



New South Wales

Government Sector Employment Amendment Bill 2022

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 *Government Sector Employment Act 2013* (the **GSE Act**) to give effect to recommendations arising out of the following reports—

- (a) the report entitled “DPC Inquiry: Appointment of Senior Trade and Investment Commissioner to the Americas” prepared by Graeme Head AO dated 12 August 2022,
- (b) the report entitled “Independent Review of the NSW Government Sector Employment Act 2013” prepared by the Hon Greg Pearce, Gabrielle Trainor AO and Jane Halton AO PSM dated 30 November 2020.

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.

Schedule 1 Amendment of Government Sector Employment Act 2013 No 40 consequent on the Head Report

Schedule 1[1] provides that the Public Service Commissioner may adopt a code of ethics and conduct and government sector employees must comply with the code.

Schedule 1[3] sets out particular roles and responsibilities of a Secretary of a Department.
Schedule 1[2] makes a consequential amendment.

Schedule 1[4] and [5] provide that a Secretary of a Department or the head of a Public Service agency (that is not a Department) is not subject to direction or control by a Minister in relation to the Secretary or head of agency's employer functions.

Schedule 1[6] provides that, after conducting an inquiry into a government sector agency under the GSE Act, section 83, the Public Service Commissioner or the Secretary of the Department of Premier and Cabinet may prepare a report on the conduct and findings, and any recommendations, of the inquiry, and publish the report, if the Commissioner or Secretary considers it is in the public interest to do so. No civil or criminal action or proceedings may be brought in relation to the publication of the report or a copy of the report.

Schedule 1[7] provides that certain government sector senior executives (*GSSE*) must seek guidance from the Public Service Commissioner if they intend to accept an offer of employment in the private sector related to any of the GSSE's roles or responsibilities during the previous 2 years.

Schedule 1[8] provides that the functions of the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (the *Joint Committee*) includes monitoring and reviewing the Public Service Commissioner's execution of the Commissioner's functions under the GSE Act and to report the Joint Committee's findings to both Houses of Parliament.

Schedule 1[9] provides for savings, transitions and other provisions consequent on the enactment of **Schedule 1[1]** and **Schedule 2[12]**.

Schedule 2 Amendment of Government Sector Employment Act 2013 No 40 consequent on the Independent Review

Schedule 2[1] inserts a definition of *personal information or health privacy law*.

Schedule 2[2] and [17] make it clear that a personal information or health privacy law does not operate to prevent—

- (a) the provision of information, or affect a duty to give information, to the Public Service Commissioner or DPC Secretary in specified circumstances, and
- (b) the provision of information by the Commissioner or DPC Secretary in specified circumstances.

Schedule 2[3] and [4] make law revision amendments.

Currently, a Public Service senior executive may, from time to time, be assigned to a role in any Public Service agency in the band in which the executive is employed. **Schedule 2[5], [6] and [7]** provide that a Public Service senior executive may also be assigned as follows—

- (a) with the prior written consent of the executive—to a role in any Public Service agency in a lower band to the band in which the executive is employed,
- (b) with the prior written consent of the executive—to a role in the Public Service agency in which the executive is employed in a classification of work in which Public Service non-executive employees are employed.

The amendments contain further provisions dealing with re-assignments.

Schedule 2[8] and [15] make it clear that the appointment of a former executive or former statutory office holder to a statutory office is *employment* for the purposes of certain sections dealing with the termination of employment of senior executives and removal of statutory office holders.

Schedule 2[9] and [16] provide, to avoid doubt, that certain provisions dealing with compensation payments and re-employment in the public sector have effect despite another Act or law unless the other Act or law explicitly provides that the provisions do not apply.

Currently, a Public Service non-executive employee in a Public Service agency may, from time to time, be assigned to a role in the agency in the classification of work in which the employee is employed. **Schedule 2[10] and [11]** provide that a Public Service senior executive may also, with the prior written consent of the employee, be assigned to a role in the agency with a lower classification of work.

