



New South Wales

Government Sector Employment Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Members of Parliament Staff Bill 2013* is cognate with this Bill.

Overview of Bill

The object of this Bill is to repeal the *Public Sector Employment and Management Act 2002* and replace it with legislation to modernise government sector employment.

Outline of provisions

Part 1 Preliminary

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 a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. These include:

Government sector comprises the following:

- (a) the Public Service,

- (b) the Teaching Service,
- (c) the NSW Police Force,
- (d) the NSW Health Service,
- (e) the Transport Service,
- (f) any other service of the Crown (including the service of any NSW government agency),
- (g) persons or bodies prescribed by the regulations.

Public Service agency means:

- (a) a Department, or
- (b) a Public Service executive agency related to a Department, or
- (c) a separate Public Service agency.

Public Service employee means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a Public Service agency.

Clause 4 sets out the objects of the proposed Act.

Clause 5 specifies persons to whom the proposed Act does not apply. In particular, judicial officers, parliamentary or Ministerial staff and staff of ICAC, the Audit Office and the Judicial Commission.

Part 2 Ethical framework for the government sector

This Part reproduces similar provisions in the current Act.

Clause 6 sets out the objective of Part 2.

Clause 7 sets out the core values for the government sector, being integrity, trust, service and accountability, and the principles that guide their implementation.

Clause 8 contains general provisions, including that the Public Service Commissioner has the function of promoting and maintaining the government sector core values.

Part 3 Public Service Commissioner and Advisory Board

This Part reproduces provisions (with some modification) enacted in 2011.

Division 1 Public Service Commissioner

Clause 9 continues to provide for the appointment of a Public Service Commissioner.

Clause 10 outlines the principal objectives of the Commissioner.

Clause 11 outlines the general functions of the Commissioner. The Bill contains additional specific functions including the making of government sector employment

rules, assigning in certain cases senior executives to roles in the Public Service and reporting on workforce diversity.

Clause 12 enables the Commissioner to make government sector employment rules on any matter for which rules are authorised to be made by the proposed Act.

Clause 13 enables the Commissioner to give a direction to the head of a government sector agency on a specific matter in relation to the employees of that agency.

Clause 14 provides that the Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.

Clause 15 requires the Commissioner to provide an annual report to the Premier on the Commissioner's work and activities, and the state of the government sector.

Clause 16 enables the Commissioner to require the head of a government sector agency to provide the Commissioner with a report on matters relating to the employees of the agency or its employment policies and practices.

Clause 17 makes miscellaneous provisions in relation to the Commissioner, including provisions relating to the staff of the Commissioner, the delegation of the Commissioner's functions and the publication of government sector employment information on the Commissioner's website.

Division 2 Public Service Commission Advisory Board

Clause 18 continues the Public Service Commission Advisory Board.

Clause 19 outlines the functions of the Advisory Board.

Part 4 The Public Service

This Part establishes a new Public Service to replace the existing Government Services that comprises Public Service and Non-Public Service Divisions.

Division 1 General

Clause 20 provides that the Public Service of New South Wales consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.

Clause 21 enables the Government of New South Wales to employ persons in the Public Service to enable Ministers, statutory bodies or statutory officers to exercise their functions, or for any other purpose.

Clause 22 provides that Public Service employees are employed in:

- (a) Departments (to be listed in Part 1 of Schedule 1 to the proposed Act), or
- (b) Public Service executive agencies related to a Department (to be listed in Part 2 of Schedule 1), or
- (c) separate Public Service agencies (to be listed in Part 3 of Schedule 1).

Administrative arrangements orders under proposed Part 7 of the *Constitution Act 1902* can create, abolish or change the name of these Public Services agencies and amend Schedule 1 to the proposed Act accordingly.

Division 2 Secretaries of Departments

Clause 23 provides that the head of a Department is the Secretary of the Department. Secretaries are appointed by the Minister administering the proposed Act (or delegate) and are subject to the Public Service senior executive provisions of this Part.

Clause 24 provides that the Minister (or delegate) may appoint a Public Service employee to act as the Secretary of a Department if the office of the Secretary is vacant or the Secretary is unavailable.

Clause 25 provides that the Secretary of a Department is responsible to the Minister or Ministers to whom the Department is responsible for the general conduct and management of the functions and activities of the Department in accordance with government sector core values.

