

**PUBLIC SECTOR MANAGEMENT (EXECUTIVES)
AMENDMENT ACT 1989 No. 103**

NEW SOUTH WALES



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**PUBLIC SECTOR MANAGEMENT (EXECUTIVES)
AMENDMENT ACT 1989 No. 103**

NEW SOUTH WALES



Act No. 103, 1989

An Act to amend the Public Sector Management Act 1988 with respect to chief executive officers and senior executive officers, and for other purposes. [Assented to 15 August 1989]

See also Statutory and Other Offices Remuneration (Executives) Amendment Act 1989; Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989; Public Sector Executives Superannuation Act 1989; Miscellaneous Acts (Public Sector Executives Superannuation) Amendment Act 1989.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Sector Management (Executives) Amendment Act 1989.

Commencement

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

Amendment of Public Sector Management Act 1988 No. 33

3. The Public Sector Management Act 1988 is amended as set out in Schedule 1.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) Section 3 (1):

Insert, in alphabetical order, the following definitions:

"chief executive officer" means a person holding a position referred to in Schedule 3A;

"chief executive position" means a position referred to in Schedule 3A;

"senior executive officer" means a person holding a position referred to in Schedule 3B;

"senior executive position" means a position referred to in Schedule 3B;

(b) Section 3 (1), definition of "disciplinary inquiry":

Omit "special division officer", insert instead "chief executive officer in the Public Service".

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) Section 3 (1), definition of "management review":
After "Department", insert "or declared authority".
- (d) Section 3 (1), definition of "officer":
Omit "a special division officer", insert instead "a chief executive officer or a senior executive officer appointed under that Part".
- (e) Section 3 (1), definitions of "special division officer", "special division position", "term officer":
Omit the definitions.
- (2) Section 4 (**Act not to apply to certain positions**):
 - (a) Section 4 (1) (d):
Omit the paragraph.
 - (b) Section 4 (2):
Omit the subsection.
- (3) Section 6 (**Special Division of the Public Service etc.**):
Omit the section.
- (4) Section 8 (**Staff positions in a Department**):
Omit section 8 (3), insert instead:
 - (3) A Department Head must classify and grade each position created under subsection (2), but may only do so:
 - (a) in the case of a senior executive position - with the approval of the Minister; or
 - (b) in any other case - with the approval of the Industrial Authority.
- (5) Sections 10A, 10B:
After section 10, insert:
Appointments to Department Head positions
10A. (1) Appointments to vacant Department Head positions are to be made by the Governor.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) It does not matter whether the person appointed is or is not already an officer of the Public Service.

(3) The employment under this Part of the Department Head is subject to Part 2A (Public Sector Executives).

(4) In this section and section 10B:

"Department Head position" means a position specified in column 2 of Schedule 1, and any position in the Public Service specified in column 2 of Schedule 2.

Acting appointments to Department Head positions

10B. (1) The Governor may appoint an officer of the Public Service to act in a Department Head position which is vacant or the holder of which is suspended, sick or absent.

(2) An officer, while acting in a Department Head position, has all the functions of the holder of the position (but is not to be taken to be a chief executive officer for the purposes of Part 2A).

(3) The Governor may, at any time, terminate the appointment of an officer to act in a Department Head position.

(6) Part 2, Division 3:

Omit the Division, insert instead:

Division 3 - Senior executive officers

Appointments to senior executive positions

13. (1) Appointments to vacant senior executive positions in the Public Service are to be made by the Governor on the recommendation of the appropriate Department Head.

(2) It does not matter whether the person appointed is or is not already an officer of the Public Service.

(3) The employment under this Part of the senior executive officer is subject to Part 2A (Public Sector Executives).

(4) Subsection (1) is subject to any express provision to the contrary in this or any other Act.

SCHEDULE 1 - AMENDMENTS - *continued*

Acting appointments to senior executive positions

14. (1) The appropriate Department Head may appoint an officer of the Public Service to act in a senior executive position in the Public Service which is vacant or the holder of which is suspended, sick or absent.

(2) An officer, while acting in any such senior executive position, has all the functions of the holder of the position (but is not to be taken to be a senior executive officer for the purposes of Part 2A).

(3) The appropriate Department Head may, at any time, terminate the appointment of an officer to act in any such senior executive position.

Merit appointment etc.

