewide health agencies. In the context of this devolution, the bill also contains measures that recognise the health secretary's system manager role. In respect of local health districts or specialty networks, the health secretary's concurrence will be required for the appointment or termination of a chief executive, and he or she will retain a "reserve power" to remove a health executive. This schedule also includes provisions relating to the issuing of directions in relation to the employment arrangements of health executives.

The bill retains the health secretary's ability to give directions to or otherwise manage New South Wales' health senior executives in respect of the health or safety of any person or essential health services. In certain circumstances the health secretary will be required to consult with the commissioner in relation to any inconsistency between the secretary's directions and the commissioner's rules. The bill improves executive mobility by enabling the transfer of executives between health and each of the public, transport and police services. It provides that the remuneration of a senior executive is to be within the relevant range determined under the Statutory and Other Offices Remuneration Act 1975, except where the health secretary determines a higher market remuneration rate in accordance with parameters agreed with the Public Service Commissioner.

The higher rate may be required to attract high-calibre applicants, such as those with specialist clinical expertise. The bill provides that the new senior executive arrangements in the health service will apply from the date of commencement of schedule 2 to the bill, which, I have noted, will not commence before 1 January 2017.

At this time, all officers in the health executive service will be subject to terms and conditions of the new senior executive arrangements, including having ongoing rather than time-limited employment contracts. However, the bill includes transitional provisions that preserve the remuneration package entitlements of current health executives.

I now turn to the provisions for the NSW Police Force. The executive and non-executive administrative employment arrangements in the NSW Police Force have historically been aligned with the provisions of the former Public Sector Employment and Management Act 2002. The bill continues this arrangement by amending the Government Sector Employment Act 2013 and the Police Act 1990 to align employment for NSW Police Force executives and non-executive administrative employees with those in the public service. The amendments are supported by the Commissioner of Police and will mean that the NSW Police Force will share the benefits of the Government Sector Employment Act 2013.

Importantly, however, the bill reflects the unique nature of the NSW Police Force and does not amend any aspect of the command and control of its members or any aspect of operational policing. As such, the current employment arrangements for police superintendents, inspectors, sergeants and constables are not affected. These sworn non-executive police officers will continue to be appointed as before under part 6 of the Police Act 1990. Minor amendments proposed to the Government Sector Employment Act will ensure that there is no unintended application of provisions to sworn officers. As a result of the bill, part 5 of the Police Act will align the Police Force senior executive service with the employment model applying to public service senior executives in the Government Sector Employment Act.

As I said previously, the Police Force senior executive service is currently aligned with the former Public Sector Employment and Management Act 2002 Public Service SES arrangements, with eight levels, remuneration determined by the statutory and other offices remuneration tribunal, and time-limited employment contracts of up to five years. The senior executive employment model will apply to all Police Force senior executive service officers, including all sworn senior executives—deputy commissioners and assistant commissioners—and all unsworn senior executives; and Police Force unsworn senior officer and equivalents.

The bill provides that executives will be employed within a band and enables the Commissioner of Police to assign a senior executive to another role within the same band within the NSW Police Force. It improves executive mobility by enabling the transfer of unsworn executives between the NSW Police Force and each of the public service, transport and health services, in consultation with the individual concerned and with agreement of the relevant agency head. Further, it provides that the remuneration of a senior executive is to be within the relevant range determined under the Statutory and Other Offices Remuneration Act 1975, except where the Commissioner of Police determines a higher remuneration package, in accordance with parameters agreed with the Public Service Commissioner. Again, a higher rate may be needed to attract high-calibre applicants.

In recognition of the unique nature of the NSW Police Force, in particular, for reasons of appointment and the exercise of policing duties, sworn police senior executives will retain the concepts of an office and a position. The Commissioner of Police will retain the current power to detach sworn police force senior executives. This is needed to allow the commissioner flexibility to consider redeployment of an executive to another executive or non-executive position. Due to the nature of sworn police officer positions, sworn police executives will not be subject to the provisions that enable transfer to the public service or health or transport service. Sworn police executives will continue to have the benefit of existing provisions in the Police Act, which will allow for secondments to other agencies.

There is no ability to transfer executives from the other services into sworn police officer positions as it is not feasible or appropriate to have public service, health or transport employees transferring into operational police officer positions, which require the incumbent to have sworn the oath of office and to exercise the office of constable. Arrangements for transition to the new senior executive employment arrangements in the Police Force are set out in the bill. In summary, current members of the NSW Police Force senior executive service will become either transitional police senior executives—as in existing deputy commissioners and assistant commissioners—or transitional administrative senior executives on commencement of schedule 3.

Under these transitional arrangements, all transitional police and administrative senior executives will continue to receive the same level of remuneration as they received before the arrangements came into effect. In addition, they will continue to be employed for the balance of their existing contract term as transitional executives and any additional period before the implementation date that the Commissioner of Police may approve. The new senior executive arrangements will apply in the NSW Police Force in accordance with a staged implementation schedule to be prepared by the Commissioner of Police in consultation with the Public Service Commissioner.