Clause 26 enables the Secretary of a Department to exercise the employer functions of the Government in relation to:

- (a) Public Service senior executives assigned to roles in the Department and other employees of the Department, and
- (b) certain heads of Public Service executive agencies related to the Department and Public Service senior executives assigned to roles in Public Service executive agencies related to the Department.

The employer functions of the Government are all the functions of an employer in respect of employees, including the power to employ persons, assign their roles and terminate their employment.

Clause 27 enables the Secretary of a Department to delegate functions to employees of the Department or of other Public Service agencies, or to statutory officers.

Division 3 Heads of other Public Service agencies

Clause 28 provides that the head of a Public Service agency (other than a Department) is the holder of the office specified in Part 2 or 3 of Schedule 1 in relation to the agency concerned. Appointments to an office of head are to be made:

- (a) in the case of a Public Service executive agency related to a Department—by the Secretary of the Department, or
- (b) in the case of a separate Public Service agency—by the Minister administering the proposed Act (or delegate).

However, if Schedule 1 provides that some other person exercises employer functions in relation to the head, appointments to the office of the head are to be made by that other person.

Clause 29 provides that the person authorised to appoint the head of a Public Service agency (other than a Department) may appoint a Public Service employee to act as the head of the agency if the office of the head is vacant or the head is unavailable.

Clause 30 provides that the head of a Public Service agency (other than a Department) is responsible to the Minister or Ministers to whom the agency is responsible for the general conduct and management of the functions and activities of the agency in accordance with government sector core values.

Clause 31 enables the head of a Public Service agency (other than a Department) to exercise employer functions in relation to employees of the agency, other than Public Service senior executives of an agency related to a Department (see clause 26).

Clause 32 enables the head of a Public Service agency (other than a Department) to delegate certain functions of the head (including functions under the proposed Act and employer functions) to employees of the agency or of other Public Service agencies, or to statutory officers. The clause also enables sub-delegation of the head's functions in certain circumstances.

Division 4 Public Service senior executives

Clause 33 provides that Division 4 applies to *Public Service senior executives*, being the Secretary of a Department, the heads of other Public Service agencies and other Public Service employees who are employed in a Public Service senior executive band. The *employer* of a Public Service senior executive is the person authorised by the proposed Act to exercise employer functions in relation to the executive that is:

- (a) for the Secretary of a Department—the Minister (or delegate), and
- (b) for executives of a Department or a Public Service executive agency related to a Department—the Secretary of the Department, and
- (c) for executives of separate Public Service agencies—the head of the agency.

Clause 34 provides that employment as a Public Service senior executive may be:

- (a) ongoing employment (being employment that continues until the executive resigns or his or her employment is terminated), or
- (b) term employment (being employment for a specified period or for the duration of a specified task, unless the executive sooner resigns, or his or her employment is sooner terminated).

Clause 35 enables the Minister, with the advice of the Public Service Commissioner, to determine the bands in which Public Service senior executives are to be employed (the *senior executive bands determination*).

Clause 36 provides that the government sector employment rules may deal with any matter relating to the employment of Public Service senior executives, including work level standards for roles in bands in which those executives are employed, methods of job evaluation for the roles of those executives and capabilities for the roles of those executives.

Clause 37 provides that a Public Service senior executive is to be employed in a band determined under the senior executive bands determination that the employer of the executive considers appropriate for the role of the executive.

Clause 38 provides that a Public Service senior executive may be assigned to a role in any Public Service agency in the band in which the executive is employed and assigned to a different role within that band from time to time.

Executives may be assigned to roles by the employer of the executive or by the Public Service Commissioner.

Clause 39 provides that a Public Service senior executive is to be employed under a written contract of employment, and sets out the matters with which the contract is to deal.

Clause 40 makes provision for the remuneration, employment benefits and allowances for Public Service senior executives (in accordance with the remuneration package for the relevant bands determined by the Statutory and Other Offices Remuneration Tribunal).

Clause 41 enables the employer of a Public Service senior executive to terminate the employment of the executive at any time for any or no stated reason and without notice. Such an executive is entitled only to the compensation provided for in his or her employment contract.

Division 5 Public Service employees (other than senior executives)

Clause 42 provides that Division 5 applies to Public Service employees other than Secretaries of Departments, heads of certain Public Service agencies and other Public Service senior executives (*Public Service non-executive employees*).

Clause 43 provides that employment as a Public Service non-executive employee may be:

- (a) ongoing employment (being employment that continues until the employee resigns or his or her employment is terminated), or
- (b) temporary employment (being employment for a temporary purpose), or
- (c) casual employment (being employment to carry out irregular, intermittent, short-term, urgent or other work as and when required).