15. (1) Sections 26 (Selection for appointment to be on merit) and 31 (Advertising vacancies) apply to and in respect of appointments to senior executive positions in the Public Service.

(2) An administrative unit for the purposes of the application of section 26 includes all senior executive positions in the Public Service or a Teaching Service.

(7) Part 2, Division 4, heading:

Omit the heading, insert instead:

**Division 4 - Officers (other than
Department Heads and senior
executive officers)**

(8) Section 22:

Omit the section, insert instead:

Officers to whom Division applies

22. (1) This Division applies to and in respect of appointments to positions in the Public Service, but does not apply to or in respect of appointments to:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) chief executive positions; and
 - (b) except in the case of sections 26 and 31 - senior executive positions.
- (2) Sections 35 - 37 do not apply to officers holding positions referred to in subsection (1) (a) or (b).

(9) Part 2A:

After Part 2, insert:

PART 2A - PUBLIC SECTOR EXECUTIVES

Division 1 - Preliminary

Definitions

42A. (1) In this Part:

"contract of employment" means a contract of employment under this Part between an executive officer and the officer's employer;

"executive officer" means a chief executive officer or a senior executive officer;

"executive position" means a chief executive position or a senior executive position;

"public authority" means a declared authority or an authority which is established by or under an Act and which is (or whose governing body is) constituted by persons appointed by the Governor or a Minister;

"remuneration package" means the remuneration package for an executive officer determined for the time being under the Statutory and Other Offices Remuneration Act 1975.

(2) In this Part, a reference to the employer of an executive officer is a reference to:

- (a) in the case of a chief executive officer - the Minister; or
- (b) in the case of a senior executive officer in the Public Service - the appropriate Department Head; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (c) in the case of a senior executive officer in a Teaching Service - the appropriate Director-General within the meaning of the Teaching Services Act 1980; or
- (d) in the case of a senior executive officer in the service of a public authority - the public authority or a person nominated by the public authority; or
- (e) in any other case - the Minister or a person nominated for the time being by the Minister.

(3) In this Part, a reference to the remuneration package for an executive officer is, if a range of amounts has been determined by the Statutory and Other Offices Remuneration Tribunal, a reference to:

- (a) the amount within that range nominated in the officer's contract of employment; or
- (b) in any other case - the minimum amount within that range.

Division 2 - Composition of Executive Services

Composition of Chief Executive Service

42B. The Chief Executive Service comprises the persons holding the positions referred to in Schedule 3A.

Composition of Senior Executive Service

42C. The Senior Executive Service comprises the persons holding the positions referred to in Schedule 3B.

Amendment or substitution of Schedule 3A or 3B

42D. (1) The Governor may, by proclamation, amend Schedule 3A or 3B by inserting the description of any position, or by omitting or amending any such description.

(2) The Governor may, by proclamation, omit Schedule 3A or 3B and insert instead a Schedule containing descriptions of positions.

SCHEDULE 1 - AMENDMENTS - *continued*

Positions which may be included in Schedule 3A or 3B

42E. The description of a position may be included in Schedule 3A or 3B by proclamation under this Division only if the position is:

- (a) a position in the Public Service; or
- (b) a statutory office (being an office that is established by or under an Act and to which appointments are made by the Governor or a Minister), but only if the employment of a person in the office is declared by or under that Act to be subject to this Part; or
- (c) a position on the staff of a public authority; or
- (d) a position in the Education Teaching Service or the Technical and Further Education Teaching Service.

Division 3 - Employment of executive officers

Term appointments

42F. Subject to this Act, an executive officer holds office for such period (not exceeding 5 years) as is specified in the officer's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Employment of executive officers to be governed by contract of employment

42G. (1) The employment of an executive officer shall be governed by a contract of employment between the officer and his or her employer.

(2) A contract of employment may be made before or after the appointment of the executive officer concerned.

(3) An executive officer is not appointed by, nor is an executive officer's term of office fixed by, the contract of employment.

(4) However, a contract of employment may constitute the instrument of appointment if the person authorised to make the appointment is also the person who signs the contract with the executive officer.

(5) A contract of employment may be varied at any time by a further contract between the parties.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) A contract of employment may not vary or exclude a provision of this Act or of any other Act under which the executive officer concerned is appointed or a provision of the regulations under this Act or any such other Act.