On the implementation date for a transitional police senior executive—deputy commissioners and assistant commissioners—the person ceases to be a transitional police senior executive and is employed as a NSW Police Force senior executive under the new senior executive provisions. The Government Sector Employment Act misconduct provisions and unsatisfactory performance provisions will apply to unsworn executive and unsworn non-executive employees within the NSW Police Force. This will not affect the equivalent provisions under the Police Act 1990, which will continue to apply to sworn executive and sworn non-executive police officers to manage performance and conduct.

If the Commissioner of Police is satisfied that a police officer has engaged in poor performance or misconduct, the commissioner will continue to be able to take appropriate action in respect of that officer, including non-reviewable action under schedule 1 of the Police Act, reviewable action under section 173 or removal under section 181D. Currently, unsworn non-executive administrative employees are employed under the Police Act. These arrangements will be continued in alignment with the public service non-executive provisions of the Government Sector Employment Act, with industrial rights, obligations and entitlements reflected in the Police Act, to ensure a more consistent approach. Without these amendments, the employment of unsworn administrative employees of the Police Force would continue to rely on and refer to the repealed Public Sector Employment and Management Act 2002.

There will be no reduction in leave entitlements, which will remain in the police regulations. Transitional arrangements will ensure that existing entitlements are preserved. The non-executive unsworn staff will be employed in a classification of work and assigned to a role like other non-executive public service employees. This alignment will modernise the NSW Police Force employment arrangements and provide this group of employees with the opportunity to broaden and diversify their skills.

I now turn to the provisions for transport. The bill amends the Transport Administration Act 1988 to establish employment in the transport service in the following three categories: Transport service senior executives; transport service senior managers; and transport service non-executive employees. Transport service senior executives will from the implementation date that applies to them be employed in a band that aligns with a band under the Premier's public service senior executive bands determination. These roles are in scope for the senior executive alignment reforms.

The remaining staff employed in the transport senior service immediately before commencement of the new provisions will continue to be employed as senior managers in the transport service on transport service contracts rather than on model contracts under the Government Sector Employment [GSE] Rules and will not be subject to the public service senior executive bands determination. All other persons employed in the transport service who are covered by awards will continue to be transport service non-executive employees and are not impacted by this bill.

The 2013 bill provided for two categories of employees: senior executives and non-executives. However, a third category—senior managers—is needed for the group of contract-based employees in roles that appropriately sit below the public service senior executive bands. Creation of a senior manager category will allow the flexibility and efficiencies gained through previous transport reforms to be maintained whilst distinguishing the group from transport service senior executives. To ensure business continuity and, in particular, that the Government is able to deliver on its major transport and infrastructure commitments, the application of the new senior executive arrangements to existing senior executives from their implementation date will be subject to comprehensive grandfathering provisions. In contrast, new senior executives will be subject to the new arrangements in full following commencement of the relevant provisions. This means that the existing and new arrangements will effectively coexist for a period of time.

The public service senior executive bands and the remuneration ranges as determined under the Statutory and Other Officers Remuneration Act will apply to new senior executives except where the transport secretary determines a higher market remuneration rate in accordance with parameters agreed with the Public Service Commissioner. Here also the higher rate may be required to attract high-calibre applicants. In relation to the transport service senior managers, it is proposed that prior to the relevant provisions of the bill commencing this group will be created and relevant existing employees designated as being in that group.

The employment of senior managers will not be subject to Government Sector Employment Rules that will apply to transport service senior executives. Their conditions of employment and remuneration will continue to be determined by the transport secretary, and they will remain on contracts of employment. Transitional provisions will preserve their current contracts, remuneration, remuneration ranges and conditions through transitional regulations if required.

I turn now to the other provisions in the bill. This bill makes amendments to the Government Sector Employment Act that address an anomaly that existed under the former Public Sector Employment and Management Act 2002 and was carried through to the current Act. An important provision under the Public Interest Disclosures Act 1994 makes it an offence for a person to take detrimental action against another that substantially is in reprisal for the other person making a public interest disclosure, known as a PID.

An award-based employee whose employment has been terminated substantially in reprisal for making a PID can seek reinstatement or re-employment through the unfair dismissal provisions of the Industrial Relations Act 1996. The Industrial Relations Commission has jurisdiction to order reinstatement or re-employment of the employee where it considers this appropriate. However, an executive whose employment is, for whatever reason, terminated under the Government Sector Employment Act is prevented by that Act from seeking reinstatement or any other relief. This is the case even if the termination was substantially in reprisal for the executive making a PID.

This anomaly was highlighted in the May 2014 Independent Commission Against Corruption [ICAC] report on Operation Dewar. In the ICAC report, a senior executive was found to have had their employment terminated substantially in reprisal for the executive making a public interest disclosure. The current Government Sector Employment Act would not have enabled that former senior executive to be directly reinstated in their previous role or directly re-employed in another suitable role. In light of the ICAC report and following consultations with the Office of the NSW Ombudsman, the Public Service Commissioner has recommended the changes contained in this bill.

