

First print



New South Wales

Public Sector Management Amendment (Mobility) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Sector Management Act 1988* to facilitate the employer-sponsored transfer of officers in the public sector (which for this purpose covers Departments and public authorities), and for other purposes.

The Bill makes a series of amendments relating to the transfer of officers, and in particular:

- (a) establishes an employer-sponsored scheme for the transfer of officers between public authorities, and between public authorities and Departments, and
 - (b) enables the transfer of senior executive officers to positions with lower remuneration, but only with their consent, and
 - (c) facilitates the appointment of unattached executive officers to positions in the public sector.
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Broadly, the current position with regard to the transfer of public sector employees is as follows:

- Schedule 5A to the Act deals with the consequences of transfers within the public sector (whether employer-sponsored or employee-initiated) by providing that employees who move between public sector employers retain their entitlements as to annual leave, sick leave, maternity leave etc.
- Sections 50 and 53A of the Act provide a scheme for the employer-sponsored transfer of officers within or between Departments.
- Transfer between other public authorities, or between public authorities and Departments, can generally only be effected by the normal appointment processes (ie resignation from one service following appointment in another service, usually after the lodging of a job application).

The Bill proposes to insert a new section 100A. This section will provide an employer-sponsored scheme for transfers between public authorities, and between public authorities and Departments. Schedule 5A will automatically extend to such transfers, provided the employing authorities concerned are covered by the Schedule.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 is a formal provision giving effect to the Schedule of amendments.

Schedule 1 [1] amends section 15. The result of the amendment will be to extend the operation of section 26 (3) to cover unattached executive officers in the Public Service or the Education Teaching Service, so that such an officer is included among those who can be appointed, in certain limited circumstances, without advertisement.

Schedule 1 [2] and **[3]** amend section 42Q. The first amendment will provide that an unattached executive officer is taken to hold an equivalent (though notional) position in the Department or organisation from which he or she was removed. The second amendment will result in an unattached chief

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executive officer being regarded as an unattached senior executive officer, and as holding a (notional) senior executive position, for certain purposes. These amendments will facilitate the appointment of such an officer under section 26 (3), or the transfer of such an officer under section 53A or proposed section 100A.

Schedule 1 [4] and [5] amend section 42Q to contemplate the possibility that an unattached executive officer could be reappointed to his or her previous position.

Schedule 1 [6] amends section 42S to ensure that an executive officer who consents to a transfer to a position with lower remuneration is not entitled to compensation from the Statutory and Other Offices Remuneration Tribunal.

Schedule 1 [7] amends section 53 to enable an officer in the Public Service to be dismissed if he or she has no valid reason for refusing a transfer under proposed section 100A. This arrangement already exists in the case of officers who refuse a transfer within or between Departments.

Schedule 1 [8] amends section 53A to bring terminology used in the section into line with that used in proposed sections 100A and 100C.

Schedule 1 [9] amends section 53A in connection with the transfer of Public Service senior executive officers within or between Departments. Proposed section 53A (5) will enable such officers to be transferred to positions with lower remuneration, but only with their consent.

Schedule 1 [10] inserts new sections 100A, 100C and 100D, and in effect renumbers the existing section 100A as 100B.

Proposed section 100A (1)–(3) enables the transfer of an officer in a Department to a public authority, and vice versa, and also enables the transfer of officers between public authorities. In each case, the officer must first be consulted, and the Head of the organisation to which the officer is being transferred must approve, and the Public Employment Office must also approve. Such a transfer must be to a position with equivalent remuneration. Proposed section 100A (4) provides that a senior executive officer may however consent to a transfer at a lower level of remuneration. Proposed section 100A (5) ensures that an officer must be qualified for the position to which he or she is being transferred. Proposed section 100A (6) provides for the dismissal of an officer of a public authority who refuses a transfer, unless the officer had a valid reason for refusing the transfer (similar provisions operate for public servants under section 53A). Proposed section 100A (7) ensures that other methods of transfer are still available. Proposed section

100A (8) leaves other statutory transfer schemes intact. Proposed section 100A (9) enables the Public Employment Office to impose conditions when giving its approval under the proposed section, including conditions relating to preservation of current entitlements not otherwise covered. Proposed section 100A (10) ensures that probity and integrity requirements relating to the position to which a person is being transferred are complied with, together with other requirements specified by the Public Employment Office or prescribed by the regulations. Proposed section 100A (11) contains definitions of expressions used in the section. It is envisaged that the power to make a regulation prescribing who is the "head" of a public authority for the purposes of the proposed section will be exercised in circumstances where this would not otherwise be clear.