The amendments contain further provisions dealing with re-assignments.

Schedule 2[12] makes it clear that the Industrial Relations Secretary may amend or rescind a determination about conditions of employment of Public Service employees made by the Industrial Relations Secretary. **Schedule 1[9]** makes a consequential savings and transitional amendment.

Schedule 2[13] provides that a person to whom the Industrial Relations Secretary has delegated a function may, subject to the conditions of the delegation, sub-delegate the function to a Public Service employee or to a statutory officer if the delegate is authorised in writing to do so.

Schedule 2[14] provides that a person employed in a government sector agency is not to be seconded to carry out work in or for a non-government body unless—

- (a) the head of the government sector agency is satisfied the secondment—
 - (i) benefits the agency or government sector, or
 - (ii) is otherwise justified in the circumstances, and
- (b) the period of the secondment does not exceed 2 years.

Schedule 3 Consequential amendments

Schedule 3 provides that the meaning of *misconduct* in the *Education (School Administrative and Support Staff) Act 1987* and the *Teaching Service Act 1980* includes a contravention of a code of ethics and conduct adopted under the GSE Act, proposed section 8A set out in **Schedule 1[1]**.



New South Wales

Government Sector Employment Amendment Bill 2022

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New South Wales

Government Sector Employment Amendment Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Government Sector Employment Act 2013* to make further provision relating to employment in the government sector.

The Legislature of New South Wales enacts—	1
1 Name of Act	2
This Act is the <i>Government Sector Employment Amendment Act 2022</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1 **Amendment of Government Sector Employment Act 2013 No 40 consequent on the Head Report**

[1] **Part 2A**

Insert after Part 2—

Part 2A Code of ethics and conduct

8A Code of ethics and conduct

- (1) The Commissioner may, by order published in the Gazette, adopt a code of ethics and conduct.
- (2) Government sector employees must comply with a code adopted under this section.
Note— A contravention of a code adopted under this section, being an instrument under this Act, may be ***misconduct*** for the purposes of section 69.
- (3) In this section—
Government sector employee means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a government sector agency.

[2] **Section 25, heading**

Omit “**General responsibility**”. Insert instead “**Role and responsibilities**”.

[3] **Section 25(3) and (4)**

Insert after section 25(2), before the note—

- (3) The role of a Secretary of a Department includes, but is not limited to, the following—
 - (a) policy adviser—acting as principal official policy adviser to the Minister or Ministers to whom the Secretary is responsible,
 - (b) manager—ensuring the delivery of the Government’s policies and programs and collaborating with other agencies across the government sector to achieve the Government’s stated outcomes,
 - (c) leader—providing stewardship within the Department and, in partnership with other Secretaries and the Public Service Commissioner, across the government sector,
 - (d) employer—exercising the employer functions of Government under this Act,
Note— See section 26.
 - (e) other roles conferred or imposed on the Secretary by or under this or another Act or another law.
- (4) Without limiting subsection (1), the responsibilities of a Secretary of a Department also include the following—
 - (a) to manage the affairs of the Department efficiently, effectively and ethically,
 - (b) to provide frank and fearless advice to the Minister or Ministers to whom the Secretary is responsible about matters relating to the Department and its related agencies,
 - (c) to implement measures to ensure the Department complies with the law,

