

**MISCELLANEOUS ACTS (PUBLIC SECTOR  
MANAGEMENT) AMENDMENT ACT 1988 No. 34**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

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3. Amendments

SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF  
CERTAIN STATUTORY OFFICE HOLDERS

SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS

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**MISCELLANEOUS ACTS (PUBLIC SECTOR MANAGEMENT)  
AMENDMENT ACT 1988 No. 34**

NEW SOUTH WALES



**Act No. 34, 1988**

An Act to amend certain Acts with respect to the removal from office of certain statutory office holders and to amend other Acts as a consequence of the enactment of the Public Sector Management Act 1988. [Assented to 6 July 1988]

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Miscellaneous Acts (Public Sector Management) Amendment Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. Each Act specified in Schedules 1 and 2 is amended as set out in those Schedules.

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**SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF CERTAIN STATUTORY OFFICE HOLDERS**

(Sec. 3)

**Anti-Discrimination Act 1977 No. 48—**

(1) Section 80 (**President**)—

Section 80 (4)—

Omit the subsection, insert instead:

(4) The Governor may remove the President from office for incapacity, incompetence or misbehaviour.

(2) Section 122HB (**Retirement or removal from office**)—

Section 122HB (2)—

Omit the subsection, insert instead:

(2) The Governor may remove the Director from office for incapacity, incompetence or misbehaviour.

**Forestry Act 1916 No. 55—**

Section 5 (**Constitution of the commission**)—

(1) Section 5 (8) (a) (vii)—

Omit the subparagraph, insert instead:

(vii) is removed from office under subsection (8A); or

(2) Section 5 (8A)—

After section 5 (8), insert:

(8A) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

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**SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF CERTAIN STATUTORY OFFICE HOLDERS—*continued***

**Soil Conservation Act 1938 No. 10—**

**Section 4 (Commissioner of Soil Conservation Service)—**

(1) Section 4 (7) (a) (vii)—

Omit subparagraph (vii), insert instead:

(vii) is removed from office under subsection (7A); or

(2) Section 4 (7A)—

After section 4 (7), insert:

(7A) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.

**State Lotteries Act 1930 No. 51—**

**Section 7 (Director)—**

(1) Section 7 (1)—

Omit “may determine”, insert instead “may specify in the instrument of appointment”.

(2) Section 7 (4)—

Omit the subsection, insert instead:

(4) The Governor may remove the Director from office for incapacity, incompetence or misbehaviour.

**State Transport (Co-ordination) Amendment Act 1954 No. 48—**

(1) Section 5 (Alteration of office of Superintendent of Motor Transport)

Section 5 (1) (b)—

Omit “sections 8 and 9”, insert instead “section 9”.

(2) Section 8—

After section 7, insert:

**Removal from office of Commissioner for Motor Transport**

8. The Governor may remove the Commissioner for Motor Transport from office for incapacity, incompetence or misbehaviour.

**Western Lands Act 1901 No. 70—**

**Section 4 (Western Lands Commissioner and Assistant Commissioners)—**

Section 4 (6)—

Omit the subsection, insert instead:

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

**SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF CERTAIN STATUTORY OFFICE HOLDERS—*continued***

(6) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

**SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS**

(Sec. 3)

**Government and Related Employees Appeal Tribunal Act 1980 No. 39—**

(1) Section 4 (**Definitions**)—

(a) Section 4 (1), definition of “employee”—

From paragraph (a), omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

(b) Section 4 (1), definition of “employee”—

From paragraph (e), omit “by a person other than the Public Service Board or”, insert instead “but not in the Public Service or by”.

(c) Section 4 (1), definition of “employer”—

From paragraph (a) (i), omit “Public Service Board”, insert instead “Public Employment Industrial Relations Authority”.

(d) Section 4 (1), definition of “employer”—

From paragraph (a) (ii), omit “Public Service Board or the appropriate Department Head within the meaning of section 4 (1) of the Public Service Act, 1979”, insert instead “Public Employment Industrial Relations Authority or the appropriate Department Head within the meaning of section 3 (1) of the Public Sector Management Act 1988”.