Proposed section 100C (1) recognises arrangements under which, when an officer is transferred at "existing salary" or at an "existing level of remuneration", a variation of salary or remuneration may be appropriate in accordance with general guidelines of the Public Employment Office. Consequently, a transfer to a position at a lower level of remuneration will not require the officer's consent (where this would otherwise be required) if the lower level is within the range of variation permitted by the guidelines. Proposed section 100C (2) provides that increases of remuneration resulting from the application of those guidelines will not result in promotion appeals. Proposed section 100C (3) provides that compensation is not payable in the event of a reduction of remuneration on a transfer resulting from the application of those guidelines. Proposed section 100C (4) makes it clear that, where a senior executive officer consents to a transfer to a position with a lower level of remuneration, the position can be a non-executive position that does not involve a remuneration package. Proposed section 100C (5) makes it clear that references to officers in the section are not limited by the definition in section 3 (1).

Proposed section 100D deals with the possibility that a Department or organisation may not be identifiable while a former officer is being regarded as holding a "notional" executive position in it, as provided by the proposed amendment to section 42Q (3).

Schedule 1 [11] inserts a reference to the Sydney Organising Committee for the Olympic Games into Schedule 3, which lists declared authorities. The Committee is already taken to be a declared authority by the Act establishing the Committee, and the amendment is made merely to make its status explicit in the *Public Sector Management Act 1988*. The Committee, being a declared authority, is within the mobility scheme.

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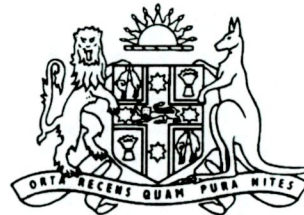
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Schedule 1 [12] is consequential on the replacement of section 100A by Schedule 1 [10].

Schedule 1 [13]–[15] make amendments of a statute law revision or clarifying nature.

Schedule 1 [16] will have the effect of enabling regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act, with the usual safeguards.

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Public Sector Management Amendment (Mobility) Bill 1996

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New South Wales

Public Sector Management Amendment (Mobility) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Public Sector Management Act 1988* to facilitate the transfer of officers in the public sector; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Management Amendment (Mobility) Act 1996*.

2 Commencement

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This Act commences on the date of assent.

3 Amendment of Public Sector Management Act 1988 No 33

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

Schedule 1 Amendments

(Section 3)

[1] Section 15 Merit appointments

Insert “and all notional executive positions referred to in section 42Q (3) (c) in the Public Service or the Education Teaching Service” after “Service” where secondly occurring in section 15 (2).

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[2] Section 42Q Removal of executive officers from office

Insert at the end of section 42Q (3) (b):

, and

- (c) is, for the purposes of sections 15 (2), 26, 53A and 100A, to be regarded as holding an equivalent (though notional) executive position in the Department or organisation from which he or she was removed.

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[3] Section 42Q (3A)

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Insert after section 42Q (3):

(3A) If the person referred to in subsection (3) was removed from a chief executive position, then for the purposes of sections 15 (2), 26, 53A and 100A:

- (a) the person is to be regarded as a senior executive officer, and
- (b) the person’s notional executive position referred to in subsection (3) (c) is to be regarded as a senior executive position.

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[4] Section 42Q (4)

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Omit “another”. Insert instead “an”.

Public Sector Management Amendment (Mobility) Bill 1996

Schedule 1 Amendments

[5] Section 42Q (5)

Omit "another" where secondly occurring.
Insert instead "a".

[6] Section 42S Compensation etc where executive officer has no right to return to public sector

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Insert "However, this section does not apply to an executive officer who consents to a transfer at a lower level of remuneration." at the end of section 42S (1).