(7) The employer of an executive officer (being an officer in the service of the Crown) acts for and on behalf of the Crown in any contract of employment between the officer and the employer.

Matters regulated by contract of employment

42H. (1) The matters to be dealt with in a contract of employment between an executive officer and his or her employer include the following:

- (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance);
- (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package);
- (c) any election by the executive officer to retain a right of return to the public sector under section 42R.

(2) A contract of employment may provide for any matter to be determined:

- (a) by further agreement between the parties; or
- (b) by further agreement between the executive officer and some other person specified in the contract; or
- (c) by the Minister or other person or body specified in the contract.

Performance reviews

42I. (1) An executive officer's performance must be reviewed, at least annually, by the officer's employer or by some other person nominated by that employer.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

Industrial arbitration or legal proceedings excluded

42J. (1) In this section, a reference to the employment of an executive officer is a reference to:

- (a) the appointment of, or failure to appoint, a person to a vacant executive position; or
- (b) the removal, retirement, termination of employment or other cessation of office of an executive officer; or
- (c) any disciplinary proceedings or disciplinary action taken against an executive officer; or
- (d) the remuneration or conditions of employment of an executive officer.

(2) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the Industrial Arbitration Act 1940.

(3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.

(4) Any award or industrial agreement (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.

(5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act (or any other Act under which the executive officer concerned is appointed) from applying the provisions of an award or industrial agreement to the employment of an executive officer.

(6) An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of an executive officer.

SCHEDULE 1 - AMENDMENTS - *continued*

(7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(8) In this section, "industrial agreement" includes any agreement under section 64 and any determination under section 63.

Division 4 - Remuneration of executive officers

Definitions

42K. (1) In this Division:

"approved" means approved for the time being for the purposes of this Division by the Minister in writing, either generally or in relation to any executive officer or class of executive officers;

"employment benefit" means:

- (a) contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer, including any liability of that employer to make any such contributions or to pay approved costs associated with that scheme; or
- (b) the provision by an executive officer's employer of a motor vehicle for private use by the officer; or
- (c) the right of return to the public sector under section 42R by an executive officer who elects to retain that right; or
- (d) the entitlement of an executive officer to approved leave with pay; or
- (e) any other approved benefit provided to an executive officer at the cost of the officer's employer (being a benefit of a private nature);

SCHEDULE 1 - AMENDMENTS - *continued*

"monetary remuneration" includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of an executive officer's duties;

"superannuation scheme" means a superannuation scheme established by or under an Act or approved for the purposes of this definition.

(2) A reference in the definition of "employment benefit" to an executive officer's employer is a reference to the person in whose service the officer is employed.

Monetary remuneration and employment benefits for executive officers

42L. (1) Executive officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contract of employment.

- (2) The total amount of:
 - (a) the annual rate of monetary remuneration for an executive officer; and
 - (b) the annual cost of employment benefits provided for the executive officer under the contract of employment,

is to be equal to the amount of the remuneration package for the executive officer.

(3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.

- (4) This section does not affect:
 - (a) any approved performance-related incentive payments made to an executive officer; or
 - (b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as statutory

SCHEDULE 1 - AMENDMENTS - *continued*

or agreed fees for attendance at meetings or the like).

(5) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.

(6) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or extended leave with pay if:

- (a) the officer forgoes (with the approval of the officer's employer) the right to take that part of that leave; and
- (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.

(7) Subsection (6) has effect despite anything to the contrary in the Annual Holidays Act 1944 or any other Act.

(8) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under subsection (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.

(9) If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.

Travelling and subsistence allowances etc.

42M. (1) An executive officer is entitled to be paid:

- (a) such travelling and subsistence allowances; and
- (b) such allowances in relation to relocation expenses; and
- (c) such other allowances in relation to expenses incurred in the discharge of the officer's duties,

SCHEDULE 1 - AMENDMENTS - *continued*

as the officer's employer may from time to time determine in respect of the officer.

- (2) An executive officer's contract of employment:
- (a) may provide for the payment to the officer of allowances of the kind referred to in this section; and
 - (b) may regulate the payment of allowances to the officer under this section.

**Division 5 - Removal, retirement etc.
of executive officers**

Definitions

42N. A reference in this Division to:

- (a) employment in the public sector is a reference to employment as an officer in the Public Service or a Teaching Service or as an officer in the service of a public authority; and
- (b) engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

Vacation of executive positions

42O. (1) The position of an executive officer becomes vacant if the officer:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) is removed from office, or retires or is retired from office, under this or any other Act; or
- (d) resigns his or her position in writing addressed to the officer's employer and that employer accepts the resignation.