(e) Section 4 (1), definition of “employer”—

From paragraph (e) (i), omit “Public Service Board”, insert instead “Public Employment Industrial Relations Authority”.

(f) Section 4 (1)—

After the definition of “office”, insert:

“Public Employment Industrial Relations Authority” means the Public Employment Industrial Relations Authority constituted by the Public Sector Management Act 1988;

(g) Section 4 (1), definition of “Public Service”—

Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

(h) Section 4 (1), definition of “Public Service Board”—

Omit the definition.

(2) Section 19 (**Publication of notices**); section 20 (**Right of appeal**)—

Omit “section 4 (1) of the Public Service Act, 1979” wherever occurring, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

**SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—*continued***

- (3) Section 21 (**Excluded circumstances**)—
- (a) Section 21 (1) (d) (i)—  
Omit “a position graded Grade 12 in the Administrative and Clerical Division of the Public Service”, insert instead “a clerk’s position graded 12 in the Public Service”.
- (b) Section 21 (1) (g)—  
Omit “or had reasonable cause for failing to do so”.
- (c) Section 21 (1) (j)—  
Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.
- (4) Section 22 (**Effect of failure to notify vacancy**)—
- (a) Section 22 (a)—  
Omit “where the employer is a person other than the Public Service Board”, insert instead “if the vacant office is not one in the Public Service”.
- (b) Section 22 (b)—  
Omit “where the employer is the Public Service Board”, insert instead “if the vacant position is one in the Public Service”.
- (c) Section 22 (b)—  
Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.
- (5) Schedule 1 (**Provisions relating to the offices of Senior Chairman and Chairman**)—
- Clause 1—  
Omit “Public Service Act, 1979”, insert instead “Public Sector Management Act 1988 (other than Part 8)”.
- (6) Schedule 2 (**Provisions relating to the nomination of employers’ representatives and employees’ representatives**)—
- (a) Clause 3 (**Representative of Public Service Board**)—  
Omit the clause.
- (b) Clauses 4 (c), 4A (c)—  
Omit “section 4 (1) of the Public Service Act, 1979” wherever occurring, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

**Industrial Arbitration Act 1940 No. 2—**

- (1) Section 20 (**Original jurisdiction**)—
- (a) Section 20 (1B)—  
Omit “Public Service Act, 1979”, insert instead “Public Sector Management Act 1988”.
- (b) Section 20 (1B) (a)—  
Omit “the Public Service Board”, insert instead “a person”.

*Miscellaneous Acts (Public Sector Management) Amendment 1988***SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—***continued*

## (c) Section 20 (1B) (b)—

Omit “the Public Service Board or any other”, insert instead “a”.

## (d) Section 20 (1B) (b)—

Omit “Public Service Board or other”.

(2) Section 20A (**Awards relating to dismissal of employees**)—

Section 20A (2)—

Omit the subsection, insert instead:

(2) In subsection (1), a reference to the dismissal or proposed dismissal of an employee is, in relation to a person employed under the Public Sector Management Act 1988, a reference to the termination or proposed termination of the employment of such a person—

(a) under section 38, 68, 69, 75 or 76 of that Act; or

(b) as referred to in section 54 of that Act,

and includes a reference to the termination or proposed termination of the employment of such a person under section 68, 69, 75 or 76 of that Act as a result of a direction that the person resign or be allowed to resign.

**Public Finance and Audit Act 1983 No. 152—**(1) Schedule 2 (**Statutory bodies**)—

In alphabetical order, insert “Public Employment Industrial Relations Authority”.

(2) Schedule 3 (**Departments**)—

Omit the item relating to the Public Service Board of New South Wales.

**Public Servant Housing Authority Act 1975 No. 38—**Section 7 (**Members of Authority**)—

## (1) Section 7 (1) (a)—

Omit “Chairman of the Public Service Board”, insert instead “Secretary of the Department of Administrative Services”.