(d)	to provide leadership, strategic direction and a focus on results for the Department,	1
(e)	to maintain clear lines of communication with the heads of the Department's related agencies,	2
(f)	to engage with stakeholders, particularly in relation to the core activities of the Department,	3
(g)	to ensure that the Department has a strong strategic policy capability that can consider complex, whole-of-government issues,	4
(h)	to assist Ministers in fulfilling Ministerial accountability obligations to Parliament in providing factual information in relation to the operation and administration of the Department,	5
(i)	to accept and take other responsibilities conferred or imposed on the Secretary by or under this or another Act or another law.	6
[4]	Section 26 Employer functions of Secretaries of Departments	7
	Insert after section 26(3)—	8
(4)	In the exercise of the employer functions referred to in subsection (1), a Secretary of a Department is not subject to the direction or control of a Minister.	9
[5]	Section 31 Employer functions of heads of agencies (other than Departments)	10
	Insert after section 31(2)—	11
(3)	In the exercise of the employer functions referred to in subsection (1), a head of a Public Service agency is not subject to the direction or control of a Minister.	12
[6]	Section 83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies	13
	Insert after section 83(4)—	14
(4A)	The Commissioner or DPC Secretary may—	15
(a)	prepare a report on the conduct and findings, and any recommendations, of the inquiry, and	16
(b)	publish the report, if the Commissioner or DPC Secretary considers it is in the public interest to do so.	17
(4B)	No civil or criminal action or proceedings may be brought in relation to the publication of the report or a copy of the report.	18
[7]	Section 83B	19
	Insert after section 83A—	20
83B	Employment after leaving certain senior executive employment	21
(1)	This section applies to the following senior executives (a <i>GSSE</i>)—	22
(a)	Secretaries of Departments,	23
(b)	other heads of Public Service agencies who are Public Service employees,	24
(c)	other Public Service employees employed in the 2 most senior bands determined under the senior executive bands determination,	25

(d)	other government sector senior executives in the following services employed in the 2 most senior bands determined under the senior executive bands determination for the service—	1
		2
		3
(i)	the NSW Health Service,	4
(ii)	the NSW Police Force,	5
(iii)	the Transport Service of New South Wales.	6
(2)	A GSSE who intends to accept an offer of employment in the private sector must, if the employment directly relates to any of the GSSE's current role or responsibilities, or a role or responsibilities held during the previous 2 years, first seek the guidance of the Commissioner.	7
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(3)	The guidance may include, but is not limited to, advice regarding—	11
(a)	the management of actual and potential conflicts of interest,	12
(b)	the use of information or knowledge gained by the GSSE in the course of the GSSE's employment.	13
		14
[8]	Section 86A	15
	Insert after section 86—	16
86A	Oversight of Commissioner's functions by Joint Committee	17
(1)	The Joint Committee has the following functions under this Act—	18
(a)	to monitor and review the exercise by the Commissioner of the Commissioner's functions under this Act (the <i>GSE functions</i>),	19
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(b)	to report to both Houses of Parliament, with comments as it thinks fit, on matters concerning the Commissioner or connected with the exercise of the Commissioner's GSE functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,	21
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(c)	to examine each annual and other report of the Commissioner and report to both Houses of Parliament on any matter appearing in, or arising out of, one of those reports,	25
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(d)	to recommend to both Houses of Parliament changes to the GSE functions of the Commissioner that the Joint Committee thinks desirable,	28
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(e)	to inquire into any question in connection with the GSE functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.	31
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(2)	Nothing in this section authorises the Joint Committee—	34
(a)	to investigate a matter relating to any particular conduct, or	35
(b)	to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter, or	36
		37
(c)	to reconsider the determinations, findings, recommendations or other decisions of the Commissioner in relation to any particular matter.	38
		39
(3)	The provisions of the <i>Ombudsman Act 1974</i> , Part 4A apply in relation to the Joint Committee's functions under this Act in the same way as the provisions apply in relation to the Joint Committee's functions under that Act.	40
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		42
(4)	In this section—	43
	<i>investigate</i> includes inquire into.	44

Joint Committee means the Committee on the Ombudsman, the Law
 Enforcement Conduct Commission and the Crime Commission constituted
 under the *Ombudsman Act 1974*.