(2) This section does not affect any other provision by or under which an executive officer vacates his or her position.

SCHEDULE 1 - AMENDMENTS - *continued*

Retirement of executive officers

42P. (1) An executive officer:

- (a) may retire on or after reaching 60 years of age; or
- (b) may be retired:
 - (i) in the case of a senior executive officer in the service of a public authority - by that authority; or
 - (ii) in any other case - by the Governor, at any time after the officer has reached 60 years of age.

(2) An executive officer is not required to retire on reaching 65 years of age.

(3) However, the period of appointment or re-appointment of:

- (a) an executive officer who has not reached 64 years of age must not extend beyond the time that the officer would reach 65 years of age; or
- (b) an executive officer who has reached 64 years of age but who has not reached 65 years of age must not exceed 12 months; or
- (c) an executive officer who has reached 65 years of age must not exceed 12 months at any one time.

Removal of executive officers from office

42Q. (1) The Governor may remove an executive officer from an executive position at any time.

(2) The Governor:

- (a) may declare an executive officer who is removed from an executive position under subsection (1) to be an unattached officer in the Public Service, a Teaching Service or another service of the Crown, as the case requires; and
- (b) may revoke any such declaration.

(3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) is to be regarded as an executive officer, although not holding an executive position; and
- (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.

(4) If:

- (a) an executive officer is removed from an executive position under subsection (1) and a declaration is not made in relation to the officer under subsection (2); or
- (b) a declaration under subsection (2) made in relation to an executive officer is revoked,

the officer ceases to be an executive officer, unless appointed to another executive position.

(5) An officer in the Public Service, a Teaching Service or another service of the Crown who ceases to be an executive officer because of subsection (4) ceases to be an officer in that service, unless appointed to another position in that service.

(6) The making of a declaration under subsection (2) in relation to an executive officer does not prevent the officer from ceasing to be an executive officer because of the completion of the officer's term of office.

(7) In the case of an executive officer in the service of a public authority, a reference in this section to:

- (a) the Governor is to be read as a reference to the public authority; and
- (b) the Public Service, a Teaching Service or another service of the Crown is to be read as a reference to the service of the public authority.

(8) This section does not prevent an executive officer being removed from office apart from this section.

Right to return to public sector for certain executive officers

42R. (1) An executive officer may elect to retain a right of return to the public sector if:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the officer was engaged in the public sector on a full-time basis when he or she first became an executive officer; and
 - (b) for at least some part of that engagement the person was an employee in the public sector.
- (2) Any such election:
- (a) may be made in the first contract of employment entered into by the executive officer, but (unless made in that first contract) may not be made in any subsequent contract for the same or another executive position; and
 - (b) is revoked if the election is not made by the executive officer in a subsequent contract of employment; and
 - (c) may be revoked by the executive officer by notice in writing to the officer's employer; and
 - (d) if revoked, may not be made again.
- (3) If an executive officer has elected to retain a right of return to the public sector, the officer's contract of employment must provide for the cost of that right as part of the officer's remuneration package under Division 4.
- (4) An executive officer who has elected to retain a right of return to the public sector is entitled to an engagement in the public sector if the person ceases to be an executive officer and:
- (a) in the case of a chief executive officer - is not re-appointed to the same or another chief executive position; or
 - (b) in the case of a senior executive officer - is not re-appointed to the same or another senior executive position.
- (5) A person is not entitled to an engagement in the public sector under this section if:
- (a) the person ceased to be an executive officer because the person resigned or was (after due inquiry) removed from office for misbehaviour; or

SCHEDULE 1 - AMENDMENTS - *continued*

(b) the person is over 60 years of age.

(6) The engagement in the public sector to which a person is entitled under this section is to be an engagement:

(a) in the case of a chief executive officer - as a senior executive officer in any part of the public sector; or

(b) in the case of a senior executive officer - in any part of the public sector at a salary not lower than the current maximum salary for:

(i) the previous engagement of the person as such an employee within the public sector; or

(ii) a clerk (grade 12) in the Public Service, whichever is the lesser.

