



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]**.