## (2) Section 7 (5)—

Omit “the Public Service Board”, insert instead “the Department of Administrative Services”.

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—**(1) Section 7 (**Assessors**)—

Section 7 (1) (a)—

Omit the paragraph, insert instead:

(a) one of whom shall be the Secretary of the Department of Industrial Relations and Employment; and

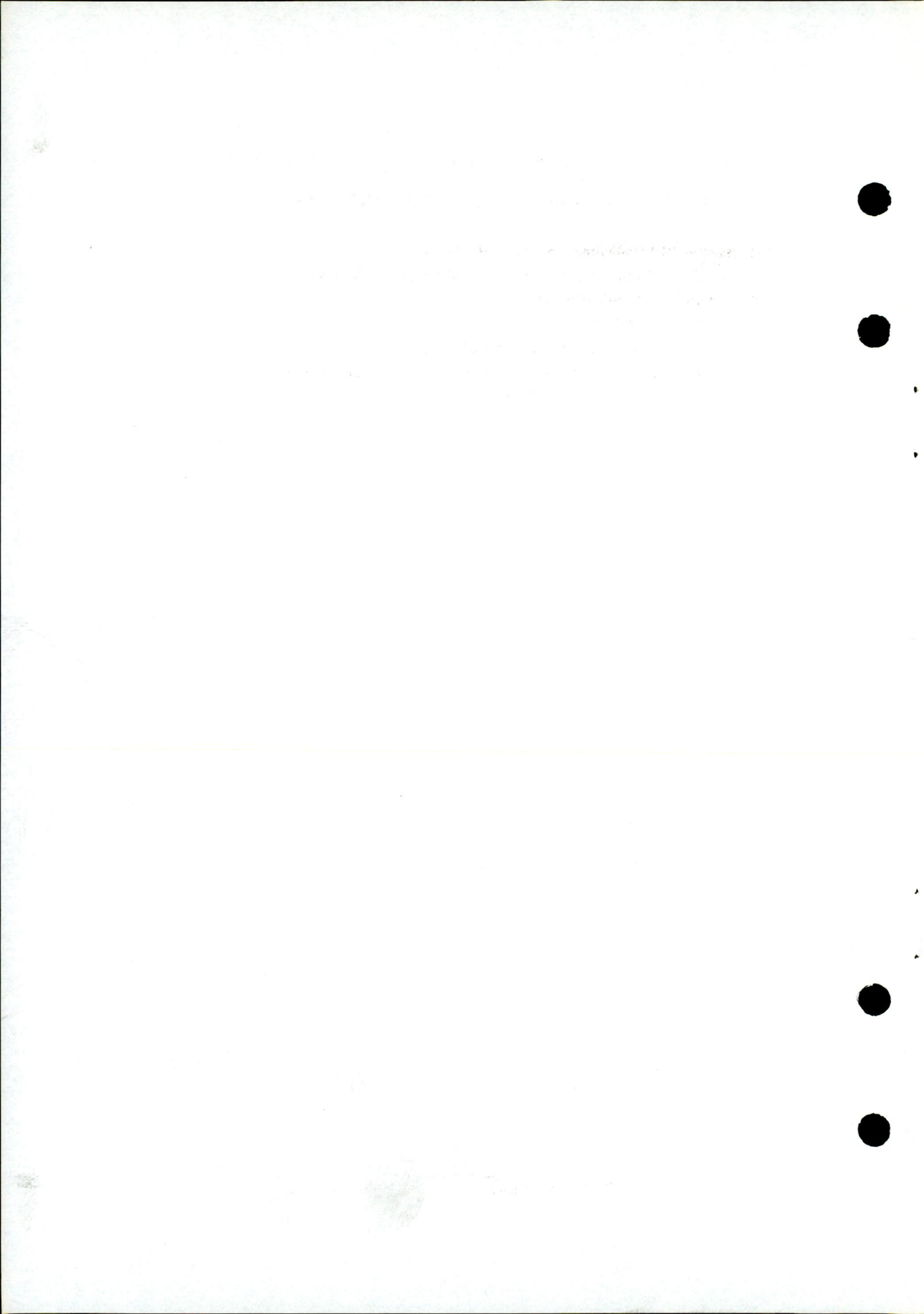


*Miscellaneous Acts (Public Sector Management) Amendment 1988*

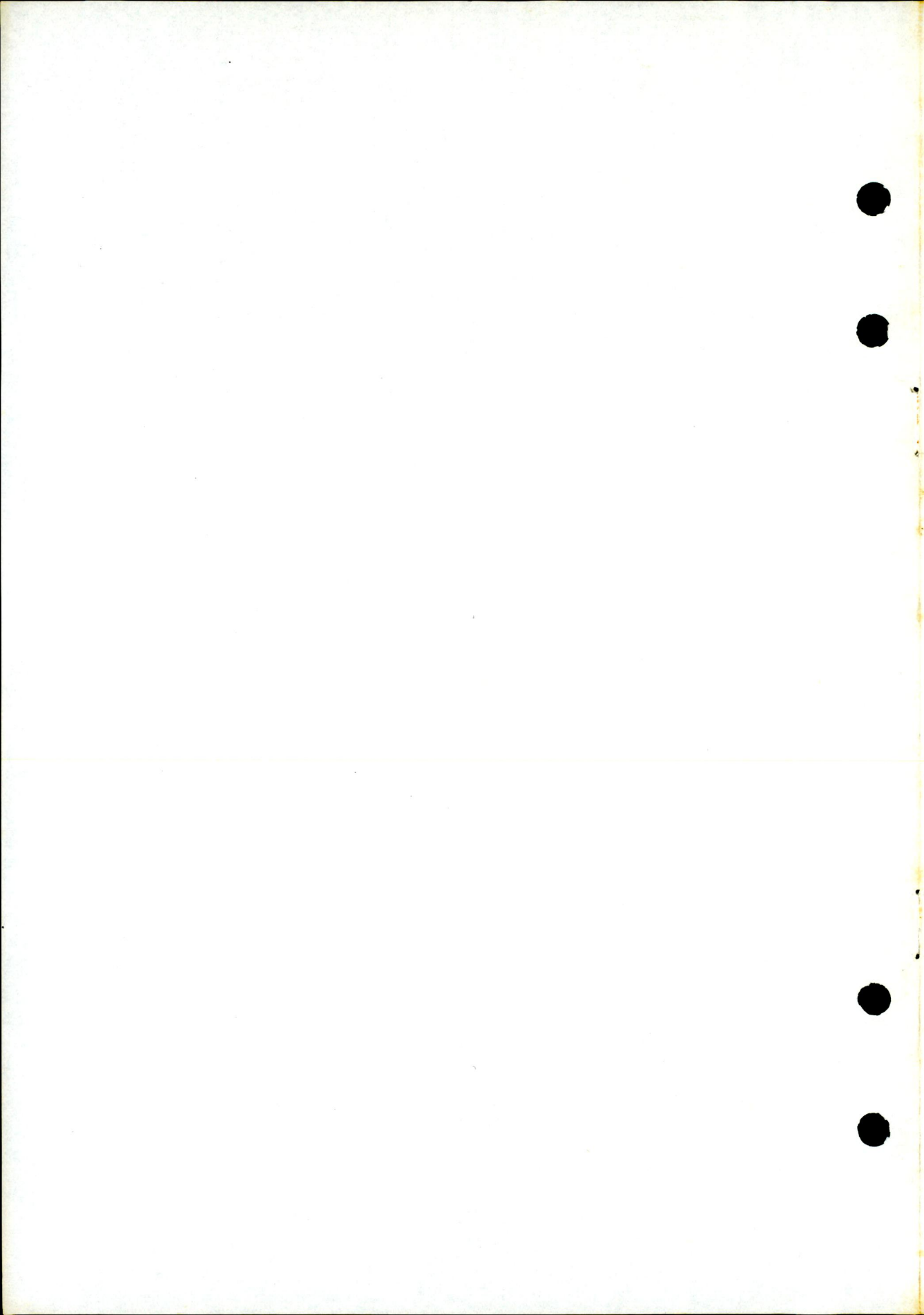
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**SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—*continued***