[9] Schedule 4 Savings, transitional and other provisions

Insert after Part 4—

**Part 5 Provisions consequent on enactment of
 Government Sector Employment Amendment Act
 2022**

21 Code of ethics and conduct—the Act, s 8A

- (1) The code set out in section 2.2 of the document entitled *Behaving Ethically: A Guide for NSW government sector employees* as published on the Public Service Commission's website on 26 August 2022 is taken to have been adopted by the Commissioner for the purposes of this Act, section 8A on the commencement of this clause.
- (2) To avoid doubt, the code referred to in subclause (1) may be revoked and replaced by an order published in the Gazette adopting a replacement code.

22 Industrial Relations Secretary determinations—the Act, s 52

To avoid doubt, a determination of the Industrial Relations Secretary under section 52 in force on the commencement of the amendment to the section by the *Government Sector Employment Amendment Act 2022*, Schedule 2[12] may be amended or rescinded by the Industrial Relations Secretary.

Schedule 2	Amendment of Government Sector Employment Act 2013 No 40 consequent on the Independent Review	1
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[1] Section 3 Definitions		4
Insert in alphabetical order in section 3(1)—		5
	<i>personal information or health privacy law</i> means a law relating to the following—	6
		7
	(a) the protection of personal information within the meaning of the <i>Privacy and Personal Information Protection Act 1998</i> ,	8
		9
	(b) the protection of health information within the meaning of the <i>Health Records and Information Privacy Act 2002</i> .	10
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[2] Section 16 Provision of reports and information by agencies		12
Omit section 16(4). Insert instead—		13
	(4) A personal information or health privacy law does not operate to prevent—	14
	(a) the provision of information, or affect a duty to give information, to the Commissioner under this section, and	15
		16
	(b) the provision of information by the Commissioner to a head of a government sector agency for the purposes of this section.	17
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[3] Section 25 General responsibility of Secretaries of Departments		19
Omit “of a Minister” from section 25(2).		20
Insert instead “on a Minister”.		21
[4] Section 30 General responsibility of heads of agencies (other than Departments)		22
Omit “of a Minister” from section 30(2).		23
Insert instead “on a Minister”.		24
[5] Section 38, heading		25
Insert “and classifications” after “bands”.		26
[6] Section 38(2) and (2A)		27
Omit section 38(2). Insert instead—		28
	(2) A Public Service senior executive may, from time to time, be assigned as follows—	29
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	(a) to a role in any Public Service agency in the band in which the executive is employed,	31
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	(b) with the prior written consent of the executive—to a role in any Public Service agency in a lower band to the band in which the executive is employed,	33
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		35
	(c) with the prior written consent of the executive—to a role in the Public Service agency in which the executive is employed in a classification of work in which Public Service non-executive employees are employed.	36
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	(2A) To avoid doubt, if a person is assigned to a role—	39
	(a) under subsection (2)(b)—the person, on and from the assignment, is employed in the lower band, or	40
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	(b) under subsection (2)(c)—the person, on and from the assignment, ceases to be a Public Service senior executive and becomes a Public Service non-executive employee.	1 2 3
[7]	Section 38(8)–(10)	4
	Omit section 38(8). Insert instead—	5
	(8) A Public Service senior executive is not to be assigned to a different role under subsection (2)(a) or transferred under subsection (7A) unless the executive has been consulted.	6 7 8
	(9) The remuneration payable to a Public Service senior executive referred to in subsection (8) is not to be reduced because of the assignment to the different role without the prior written consent of the executive.	9 10 11
	(10) The remuneration payable to the Public Service senior executive assigned under subsection (2)(b) or (c) is to be adjusted, on the commencement of the assignment, to a level appropriate for the lower band or classification of work.	12 13 14
[8]	Section 41 Termination of employment of senior executives	15
	Insert at the end of section 41(5), definition of <i>employment</i> , paragraph (c)—	16
	, and	17
	(d) the appointment of the former executive to a statutory office.	18
[9]	Section 41(6)	19
	Insert after section 41(5)—	20
	(6) To avoid doubt, subsection (3) has effect despite another Act or law unless the other Act or law explicitly provides that the subsection does not apply.	21 22
[10]	Section 46 Assignment to roles in work classifications	23
	Omit section 46(2). Insert instead—	24
	(2) The head of a Public Service agency may from time to time assign a Public Service non-executive employee of the agency as follows—	25 26
	(a) to a role in the agency in the classification of work in which the employee is employed,	27 28
	(b) with the prior written consent of the employee—to a role in the agency with a lower classification of work.	29 30
	(2A) To avoid doubt, if an employee is assigned to a role under subsection (2)(b), the employee is, on and from the assignment, employed in the lower classification of work.	31 32 33
[11]	Section 46(4)–(6)	34
	Omit section 46(4). Insert instead—	35
	(4) A Public Service non-executive employee is not to be assigned to a different role under subsection (2)(a) unless the employee has been consulted.	36 37
	(5) The remuneration payable to an employee referred to in subsection (4) is not to be reduced because of the assignment to the different role without the prior written consent of the employee.	38 39 40
	(6) The remuneration payable to an employee assigned under subsection (2)(b) is to be adjusted, on the commencement of the assignment, to a level appropriate for the lower classification of work.	41 42 43