(7) A person who is entitled to such an engagement is not entitled to any compensation for ceasing to hold office as an executive officer or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

(8) Subsection (7) does not prevent the payment of additional remuneration to a person who is engaged in the public sector under this section in order to maintain, in accordance with the employer's redeployment policy, the level of the person's previous remuneration package for a period after the person ceases to be an executive officer.

(9) If an executive officer has not entered into a contract of employment and is eligible to make an election under this section:

(a) the officer is (until the officer enters into a contract of employment) to be taken to have made an election under this section, but may revoke that election; and

(b) the cost (under Division 4) of the right of return to the public sector in accordance with that election is to be deducted from the officer's remuneration.

SCHEDULE 1 - AMENDMENTS - *continued*

(10) A reference in this section to an executive officer ceasing to be an executive officer is, in the case of an executive officer removed from office under section 42Q, a reference to an executive officer ceasing to be such an officer as referred to in section 42Q (4).

Compensation etc. where executive officer has no right to return to public sector

42S. (1) This section applies to:

- (a) an executive officer who is removed from office under section 42Q and who ceases to be an executive officer as referred to in section 42Q (4);
or
- (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry);
or
- (c) an executive officer who is, after reaching the age of 60 years and before reaching the age of 65 years, retired from office under section 42P; or
- (d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires, who has not reached the age of 60 years and who is not re-appointed,

being a person who is not entitled to be engaged in the public sector under section 42R.

(2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Statutory and Other Offices Remuneration Tribunal:

- (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed; and
- (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be

SCHEDULE 1 - AMENDMENTS - *continued*

taken into consideration when it makes determinations under this section.

(4) The maximum compensation payable is an amount equal to the person's remuneration package for:

- (a) the period of one year; or
- (b) if the person was removed or retired from office - the period starting from that removal or retirement and ending when the person's term of office would have expired; or
- (c) if the person's term of office expired - the period starting from that expiry and ending when the person would reach the age of 60 years,

whichever is the shorter or shortest period.

(5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

(6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:

- (a) the person is appointed on that removal or expiry of the term of office to another executive position; and
- (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.

(7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.

(8) The person may not be engaged in the public sector during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

SCHEDULE 1 - AMENDMENTS - *continued*

Election to take compensation

42T. (1) An executive officer who is entitled to be engaged in the public sector under section 42R may, before being so engaged, elect in writing to take compensation referred to in section 42S.

(2) On the election taking effect, the person ceases to be entitled to be engaged in the public sector under section 42R.

Division 6 - General

Appointment of incumbent officers to senior executive positions

42U. (1) When a position becomes a senior executive position, the person (if any) holding the position is to continue to hold that position until the person or some other person is duly appointed to the position.

(2) While the person continues to hold the position, the conditions of employment (including remuneration) of the person are to be the same as those which applied to the person immediately before the position became a senior executive position.

(3) The person who continues to hold the position may be appointed to the position without the vacancy being advertised.

(4) If the person who continues to hold the position is not appointed to the position or to any other executive position, sections 42R - 42T apply to the person as if he or she had elected to retain a right of return to the public sector.

(5) This section does not apply to a senior executive position referred to in Part 2 of Schedule 3B (statutory positions).

Incumbent officers - accrued leave

42V. (1) A person who:

- (a) was engaged in the public sector when appointed to an executive position; and

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) had a right to accrued extended or annual leave with pay immediately before that appointment; and
- (c) has not taken that leave before taking up duties in the executive position,

is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.

(2) An election under this section is to be made within the time and in the manner determined by the Minister.

(3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.

(4) A person who was engaged in the public sector when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).

(5) A reference in this section to an engagement in the public sector has the same meaning as in Division 5.

Change in status of positions

42W. (1) If a chief executive position becomes a senior executive position or a senior executive position becomes a chief executive position, the existing contract of employment continues in force until a new contract is made under this Part.

(2) If a position ceases to be an executive position because of its omission from Schedule 3A or 3B by a proclamation:

- (a) the position is not thereby abolished; and
- (b) any person holding the position is to be taken to have been appointed to the position in accordance with the relevant provisions.

(3) However, the proclamation by which a position is omitted from Schedule 3A or 3B may direct that the person holding the position is to cease to hold the position,

SCHEDULE 1 - AMENDMENTS - *continued*

but only if the person was not employed in the public sector (within the meaning of Division 5) immediately before last becoming an executive officer.