[7] Section 53 Officer refusing transfer

Omit "a transfer from one position to another under section 50, 51 or 52" from section 53 (1).
Insert instead "a transfer under section 50, 51, 52 or 100A".

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[8] Section 53A Provisions applying to senior executive officers in the Public Service

Omit "(being a position with the same remuneration package)" wherever occurring.
Insert instead "at the officer's existing level of remuneration".

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[9] Section 53A (5)

Insert after section 53A (4):

- (5) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.

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[10] Sections 100A–100D

Omit section 100A. Insert instead:

100A Employer-sponsored transfers involving public authorities

- (1) The Head of a Department may transfer an officer of the Department to a position in the service of a public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the public authority and of the Public Employment Office. 5
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- (2) The Head of a public authority may transfer an officer of the public authority to a position in a Department at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the appropriate Department Head and of the Public Employment Office. 15
- (3) The Head of a public authority may transfer an officer of the public authority to a position in the service of another public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the other public authority and of the Public Employment Office. 20
- (4) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer. 25
- (5) A transfer under this section may be made only if the officer possesses the qualifications required for the position to which the officer is being transferred. 30
- (6) An officer of a public authority who refuses a transfer under this section may be dismissed from the service of the public authority in accordance with any dismissal procedures applicable to the public authority, but only if the Head of the public authority has certified that the officer had no valid reason for so refusing. This subsection does not affect the power of removal under section 42Q. 35

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Schedule 1 Amendments

- (7) This section does not affect any other method (statutory or otherwise) by which officers of Departments or public authorities can transfer or be transferred.
- (8) This section does not affect any provisions of any other Act to the extent that they specifically deal with the transfer of any officers from a Department or a public authority. 5
- (9) The approval of the Public Employment Office under this section may be given unconditionally or subject to conditions. Without limitation, such a condition may provide for the retention of accrued or accruing rights or benefits where they are not covered by Schedule 5A or where that Schedule is not applicable. 10
- (10) The approval of the Head of a Department or public authority to the transfer of an officer to a protected position in or with the Department or public authority (that is, a position that is subject to the requirements of some other Act or law with respect to appointments to such a position) is effective only after substantial compliance with: 15
- (a) such of those requirements as relate to probity or integrity, and
- (b) such of those requirements as are specified in any conditions subject to which the approval of the Public Employment Office is given, and 20
- (c) such of those requirements as are prescribed by the regulations. 25
- For the purposes of this subsection, the relevant provisions of the other Act or law imposing any such requirement apply with any necessary modifications. 30
- (11) In this section:
- Head** of a public authority means:
- (a) (subject to paragraph (b)) the person who is or exercises the functions of chief executive officer of the authority, or 35
- (b) the person prescribed by the regulations.

officer of a Department means an officer, as defined in section 3 (1), of the Department.

officer of a public authority means an officer or employee of the public authority.

public authority means: 5

(a) the whole or a part of a public sector service or an employer constituting, or within, or for the purposes of, a public sector service, or

(b) (without limiting paragraph (a)) a State owned corporation, 10

but does not include a Department.

public sector service has the same meaning as in Schedule 5A.

100B Provisions relating to mobility of public sector employees 15

Schedule 5A has effect.

100C Variations in remuneration on transfer

(1) A reference in this Act to an officer's existing salary or an officer's existing level of remuneration includes a reference to that salary or level of remuneration as varied in accordance with general guidelines issued from time to time by the Public Employment Office in connection with the transfer of officers. 20

(2) A person is not entitled to appeal under section 20 of the *Government and Related Employees Appeal Tribunal Act 1980* in respect of a decision relating to a vacant office, where the maximum salary applicable to the vacant office is greater than the salary paid to an employee, because of the application of the guidelines. 25

(3) An officer is not entitled to any compensation in respect of any reduction of remuneration because of the application of the guidelines. 30

Schedule 1 Amendments

- (4) A reference in this Act to the transfer of a senior executive officer at a level of remuneration that is lower than the officer's existing level of remuneration includes a reference to the transfer of the officer to a position without a remuneration package (within the meaning of Part 2A) and with a salary and other benefits that are lower in value than the officer's existing remuneration package (within the meaning of that Part). The relative values are to be determined in accordance with any relevant principles in the guidelines. 5
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- (5) This section extends to officers referred to in section 100A.