Clause 44 allows the engagement of Public Service non-executive employees to be made subject to conditions notified to the employee on engagement (such as probation, health clearances and citizenship or residency requirements).

Clause 45 provides that Public Service non-executive employees are to be employed in a Public Service agency in a classification of work determined by the head of the Public Service agency in which the person is employed.

Clause 46 enables the head of a Public Service agency to assign Public Service non-executive employees to roles in the agency within the classification of work in

which the employees are employed, and enables them to be assigned to different roles from time to time.

Clause 47 enables the head of a Public Service agency to terminate the employment of a Public Sector non-executive employee of the agency on certain specified grounds, if the employment is ongoing. If the employment is not ongoing, the head may terminate the employment at any time.

Clause 48 provides that the government sector employment rules may deal with any matter relating to the employment of Public Service non-executive employees.

Division 6 Industrial relations employer functions

Clause 49 contains provisions relating to the interpretation and application of Division 6.

Clause 50 provides that the Industrial Relations Secretary (being currently the Secretary of the Treasury) is, for the purposes of any industrial proceedings relating to Public Service employees, taken to be the employer of those employees.

Clause 51 enables the Industrial Relations Secretary to enter into an agreement with any association or organisation representing a group of Public Service employees with respect to industrial matters.

Clause 52 enables the Industrial Relations Secretary to make determinations fixing conditions of employment of Public Service employees.

Clause 53 contains miscellaneous provisions in relation to the Industrial Relations Secretary, including provisions relating to the functions of the Secretary and the delegation of those functions.

Division 7 Additional Public Service employment provisions

Clause 54 provides that Public Service employees have the entitlements to extended and other leave prescribed by the regulations.

Clause 55 provides that Public Service employees may resign their employment by written notice of resignation.

Clause 56 enables the head of a Public Service agency to retire employees of the agency if they are unfit to perform or incapable of performing their duties.

Clause 57 preserves the Crown's right to dispense with the services of any Public Service employee.

Clause 58 excludes certain industrial and legal proceedings with respect to the employment of Public Service senior executives and with respect to the decision to engage or not engage any Public Service employee.

Clause 59 deals with the construction, in other Acts, instruments and contracts, of references to officers, employees or members of staff of statutory bodies.

Clause 60 enables the Minister or Treasurer to give statutory bodies directions requiring payment, by the statutory body, of employer costs for Public Service employees who are employed to enable the body to exercise its functions.

Clause 61 deals with civil liability with respect to staff of statutory bodies.

Clause 62 provides that a group of Public Service employees employed to enable a statutory body to exercise its functions is taken to be part of the statutory body for the purposes of privacy legislation.

Part 5 Government sector employees

This Part deals with Public Service employees and employees in the wider government sector.

Clause 63 provides that the head of a government sector agency (including a State owned corporation) is responsible for workplace diversity within the agency. The government sector employment rules may deal with workplace diversity.

Clause 64 provides that the government sector employment rules may deal with the transfer of employees between or within government sector and other agencies (by way of secondment or permanent transfer).

Clause 65 enables cross-agency employment by allowing a person to be employed by 2 or more government sector agencies.

Clause 66 allows for temporary assignments of employees between government sector agencies and between those agencies and other relevant bodies (such as private sector entities, universities and other Australian government agencies).

Clause 67 provides that the head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.

Clause 68 provides that the government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance. If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may take certain actions, including terminating the employment of the employee, or reducing the remuneration or the classification or grade of the employee.

Clause 69 provides that the head of a Public Service agency or other prescribed government sector agency is responsible for dealing with any misconduct (or any conviction for a serious offence) by employees of the agency. This may include terminating the employment of the employee, imposing a fine on the employee or reducing the remuneration or the classification or grade of the employee, among other actions.

Clause 70 enables the head of a government agency to suspend an employee from duty (and withhold remuneration) in connection with any allegation of misconduct, serious criminal charges or corrupt findings or investigations of ICAC.

Clause 71 provides that a person employed in any government sector agency who is nominated for election to the Legislative Assembly or Legislative Council is to be granted leave of absence until the result of the election is declared. If the person is elected, the person is required to resign from the government sector agency.

Clause 72 provides for the re-employment, in certain circumstances, of employees of government sector agencies who resign to contest Commonwealth elections but fail to be elected.