- (2) Section 10 (**Assistance for the Tribunal**)—  
Omit “Public Service Board”, insert instead “Minister”.
- (3) Schedule 1 (**Public offices**)—  
Omit the following:  
Chairman of the Public Service Board.  
Member of the Public Service Board, other than the Chairman.







**MISCELLANEOUS ACTS (PUBLIC SECTOR  
MANAGEMENT) AMENDMENT BILL 1988**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Public Sector Management Bill 1988.

The object of the Bill is to amend certain Acts with respect to the removal from office of certain statutory office holders and to amend other Acts as a consequence of the enactment of the proposed Public Sector Management Act 1988.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act will commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedules of amendments.

**Schedule 1** contains amendments to the Acts constituting certain statutory offices for the purpose of replacing provisions that require Parliamentary approval for the removal from office of the holders of those offices. The offices concerned are—

- the President of the Anti-Discrimination Board;
- the Director of Equal Opportunity in Public Employment;
- the Commissioner and an Assistant Commissioner appointed under the Forestry Act 1916;
- the Commissioner of the Soil Conservation Service;
- the Director of State Lotteries;
- the Commissioner for Motor Transport; and
- the Western Lands Commissioner and an Assistant Western Lands Commissioner.

As a result of the amendments, the Governor will be empowered to remove from office the holders of those offices for incapacity, incompetence or misbehaviour or under the provisions of Part 8 of the proposed Public Sector Management Act 1988.

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

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**Schedule 2** contains amendments to the following Acts:

- the Government and Related Employees Appeal Tribunal Act 1980.
- the Industrial Arbitration Act 1940.
- the Public Finance and Audit Act 1983.
- the Public Servant Housing Authority Act 1975.
- the Statutory and Other Offices Remuneration Act 1975.

All the amendments contained in the Schedule are consequential on the abolition of the Public Service Board and the establishment of the Public Employment Industrial Relations Authority, except for the amendment to section 21 (1) (g) of the Government and Related Employees Appeal Tribunal Act 1980. As a result of that amendment, an appeal under section 20 of that Act against a decision to recommend the appointment of an employee to fill a vacant position that has been advertised may not be entertained unless the appellant was an applicant for the vacant position.

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# MISCELLANEOUS ACTS (PUBLIC SECTOR MANAGEMENT) AMENDMENT BILL 1988

NEW SOUTH WALES



## TABLE OF PROVISIONS

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**MISCELLANEOUS ACTS (PUBLIC SECTOR  
MANAGEMENT) AMENDMENT BILL 1988**

NEW SOUTH WALES



No. , 1988

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**A BILL FOR**

An Act to amend certain Acts with respect to the removal from office of certain statutory office holders and to amend other Acts as a consequence of the enactment of the Public Sector Management Act 1988.

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*Miscellaneous Acts (Public Sector Management) Amendment 1988*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Miscellaneous Acts (Public Sector Management) Amendment Act 1988.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendments**

3. Each Act specified in Schedules 1 and 2 is amended as set out in those 10 Schedules.

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**SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF CERTAIN STATUTORY OFFICE HOLDERS**

(Sec. 3)

**Anti-Discrimination Act 1977 No. 48—**

15 (1) Section 80 (**President**)—

Section 80 (4)—

Omit the subsection, insert instead:

(4) The Governor may remove the President from office for incapacity, incompetence or misbehaviour.

20 (2) Section 122HB (**Retirement or removal from office**)—

Section 122HB (2)—

Omit the subsection, insert instead:

(2) The Governor may remove the Director from office for incapacity, incompetence or misbehaviour.