100D Departmental or organisational changes affecting notional executive positions

If a Department or organisation referred to in section 42Q (3) (c) ceases to exist or to be identifiable, the Public Employment Office may determine that the executive position concerned is to be regarded for the purposes of that paragraph as being in some other specified Department or organisation. 15
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[11] Schedule 3 Declared authorities

Insert "Sydney Organising Committee for the Olympic Games." in alphabetical order.

[12] Schedule 5A Provisions relating to mobility of public sector employees

Omit "100A" occurring before clause 1. Insert instead "100B". 25

[13] Schedule 5A, clause 1 (1)

Omit "other" from paragraph (d) of the definition of *public sector service*.
Insert instead "of a". 30

Public Sector Management Amendment (Mobility) Bill 1996

Amendments

Schedule 1

[14] Schedule 5A, clause 1 (1)

Insert “the service of” before “either” in paragraph (e) of the definition of *public sector service*.

[15] Schedule 5A, clause 1 (2)

Omit “section”. Insert instead “Schedule”.

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[16] Schedule 7 Savings, transitional and other provisions

Insert “*Public Sector Management Amendment (Mobility) Act 1996*” at the end of clause 2 (1).

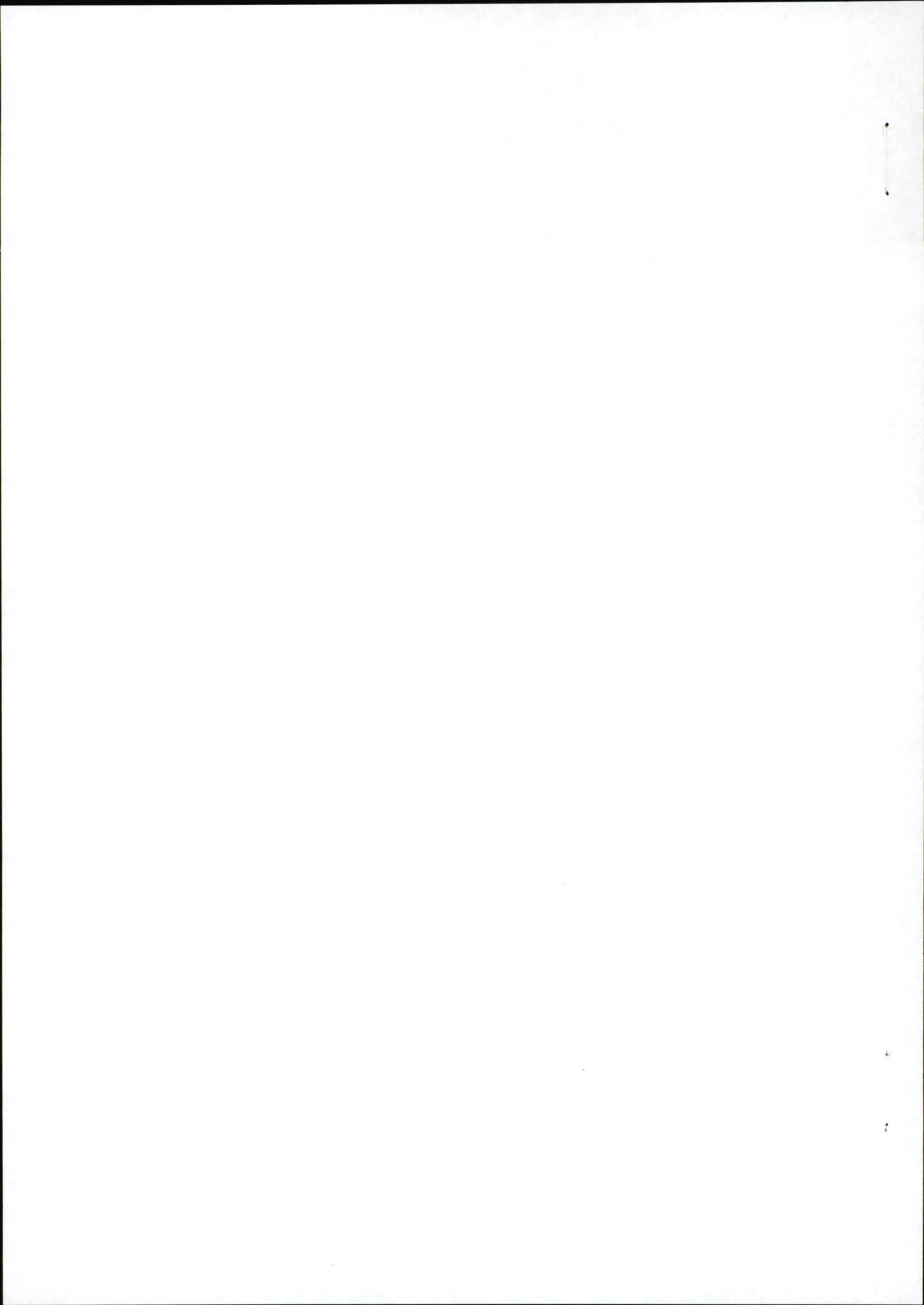


New South Wales

Public Sector Management Amendment (Mobility) Act 1996 No 127

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New South Wales

Public Sector Management Amendment (Mobility) Act 1996 No 127

Act No 127, 1996

An Act to amend the *Public Sector Management Act 1988* to facilitate the transfer of officers in the public sector; and for other purposes. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Management Amendment (Mobility) Act 1996*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Public Sector Management Act 1988 No 33

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

Schedule 1 Amendments

(Section 3)

[1] Section 15 Merit appointments

Insert “and all notional executive positions referred to in section 42Q (3) (c) in the Public Service or the Education Teaching Service” after “Service” where secondly occurring in section 15 (2).

[2] Section 42Q Removal of executive officers from office

Insert at the end of section 42Q (3) (b):

, and

- (c) is, for the purposes of sections 15 (2), 26, 53A and 100A, to be regarded as holding an equivalent (though notional) executive position in the Department or organisation from which he or she was removed.

[3] Section 42Q (3A)

Insert after section 42Q (3):