Clause 73 provides that the doctrine of incompatibility of office does not prevent the holder of a position in a government sector agency from being appointed to another position in that or any other government sector agency, or require the holder to surrender or vacate the original position.

Clause 74 provides that Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* (Unfair contracts) does not apply to employment contracts of employees of government sector agencies that are alleged to be unfair for any reason relating to excess employees.

Part 6 Removal of statutory officers

This Part reproduces provisions of the existing Act that is being repealed.

Clause 75 provides that Part 6 applies to:

- (a) a person appointed by the Governor or a Minister to a statutory office where the Act concerned provides that the holder of the office holds it for a specified term, and
- (b) a director or chief executive officer of a statutory State owned corporation.

Clause 76 specifies persons to whom Part 6 does not apply (such as Ministers, judicial officers, Public Service senior executives and statutory officers whose removal requires an address of both Houses of Parliament).

Clause 77 enables the Governor to remove a person to whom Part 6 applies from office at any time for any or no stated reason and without notice.

Clause 78 entitles a person who is removed from office under Part 6 (other than part-time office holders) to compensation for loss of remuneration as determined by the Statutory and Other Offices Remuneration Tribunal.

Clause 79 contains provisions relating to the operation of Part 6.

Part 7 Miscellaneous

Clause 80 provides that the proposed Act will bind the Crown.

Clause 81 enables the Minister to delegate the Minister's functions under the proposed Act to any authorised person.

Clause 82 enables the Minister to direct a specific person to conduct a special inquiry into any matter relating to a government sector agency or a NSW government agency.

Clause 83 enables the Public Service Commissioner or the Secretary of the Department of Premier and Cabinet (or a person authorised by either) to conduct an inquiry into any matter relating to the administration or management of a government sector agency.

Clause 84 provides that nothing in the proposed Act limits a Minister's ordinary and necessary departmental authority with respect to the control and direction of staff and work.

Clause 85 preserves the operation of the *Industrial Relations Act 1996* and State superannuation legislation.

Clause 86 provides that nothing in the proposed Act prevents the head of a Public Service agency or a Public Service senior executive or employee from also being appointed to a statutory office.

Clause 87 provides that proceedings for offences against the regulations may be dealt with summarily before the Local Court.

Clause 88 enables the Governor to make regulations for the purposes of the proposed Act. Regulations may be made for any purpose for which government sector employment rules may be made.

Clause 89 provides for the review of the proposed Act in 5 years.

Schedule 1 Public Service Agencies

The Schedule will list Departments, Executive agencies related to Departments and separate agencies.

Schedule 2 Provisions relating to Public Service Commissioner

This Schedule continues existing provisions relating to the Public Service Commissioner.

Schedule 3 Members and procedure of Public Service Commission Advisory Board

This Schedule continues existing provisions relating to the members and procedure of the Public Service Commission Advisory Board.

Schedule 4 Savings, transitional and other provisions

This Schedule contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule:

- (a) continues the employment of existing staff of the Government Service as employees in the Public Service, and
- (b) continues in office the existing Public Service Commissioner and departmental heads, and
- (c) provides for the staged implementation of the new senior executive employment arrangements, and
- (d) preserves existing conditions of employment.

Schedule 5 Repeal of existing Act and Regulation

This Schedule repeals the *Public Sector Employment and Management Act 2002* and the *Public Sector Employment and Management Regulation 2009*.

Schedule 6 Amendment of other Acts

This Schedule contains amendments to the following Acts:

6.1 Anti-Discrimination Act 1977

Part 9A of that Act relating to Equal Opportunity in Public Employment is omitted as a result of the transfer of provisions relating to workforce diversity to section 63 of the proposed Act.

6.2 Constitution Act 1902

The amendments transfer to the *Constitution Act 1902* provisions of the existing *Public Sector Employment and Management Act 2002* relating to administrative changes orders. In addition to maintaining existing powers to establish, abolish or change the name of existing Public Service Departments and other agencies, to transfer affected staff and construe legislative references as a result of administrative changes, the new provisions give statutory recognition to the allocation to Ministers of the administration of Acts and other portfolio responsibilities. The new orders will be known as administrative arrangements orders.

6.3 Government Information (Public Access) Act 2009

The amendment enables the exclusion of access to information held by the Public Service Commissioner in relation to inquiries under the proposed Act.

6.4 Industrial Relations Act 1996

The amendments abolish promotion appeals in the public sector and make consequential changes.

