

Ms Abigail Boyd MLC  
Chair, Public Accountability & Works Committee  
NSW Parliament  
6 Macquarie Street  
SYDNEY NSW 2000

Ref: LEX 41315

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**Re: Inquiry into the appointments of Josh Murray to the position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner, and Senior Executives and Department Liaison Officers in 2023**

Dear Chair,

I refer to the hearing before the Public Accountability and Works Committee (the Hearing) today and to the question on notice taken by Transport for NSW (Transport) in relation to legal advice provided to the Chief of Staff in relation to the *Government Sector Employment Act 2013* on 28 March 2023.

Following the conclusion of today's hearing, Ms Susan Carroll and I were advised the document was not previously produced in response to the Order for Papers in relation to the Transition Office and Coordinator General dated 22 November 2023 (and not referenced in the index that accompanied that response) as, on a review of the face of the document, it did not relate to the categories of information called for in that Order.

However, in light of the Committee's interest in this matter and questions to myself and Ms Carroll, Transport encloses a copy and will not press a claim for privilege.

Yours sincerely

Josh Murray  
Secretary

8 April 2024

Hi Susan

As discussed, the *Government Sector Employment Act (GSEA)* sets out who may be seconded to government agencies. The Act does not contemplate secondments of MOPS staff (*Members of Parliament Staff Act*) to Transport because MOPS staff are not included in the definition of non-government sector body (s 66(1)).

DPC advise that MOPS staff used to be captured in the definition of non-government sector body but the legislation was amended in March 2016 (extract below).

Please also note that GSEA s 64 provides that the Public Service Commissioner can make rules relating to the transfer or secondment of an employee to a government sector agency but in this section government sector agency includes MOPS staff. The Public Service Commissioner made Rule 28 but it expressly excludes secondments of MOPS staff. DPC advise that the Public Service Commissioner considered that it was not sound policy to allow secondments of MOPS staff because MOPS staff do not go through a merit based process whereas public servants do).

Lastly, I note that following on from the Head Review in 2022, the GSEA was amended to include s26(4) which provides that a Minister cannot direct a secretary in relation to the exercise of employer functions.

For completeness, Transport staff can be seconded as MOPS staff under clause 35 of the GSEA Reg.

### Current GSEA – Secondment provision

#### 66 Secondments of staff between government sector agencies and other relevant bodies

(1) Arrangements may be made under this section under which—

(a) (Repealed)

(b) a person who is employed in a government sector agency is seconded to carry out work in or for a non-government sector body, or

(c) a person who is employed in or by a non-government sector body is seconded to carry out work in or for a government sector agency.

Any such secondment may be on a full-time or part-time basis.

(2) An arrangement for a secondment under this section is to be made between the head of the government sector agency and the person responsible for the employment of persons in or by the non-government sector body.

(3) A person employed in or by a non-government sector body (other than a local council or State owned corporation) is not to be seconded under this section to carry out work in or for a government sector agency unless—

(a) the head of the agency is satisfied that the secondment is justified because of the special skills of the person or the special circumstances of the case, and

(b) the period of any one secondment does not exceed 2 years.

(4) The government sector employment rules may deal with secondments under this section.

(5) A person's employment in a government sector agency (including the continuity of that employment) is not affected by the secondment of the person under this section.

(6) In this section—

*non-government sector body* means any of the following—

(a) a local council,

(b) a State owned corporation,

(c) a private sector entity (including a not-for-profit sector entity),

(d) a public authority or government agency of the Commonwealth or of another State or Territory,

(e) (Repealed)

(f) a university.

s 66: Am 2016 No 2, Sch 1 [43]-[49]

Pre-2016 GSEA Secondment Wording

(6) In this section:

***non-government sector body*** means any of the following:

- (a) a local council,
- (b) a State owned corporation,
- (c) a private sector entity (including a not-for-profit sector entity),
- (d) a public authority or government agency of the Commonwealth or of another State or Territory,
- (e) a political office holder under the *Members of Parliament Staff Act 2013* (except in relation to an assignment to carry out work in or for a government sector agency),
- (f) a university.

Regards

Sally

Confidential and subject to LPP

28/03/2023



## NSW legislation

# Government Sector Employment Act 2013 No 40

Current version for 27 February 2023 to date (accessed 29 March 2023 at 17:22)

[Part 4](#) > [Division 2](#) > Section 26

### 26 Employer functions of Secretaries of Departments

- (1) The Secretary of a Department may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the following—
  - (a) the Public Service senior executives assigned to roles in the Department,
  - (b) the other employees of the Department,
  - (c) the head of each Public Service executive agency related to the Department unless—
    - (i) the office of the head is a statutory office established by another Act, or
    - (ii) the head is the Secretary, or
    - (iii) Schedule 1 provides that some other person exercises the employer functions in relation to the head,
  - (d) the Public Service senior executives assigned to roles in each Public Service executive agency related to the Department.
- (2) (Repealed)
- (3) The employer functions of the Government are all the functions of an employer in respect of employees, including (without limitation) the power to employ persons, to assign them to roles and to terminate their employment.
- (4) In the exercise of the employer functions referred to in subsection (1), a Secretary of a Department is not subject to the direction or control of a Minister.