(3A) If the person referred to in subsection (3) was removed from a chief executive position, then for the purposes of sections 15 (2), 26, 53A and 100A:

- (a) the person is to be regarded as a senior executive officer, and
- (b) the person’s notional executive position referred to in subsection (3) (c) is to be regarded as a senior executive position.

[4] Section 42Q (4)

Omit “another”. Insert instead “an”.

[5] Section 42Q (5)

Omit "another" where secondly occurring.
Insert instead "a".

[6] Section 42S Compensation etc where executive officer has no right to return to public sector

Insert "However, this section does not apply to an executive officer who consents to a transfer at a lower level of remuneration." at the end of section 42S (1).

[7] Section 53 Officer refusing transfer

Omit "a transfer from one position to another under section 50, 51 or 52" from section 53 (1).
Insert instead "a transfer under section 50, 51, 52 or 100A".

[8] Section 53A Provisions applying to senior executive officers in the Public Service

Omit "(being a position with the same remuneration package)" wherever occurring.
Insert instead "at the officer's existing level of remuneration".

[9] Section 53A (5)

Insert after section 53A (4):

- (5) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.

[10] Sections 100A–100D

Omit section 100A. Insert instead:

100A Employer-sponsored transfers involving public authorities

- (1) The Head of a Department may transfer an officer of the Department to a position in the service of a public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the public authority and of the Public Employment Office.
- (2) The Head of a public authority may transfer an officer of the public authority to a position in a Department at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the appropriate Department Head and of the Public Employment Office.
- (3) The Head of a public authority may transfer an officer of the public authority to a position in the service of another public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the other public authority and of the Public Employment Office.
- (4) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.
- (5) A transfer under this section may be made only if the officer possesses the qualifications required for the position to which the officer is being transferred.
- (6) An officer of a public authority who refuses a transfer under this section may be dismissed from the service of the public authority in accordance with any dismissal procedures applicable to the public authority, but only if the Head of the public authority has certified that the officer had no valid reason for so refusing. This subsection does not affect the power of removal under section 42Q.