The amendments enable the reinstatement or re-employment of a former public service senior executive where the Public Service Commissioner is satisfied that the executive's termination was substantially in reprisal for making a PID and, after consulting the former executive, the former executive wishes to be reinstated or re-employed. If reinstatement to the executive's former role would be impracticable, the provisions would enable the former executive to be re-employed in a similar role or other appropriate role, whether in the agency in which their former role is located or in a different agency. They would, under these new arrangements, not be subject to the usual merit-based recruitment requirements under the Government Sector Employment Act 2013.

The amendments just as importantly restore the entitlements such as sick leave and extended leave and foregone salary of the reinstated or re-employed person so that they are in the same position they would have been in if they had not been terminated, subject to repayment of compensation and any other amount paid on termination. These reinstatement provisions will also apply to health, transport and Police Force senior executives.

Schedule 1 to the bill also contains amendments to the Government Sector Employment Act 2013 to refine its operation. These include amendments to allow the Public Service Commissioner, subject to the Government Sector Employment Regulation, to determine the kinds and value of "employment benefits" for public service senior executives that may form part of the total remuneration package. This will not impact on the total amount of the remuneration package of a senior executive, which will continue to be within the range determined under the Statutory and Other Offices Remuneration Act 1975. It also includes amendments to strengthen the "portability" of the executive contracts within the public service and across the other services without termination of a contract and compensation. It also contains amendments to the membership of the Public Service Commission's Advisory Board to include the Secretary of the Treasury or the secretary's nominee.

Schedule 1 also includes amendments to ensure that the secretary of a department who is, pursuant to section 26 of the Government Sector Employment Act, the employer of senior executives of an executive agency related to that department is able to exercise all the key employer functions under the Government Sector Employment Act, including implementing a direction of the Public Service Commissioner that relates to those senior executives. It also contains amendments to list Crown law officers expressly by title as excluded from part 6 of the Act, which deals with removal of statutory office holders. While the Government Sector Employment Act did not change the position relating to the removal of Crown law officers, the amendment is made for abundant clarity, as promised during debate on the Government Sector Employment Bill 2013.

In addition, schedule 1 contains amendments that also strengthen the misconduct regime in relation to serious offences. Misconduct is to include where there is a finding of guilt for a serious offence with no conviction recorded and the scope will include offences committed outside New South Wales which if committed in New South Wales would be a serious offence within the defined meaning. Schedule 5 to the bill contains amendments to other legislation, including the Statutory and Other Offices Remuneration Act 1975, the Constitution Act 1902, the Sydney Cricket and Sports Ground Act 1978, and other minor miscellaneous amendments.

The amendment to the Constitution Act 1902 clarifies that parliamentary officers and staff may continue to be appointed and employed outside of the Government Sector Employment Act. The amendments to the Sydney Cricket and Sports Ground Act 1978 will provide the trust with the power to employ its own staff. The amendments to the Statutory and Other Offices Remuneration Act 1975 will provide the Statutory and Other Offices Remuneration Tribunal with the necessary range of options to determine a consistent and transparent remuneration framework for executives across the sector.

Public service senior executives are employed in a band and receive a remuneration package within a remuneration range determined by the tribunal. In limited circumstances, however, it will be appropriate, due to competitive market pressures, for an office, a role, a class of senior executives or a particular person assigned to a role to have a remuneration package that is above the general remuneration range for the band. Under legislative provisions that applied to the former senior executive service, the tribunal was able to make determinations to address a range of employment circumstances. This included the ability to: fix a remuneration package for a particular executive office holder who is named in the determination; fix remuneration packages for particular executive office holders without the office holders having to be named; fix remuneration packages for classes of executive office holders; and make a determination that applies in relation to an office holder even though no person holds the office for the time being.

Under the existing legislative provisions the tribunal may only make a determination of an above-band remuneration package in respect of appointments of named individuals. The tribunal is not able to make a general determination that would apply to a specific role, regardless of the occupant, or to a class of public service senior executive offices or roles—that was not intended. The proposed amendments will extend to the tribunal the previous powers and enable it to determine remuneration suitable for the diverse range of senior executive roles across the sector.

In her Commission of Audit, Kerry Schott showed us that the public sector had been neglected. In effect, the fine women and men who devote their careers to public service were delivering for communities in spite of the workforce management systems in their organisations rather than with the support of those systems. The Government has been systematically turning this situation around. We want to unlock the potential within our public sector. We want to attract the best and the brightest to work in the public service. This bill is the next important step in that process of reform. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Dr Peter Phelps and set down as an order of the day for a later hour.**

*[The Assistant-President (Reverend the Hon. Fred Nile) left the chair at 12.51 p.m. The House resumed at 2.30 p.m.]*

**Pursuant to sessional orders business interrupted at 2.30 p.m. for questions.**