(4) The person to whom any such direction relates ceases to hold the position concerned and has the same rights and obligations as if the person had ceased to be an executive officer as referred to in section 42Q (4).

(5) A proclamation which amends Schedule 3A or 3B may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.

Change in title of positions

42X. A position referred to in Schedule 3A or 3B does not cease to be an executive position merely because of a change in the title of the position.

Approval to engage in other paid employment

42Y. An executive officer shall not engage in any paid employment outside the duties of the executive position without the consent of the officer's employer.

Operation of Part

42Z. (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.

(2) The provisions of this Part apply to a person appointed to an executive position under any Act even though the Act excludes the application of this Act, unless it expressly excludes the application of those provisions.

(10) Part 3, heading:

Omit "PUBLIC SERVICE", insert instead "PUBLIC SECTOR".

SCHEDULE 1 - AMENDMENTS - *continued*

(11) Section 43 (**Functions of the Minister**):

Omit "Public Service" wherever occurring, insert instead "public sector".

(12) Sections 45 (**Power to enter Department's premises etc.**); 46 (**Management assistance and advice**); 47 (**Reports on personnel practices and policies**); 48 (**Power of Minister to carry out management reviews**):

After "Department" and "Department Head" wherever occurring, insert "or declared authority".

(13) Part 3, Division 3, heading:

After "management", insert "of the Public Service".

(14) Section 53A:

After section 53, insert:

Provisions applying to senior executive officers in the Public Service

53A. (1) Sections 50 - 53 do not apply to senior executive officers in the Public Service.

(2) If the Department Head considers it to be in the interests of the Department to do so, the Department Head may transfer a senior executive officer from one position in the Department to another position in the Department (being a position with the same remuneration package).

(3) If the appropriate Department Head considers it to be in the interests of the Public Service to do so, the Department Head may, with the approval of the Minister and the Department Head of the other Department concerned, transfer a senior executive officer from a position in the Department to a position in another Department (being a position with the same remuneration package).

SCHEDULE 1 - AMENDMENTS - *continued*

(4) A transfer under this section may be made only if the senior executive officer possesses the qualifications required for the other position.

(15) Section 63 (**Industrial Authority may determine salaries, wages etc.**):

(a) Section 63 (1):

Omit "(other than special division officers)".

(b) Section 63 (2):

Omit "(other than a special division officer)".

(c) Section 63 (4):

After section 63 (3), insert:

(4) This section does not apply in relation to remuneration or allowances fixed under Part 2A or under the Statutory and Other Offices Remuneration Act 1975.

(16) Section 64 (**Industrial Authority may enter into agreements**):

Omit section 64 (3), insert instead:

(3) This section does not apply in relation to remuneration or allowances fixed under Part 2A or under the Statutory and Other Offices Remuneration Act 1975.

(17) Part 5, Division 1, heading:

Omit the heading, insert instead:

Division 1 - Application and interpretation

(18) Section 65A:

Before section 66, insert:

Part applies to public servants (except chief executive officers)

65A. This Part applies to officers in the Public Service but (unless otherwise expressly provided by this Act) does not apply to chief executive officers in the Public Service.

SCHEDULE 1 - AMENDMENTS - *continued*

- (19) Part 5, Division 2:
Omit the Division.
- (20) Part 5, Division 3, heading:
Omit the heading, insert instead:
Division 3 - Officers (other than chief executive officers)
- (21) Section 73 (**Division not to apply to special division officers**):
Omit the section.
- (22) Section 75 (**Punishment of officers for breaches of discipline**):
Section 75 (2) (d):
Before "reduction", insert "except in the case of a senior executive officer,".
- (23) Section 77A:
After section 77, insert:
Effect of dismissal of senior executive officers
77A. If a senior executive officer is dismissed from the Public Service under this Division:
(a) the term for which the officer was appointed is to be regarded as having come to an end; and
(b) no compensation is payable in respect of the dismissal.
- (24) Section 80 (**Officer not to engage in other employment without permission**):
Omit section 80 (7), insert instead:
(7) This section does not apply to chief executive officers or senior executive officers.
- (25) Section 81 (**Officers retiring or resigning before breach of discipline dealt with**):