[12] Section 52 Industrial Relations Secretary may determine employment conditions not otherwise lawfully determined	1
Insert after section 52(4)—	2
(5) The Industrial Relations Secretary may amend or rescind a determination made under this section.	3
[13] Section 53 Industrial relations provisions	4
Insert after section 53(2)—	5
(2A) A delegate under subsection (2) may, subject to the conditions of the delegation, sub-delegate a function to a Public Service employee or to a statutory officer if the delegate is authorised in writing to do so.	6
[14] Section 66 Secondments of staff between government sector agencies and other relevant bodies	7
Insert after section 66(3)—	8
(3A) A person employed in a government sector agency is not to be seconded under this section to carry out work in or for a non-government body unless—	9
(a) the head of the government sector agency is satisfied the secondment—	10
(i) benefits the agency or government sector, or	11
(ii) is otherwise justified in the circumstances, and	12
Examples— A secondment may benefit a government sector agency or the government sector by enabling the seconded employee to improve the employee's skills, knowledge and experience that would be beneficial for the agency or government sector on return.	13
A secondment to a non-government sector body for public or charitable purposes may be otherwise justified in the circumstances.	14
(b) the period of the secondment does not exceed 2 years.	15
[15] Section 78 Compensation for office holder following removal	16
Insert at the end of section 78(8), definition of <i>employment</i> , paragraph (c)—	17
, and	18
(d) the appointment of the person to a statutory office.	19
[16] Section 78(9)	20
Insert after section 78(8)—	21
(9) To avoid doubt, subsection (7) has effect despite another Act or law unless the other Act or law explicitly provides that the subsection does not apply.	22
[17] Section 83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies	23
Insert after section 83(6)—	24
(7) A personal information or health privacy law does not operate to prevent—	25
(a) the provision of information, or affect a duty to give information, to the Commissioner or DPC Secretary under this section, and	26
(b) the provision of information by the Commissioner or DPC Secretary to a person for the purposes of this section.	27

Schedule 3	Consequential amendments	1
3.1	Education (School Administrative and Support Staff) Act 1987 No 240	2
	Section 29 Meaning of “misconduct”	3
	Insert after section 29(1)(a)—	4
	(a1) a contravention of a code of ethics and conduct adopted under the	5
	<i>Government Sector Employment Act 2013 No 40</i> , section 8A,	6
3.2	Teaching Service Act 1980 No 23	7
	Section 93C Meaning of “misconduct”	8
	Insert after section 93C(1)(a)—	9
	(a1) a contravention of a code of ethics and conduct adopted under the	10
	<i>Government Sector Employment Act 2013 No 40</i> , section 8A,	11