25 **Forestry Act 1916 No. 55—**

Section 5 (**Constitution of the commission**)—

(1) Section 5 (8) (a) (vii)—

Omit the subparagraph, insert instead:

(vii) is removed from office under subsection (8A); or

30 (2) Section 5 (8A)—

After section 5 (8), insert:

(8A) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

**SCHEDULE 1—AMENDMENTS RELATING TO REMOVAL FROM OFFICE OF CERTAIN STATUTORY OFFICE HOLDERS—*continued***

**Soil Conservation Act 1938 No. 10—**

**Section 4 (Commissioner of Soil Conservation Service)—**

(1) Section 4 (7) (a) (vii)—

5 Omit subparagraph (vii), insert instead:

(vii) is removed from office under subsection (7A); or

(2) Section 4 (7A)—

After section 4 (7), insert:

(7A) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.

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**State Lotteries Act 1930 No. 51—**

**Section 7 (Director)—**

(1) Section 7 (1)—

15 Omit “may determine”, insert instead “may specify in the instrument of appointment”.

(2) Section 7 (4)—

Omit the subsection, insert instead:

(4) The Governor may remove the Director from office for incapacity, incompetence or misbehaviour.

20 **State Transport (Co-ordination) Amendment Act 1954 No. 48—**

(1) Section 5 (Alteration of office of Superintendent of Motor Transport)

Section 5 (1) (b)—

Omit “sections 8 and 9”, insert instead “section 9”.

(2) Section 8—

25 After section 7, insert:

**Removal from office of Commissioner for Motor Transport**

8. The Governor may remove the Commissioner for Motor Transport from office for incapacity, incompetence or misbehaviour.

30 **Western Lands Act 1901 No. 70—**

**Section 4 (Western Lands Commissioner and Assistant Commissioners)—**

Section 4 (6)—

Omit the subsection, insert instead:

*Miscellaneous Acts (Public Sector Management) Amendment 1988*SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—*continued*

(6) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

## SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS

(Sec. 3)

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**Government and Related Employees Appeal Tribunal Act 1980 No. 39—**(1) Section 4 (**Definitions**)—

(a) Section 4 (1), definition of “employee”—

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From paragraph (a), omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

(b) Section 4 (1), definition of “employee”—

From paragraph (e), omit “by a person other than the Public Service Board or”, insert instead “but not in the Public Service or by”.

15

(c) Section 4 (1), definition of “employer”—

From paragraph (a) (i), omit “Public Service Board”, insert instead “Public Employment Industrial Relations Authority”.

(d) Section 4 (1), definition of “employer”—

20

From paragraph (a) (ii), omit “Public Service Board or the appropriate Department Head within the meaning of section 4 (1) of the Public Service Act, 1979”, insert instead “Public Employment Industrial Relations Authority or the appropriate Department Head within the meaning of section 3 (1) of the Public Sector Management Act 1988”.

(e) Section 4 (1), definition of “employer”—

25

From paragraph (e) (i), omit “Public Service Board”, insert instead “Public Employment Industrial Relations Authority”.

(f) Section 4 (1)—

After the definition of “office”, insert:

30

“Public Employment Industrial Relations Authority” means the Public Employment Industrial Relations Authority constituted by the Public Sector Management Act 1988;

(g) Section 4 (1), definition of “Public Service”—

Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

(h) Section 4 (1), definition of “Public Service Board”—

35

Omit the definition.

(2) Section 19 (**Publication of notices**); section 20 (**Right of appeal**)—

Omit “section 4 (1) of the Public Service Act, 1979” wherever occurring, insert instead “section 3 (1) of the Public Sector Management Act 1988”.