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) Section 81 (1):
Omit "an inquiry", insert instead "a disciplinary inquiry".
 - (b) Section 81 (5):
Omit the subsection.
- (26) Section 82 (**Minister may direct holding of special inquiry**):
- (a) Omit "(including a matter involving the alleged commission of a breach of discipline by a special division officer)".
 - (b) At the end of the section, insert:
 - (2) A special inquiry may be conducted under this section into a matter involving an alleged breach of discipline by a chief executive officer or a senior executive officer (whether or not the person has ceased to be such an officer).
 - (3) If a special inquiry is conducted under this section into a matter involving an alleged breach of discipline by a senior executive officer in the Public Service, a disciplinary inquiry is not required to be held under Part 5.
- (27) Sections 82, 83:
After "Department" wherever occurring, insert "or declared authority".
- (28) Section 86 (**Power to amend Schedule 3 relating to declared authorities**):
Section 86 (2):
Omit "any of the applicable provisions referred to in section 87, or the provisions of section 88,", insert instead "any of the provisions of this Act relating to declared authorities".

SCHEDULE 1 - AMENDMENTS - *continued*

(29) Section 87:

Omit the section, insert instead:

Certain provisions not to apply

87. A provision of this Act relating to declared authorities does not apply to a particular declared authority if the provision is specified after the name of that authority in Schedule 3 as not applying to that authority.

(30) Section 89 (**Definitions**):

- (a) Section 89 (1), definitions of "office holder", "term appointee":

After "appointed" wherever occurring, insert "by the Governor or a Minister".

- (b) Section 89 (4):

Omit the subsection.

(31) Section 89A:

After section 89, insert:

Part not to apply to executive officers

89A. This Part does not apply to a person in the person's capacity as a chief executive officer or a senior executive officer.

(32) Section 90 (**Removal of term appointee from office**):

Section 90 (4) (a):

Omit the paragraph.

(33) Section 91 (**Re-appointment to public sector following removal of term appointee**):

Omit section 91 (1), insert instead:

(1) This section applies to a person who is removed from office under section 90 and who has not reached the age of 60 years.

SCHEDULE 1 - AMENDMENTS - *continued*

- (34) Section 92 (**Compensation for office holder following removal or retirement**):
- (a) Section 92 (1) (b):
Omit the paragraph.
 - (b) Section 92 (1) (c):
Omit "under section 19 or".
- (35) Section 95 (**Certain other Acts not to be affected**):
- (a) Section 95:
Omit "and the State Authorities Superannuation Act 1987", insert instead ", the State Authorities Superannuation Act 1987 and the Public Sector Executives Superannuation Act 1989".
 - (b) At the end of the section, insert:
(2) Subsection (1) does not limit section 42J.
- (36) Section 99 (**Deductions for rent etc. in certain cases**):
- After section 99 (4), insert:
- (5) This section is subject, in the case of a chief executive officer or senior executive officer, to the contract of employment entered into by the officer under Part 2A.
- (37) Sections 100 (**Extended leave for officers etc.**); 101 (**Attachment of wages or salary of officers etc.**):
- After "has effect" wherever occurring, insert "in relation to officers and temporary employees".
- (38) Section 102 (**Regulations**):
- (a) Section 102 (2) (d):
Omit "a special division position", insert instead "a chief executive position".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Section 102 (2) (i):
Omit "(other than special division officers)".
- (39) Schedule 3 (**Declared Authorities**):
Omit "(section 7 not to apply)" wherever occurring.
- (40) Schedules 3A, 3B:
After Schedule 3, insert:

**SCHEDULE 3A - CHIEF EXECUTIVE
POSITIONS**

(Sec. 42B)

**Part 1 - Heads of Government
Departments**

Department Head positions specified in Column 2 of
Schedule 1.

**Part 2 - Heads of Administrative
Offices**

Director-General of Corrective Services
General Manager of the New South Wales Dairy
Corporation
General Manager of the Darling Harbour Authority
Director of the Office of the Minister for the
Environment
Chairman of the Ethnic Affairs Commission
Commissioner constituting the Forestry Commission
Director of the Legal Aid Commission
General Manager of the Motor Accidents Authority
Director of National Parks and Wildlife
Chairman of the New South Wales Meat Industry
Authority
Director of Planning
Commissioner of the Soil Conservation Service
Director of State Lotteries
Director of the State Pollution Control Commission
General Manager of the Tourism Commission
General Manager of the Workers Compensation and
Rehabilitation Authority