- (7) This section does not affect any other method (statutory or otherwise) by which officers of Departments or public authorities can transfer or be transferred.
- (8) This section does not affect any provisions of any other Act to the extent that they specifically deal with the transfer of any officers from a Department or a public authority.
- (9) The approval of the Public Employment Office under this section may be given unconditionally or subject to conditions. Without limitation, such a condition may provide for the retention of accrued or accruing rights or benefits where they are not covered by Schedule 5A or where that Schedule is not applicable.
- (10) The approval of the Head of a Department or public authority to the transfer of an officer to a protected position in or with the Department or public authority (that is, a position that is subject to the requirements of some other Act or law with respect to appointments to such a position) is effective only after substantial compliance with:
- (a) such of those requirements as relate to probity or integrity, and
 - (b) such of those requirements as are specified in any conditions subject to which the approval of the Public Employment Office is given, and
 - (c) such of those requirements as are prescribed by the regulations.

For the purposes of this subsection, the relevant provisions of the other Act or law imposing any such requirement apply with any necessary modifications.

- (11) In this section:

Head of a public authority means:

- (a) (subject to paragraph (b)) the person who is or exercises the functions of chief executive officer of the authority, or
- (b) the person prescribed by the regulations.

officer of a Department means an officer, as defined in section 3 (1), of the Department.

officer of a public authority means an officer or employee of the public authority.

public authority means:

- (a) the whole or a part of a public sector service or an employer constituting, or within, or for the purposes of, a public sector service, or
- (b) (without limiting paragraph (a)) a State owned corporation,

but does not include a Department.

public sector service has the same meaning as in Schedule 5A.

100B Provisions relating to mobility of public sector employees

Schedule 5A has effect.

100C Variations in remuneration on transfer

- (1) A reference in this Act to an officer's existing salary or an officer's existing level of remuneration includes a reference to that salary or level of remuneration as varied in accordance with general guidelines issued from time to time by the Public Employment Office in connection with the transfer of officers.
- (2) A person is not entitled to appeal under section 20 of the *Government and Related Employees Appeal Tribunal Act 1980* in respect of a decision relating to a vacant office, where the maximum salary applicable to the vacant office is greater than the salary paid to an employee, because of the application of the guidelines.
- (3) An officer is not entitled to any compensation in respect of any reduction of remuneration because of the application of the guidelines.

- (4) A reference in this Act to the transfer of a senior executive officer at a level of remuneration that is lower than the officer's existing level of remuneration includes a reference to the transfer of the officer to a position without a remuneration package (within the meaning of Part 2A) and with a salary and other benefits that are lower in value than the officer's existing remuneration package (within the meaning of that Part). The relative values are to be determined in accordance with any relevant principles in the guidelines.
- (5) This section extends to officers referred to in section 100A.

100D Departmental or organisational changes affecting notional executive positions

If a Department or organisation referred to in section 42Q (3) (c) ceases to exist or to be identifiable, the Public Employment Office may determine that the executive position concerned is to be regarded for the purposes of that paragraph as being in some other specified Department or organisation.

[11] Schedule 3 Declared authorities

Insert "Sydney Organising Committee for the Olympic Games." in alphabetical order.

[12] Schedule 5A Provisions relating to mobility of public sector employees

Omit "100A" occurring before clause 1. Insert instead "100B".

[13] Schedule 5A, clause 1 (1)

Omit "other" from paragraph (d) of the definition of *public sector service*.

Insert instead "of a".

[14] Schedule 5A, clause 1 (1)

Insert “the service of” before “either” in paragraph (e) of the definition of *public sector service*.

[15] Schedule 5A, clause 1 (2)

Omit “section”. Insert instead “Schedule”.

[16] Schedule 7 Savings, transitional and other provisions

Insert “*Public Sector Management Amendment (Mobility) Act 1996*” at the end of clause 2 (1).

[Minister’s second reading speech made in—
Legislative Assembly on 13 November 1996
Legislative Council on 28 November 1996]