(3) Section 21 (**Excluded circumstances**)—

40

(a) Section 21 (1) (d) (i)—

*Miscellaneous Acts (Public Sector Management) Amendment 1988*

SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—*continued*

- Omit “a position graded Grade 12 in the Administrative and Clerical Division of the Public Service”, insert instead “a clerk’s position graded 12 in the Public Service”.
- (b) Section 21 (1) (g)—  
5 Omit “or had reasonable cause for failing to do so”.
- (c) Section 21 (1) (j)—  
Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.
- (4) Section 22 (**Effect of failure to notify vacancy**)—  
10 (a) Section 22 (a)—  
Omit “where the employer is a person other than the Public Service Board”, insert instead “if the vacant office is not one in the Public Service”.
- (b) Section 22 (b)—  
15 Omit “where the employer is the Public Service Board”, insert instead “if the vacant position is one in the Public Service”.
- (c) Section 22 (b)—  
Omit “section 4 (1) of the Public Service Act, 1979”, insert instead “section 3 (1) of the Public Sector Management Act 1988”.
- (5) Schedule 1 (**Provisions relating to the offices of Senior Chairman and Chairman**)—  
20 Clause 1—  
Omit “Public Service Act, 1979”, insert instead “Public Sector Management Act 1988 (other than Part 8)”.
- (6) Schedule 2 (**Provisions relating to the nomination of employers’ representatives and employees’ representatives**)—  
25 (a) Clause 3 (**Representative of Public Service Board**)—  
Omit the clause.
- (b) Clauses 4 (c), 4A (c)—  
Omit “section 4 (1) of the Public Service Act, 1979” wherever occurring, insert instead “section 3 (1) of the Public Sector Management Act 1988”.
- 30 **Industrial Arbitration Act 1940 No. 2—**
- (1) Section 20 (**Original jurisdiction**)—
- (a) Section 20 (1B)—  
Omit “Public Service Act, 1979”, insert instead “Public Sector Management Act 1988”.
- 35 (b) Section 20 (1B) (a)—  
Omit “the Public Service Board”, insert instead “a person”.
- (c) Section 20 (1B) (b)—  
Omit “the Public Service Board or any other”, insert instead “a”.
- (d) Section 20 (1B) (b)—  
40 Omit “Public Service Board or other”.
- (2) Section 20A (**Awards relating to dismissal of employees**)—  
Section 20A (2)—

*Miscellaneous Acts (Public Sector Management) Amendment 1988*SCHEDULE 2—OTHER CONSEQUENTIAL AMENDMENTS—*continued*

Omit the subsection, insert instead:

(2) In subsection (1), a reference to the dismissal or proposed dismissal of an employee is, in relation to a person employed under the Public Sector Management Act 1988, a reference to the termination or proposed termination of the employment of such a person—

(a) under section 38, 68, 69, 75 or 76 of that Act; or

(b) as referred to in section 54 of that Act,

and includes a reference to the termination or proposed termination of the employment of such a person under section 68, 69, 75 or 76 of that Act as a result of a direction that the person resign or be allowed to resign.

**Public Finance and Audit Act 1983 No. 152—**(1) Schedule 2 (**Statutory bodies**)—

In alphabetical order, insert “Public Employment Industrial Relations Authority”.

(2) Schedule 3 (**Departments**)—

Omit the item relating to the Public Service Board of New South Wales.

**Public Servant Housing Authority Act 1975 No. 38—**Section 7 (**Members of Authority**)—

## (1) Section 7 (1) (a)—

Omit “Chairman of the Public Service Board”, insert instead “Secretary of the Department of Administrative Services”.

## (2) Section 7 (5)—

Omit “the Public Service Board”, insert instead “the Department of Administrative Services”.

**25 Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—**(1) Section 7 (**Assessors**)—

## Section 7 (1) (a)—

Omit the paragraph, insert instead:

(a) one of whom shall be the Secretary of the Department of Industrial Relations and Employment; and

(2) Section 10 (**Assistance for the Tribunal**)—

Omit “Public Service Board”, insert instead “Minister”.

(3) Schedule 1 (**Public offices**)—

Omit the following:

Chairman of the Public Service Board.

Member of the Public Service Board, other than the Chairman.