#### Note—

Division 6 confers on the Industrial Relations Secretary employer functions relating to the determination of the conditions of employment of, and other industrial matters relating to, Public Service employees.

# Response to Graeme Head Inquiry

Published: 16 Aug 2022

Released by: The Premier

On 23 June 2022, I asked the Department of Premier and Cabinet to inquire into the process that was followed in relation to the employment of the Senior Trade and Investment Commissioner to the Americas.

The Department appointed former NSW Public Service Commissioner, Mr Graeme Head AO, to conduct the inquiry on behalf of the Secretary under section 83 of the *Government Sector Employment Act 2013 (NSW) (GSE Act)*.

The Report has made 8 findings and 13 recommendations.

The Government supports 12 of the 13 recommendations directed to the Government in the Report, with the following key recommendations to be adopted:

- An amendment to the GSE Act to make clear that a Minister cannot direct a Secretary in the exercise of their employment functions;
- An amendment to the GSE Regulations so that the full GSE Rules-based merit process applies to the future selection of the Senior Trade and Investment Commissioners;
- Amendments to the GSE Act to legislate a Code of Ethics and Conduct for the public sector;
- A new Parliamentary Joint Committee to monitor and review the exercise of the Public Service Commissioner and the Commissioners' functions under the GSE Act; and
- Codification of the roles and responsibilities of Secretaries.

In addition to the recommendations of the Head inquiry, and to further increase transparency, the NSW Government will:

- Make a change to the Ministerial Code of Conduct to prevent Ministers for a period of 18 months from accepting any offer of employment within an public sector agency that reported to them within the last two years of Ministerial office;
- Senior public servants who leave their employment to work in the private sector will have to seek ethics advice where that employment relates to their previous role; and
- All trade commissioner roles will be appointed through the GSE Act, consistent with the GSE processes outlined in the Head Review. They will not be statutory appointments.

The Government notes Recommendation 3, which proposed amendments to the Ministerial Code of Conduct, to prevent Ministers from seeking to influence Secretaries in relation to their employer functions. The Code already provides that:

- A Minister must not knowingly breach the law (section 3);
- Minister must not knowingly issue any direction or make any request that would require a public service agency or any other person to act contrary to the law (section 5);
- A Minister, in the exercise or performance of their official functions, must not act dishonestly, must act only in what they consider to be the public interest, and must not act improperly for their private benefit or for the private benefit of any other person (section 6).

The Government considers that these provisions, coupled with the proposed amendments to the GS Act, will make clear that Secretaries and other Agency Heads are not subject to the direction and control of Ministers in the exercise of their employer functions.

The Government will work with the Public Service Commissioner to implement these recommendations.

The Government is committed to transparency, accountability, and acting in the best interests of the people of NSW. Maintaining an independent and apolitical public service, employed on merit, is a ke foundation of our responsible government.

I thank Mr Graeme Head AO for his important and valuable work on the Inquiry.

A full copy of the Report will be available at: [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au)  (<http://www.dpc.nsw.gov.au/>).

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## Part 2 Ethical framework for the government sector

### 6 Objective of Part

This Part:

- (a) recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day, and
- (b) establishes an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

### 7 Government sector core values

The core values for the government sector and the principles that guide their implementation are as follows:

#### **Integrity**

- (a) Consider people equally without prejudice or favour.
- (b) Act professionally with honesty, consistency and impartiality.
- (c) Take responsibility for situations, showing leadership and courage.
- (d) Place the public interest over personal interest.

#### **Trust**

- (a) Appreciate difference and welcome learning from others.
- (b) Build relationships based on mutual respect.
- (c) Uphold the law, institutions of government and democratic principles.
- (d) Communicate intentions clearly and invite teamwork and collaboration.
- (e) Provide apolitical and non-partisan advice.

#### **Service**

- (a) Provide services fairly with a focus on customer needs.
- (b) Be flexible, innovative and reliable in service delivery.
- (c) Engage with the not-for-profit and business sectors to develop and implement service solutions.
- (d) Focus on quality while maximising service delivery.

#### **Accountability**

- (a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.

- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient, effective and prudent use of resources.

**8 General provisions**

- (1) The Public Service Commissioner has the function of promoting and maintaining the government sector core values.
- (2) There is no hierarchy among the core values and each is of equal importance.
- (3) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action.