6.5 Interpretation Act 1987

The amendments make consequential changes.

6.6 Police Act 1990

The amendments make consequential changes.

6.7 Public Sector Employment and Management Act 2002

The Act is amended before its repeal to enable the transfer of provisions relating to government procurement of goods and services to the *Public Works Act 1912*.

6.8 Public Works Act 1912

The Act is consequentially amended and renamed the *Public Works and Procurement Act 1912*.

6.9 Statutory and Other Offices Remuneration Act 1975

The amendments authorise the Statutory and Other Offices Remuneration Tribunal to determine the appropriate remuneration package for Secretaries of Departments and other bands of Public Service senior executives.

6.10 Transport Administration Act 1988

The amendments transfer the employment of the heads of Roads and Maritime Services, the State Transit Authority and RailCorp from the Government Service to the Transport Service.

6.11 Transport Legislation Amendment Act 2011

The amendment makes a consequential repeal.

6.12 Workers Compensation Act 1987

The amendment transfers a provision relating to workers compensation liability from the *Public Sector Employment and Management Act 2002* to the Act.

Table of concordance

Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of repealed Public Sector Employment and Management Act 2002
Secs 1–4	—
Sec 5	Sec 158A
Sec 6	Sec 3A
Sec 7	Sec 3B
Sec 8	Sec 3C
Sec 9	Sec 3D
Sec 10	Sec 3E
Sec 11	Sec 3F
Sec 12	—
Sec 13	Sec 3J
Sec 14	Sec 3G
Sec 15	Sec 3H
Sec 16	Sec 3I
Sec 17	Secs 3L–3P, 164 (1A)
Sec 18	Sec 3Q
Sec 19	Sec 3R
Sec 20	Secs 4A, 6
Sec 21	Sec 4B
Sec 22	Sec 4C
Sec 23	Secs 4D (1), 10, 12
Sec 24	Sec 13
Sec 25	Sec 14
Sec 26	Sec 4D (2), (3)
Sec 27	Sec 4F
Sec 28	Secs 4D (1), 10
Sec 29	Sec 13

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Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of repealed Public Sector Employment and Management Act 2002
Sec 30	Sec 14
Sec 31	Sec 4D (2), (3)
Sec 32	Sec 4F
Secs 33–38	—
Sec 39	Sec 69
Sec 40	Sec 74
Sec 41	Sec 77
Sec 42	Sec 16
Sec 43	Sec 7
Secs 44–46	—
Sec 47	Secs 25, 26, 30, 39, 56
Secs 48, 49	—
Sec 50	Sec 129
Sec 51	Sec 131
Sec 52	Secs 4E (1), 130
Sec 53	Secs 122–125
Secs 54, 55	—
Sec 56	Sec 25
Sec 57	Secs 60, 61
Sec 58	Secs 22, 72
Sec 59	Sec 4K
Sec 60	Sec 4E (2), (3)
Sec 61	Sec 4I (4)
Sec 62	Sec 4J
Sec 63	—
Sec 64	Secs 86–91
Sec 65	Sec 100
Sec 66	Secs 88, 88A

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Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of repealed Public Sector Employment and Management Act 2002
Sec 67	Sec 101A
Sec 68	Sec 47
Sec 69	Secs 40–53
Sec 70	Sec 49
Sec 71	Sec 102
Sec 72	Sec 103
Sec 73	Sec 102A
Sec 74	Sec 103A
Sec 75	Secs 114, 116 (3)
Sec 76	Secs 115, 116 (4), 120 (6)
Sec 77	Sec 116
Sec 78	Sec 118
Sec 79	Sec 120
Sec 80	Sec 158
Sec 81	Sec 162
Sec 82	Sec 159
Sec 83	Secs 3K, 159A
Sec 84	Sec 161
Sec 85	Secs 93, 160
Sec 86	—
Sec 87	Sec 163
Sec 88	Secs 4G, 62, 164
Sec 89	—
Sch 1	Sch 1

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Column 1	Column 2
Provisions of the proposed Act	Corresponding provisions of repealed Public Sector Employment and Management Act 2002
Sch 2	Sch 2A
Sch 3	Sch 2B

Note. See Part 7 of the *Constitution Act 1902* in relation to sections 104, 106 and 108–113 of the repealed *Public Sector Employment and Management Act 2002*.

See section 279A of the *Workers Compensation Act 1987* in relation to section 41 of the repealed *Public Sector Employment and Management Act 2002*.