



New South Wales

Public Sector Management Amendment Act 1995 No 36

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New South Wales

Public Sector Management Amendment Act 1995 No 36

Act No 36, 1995

An Act to amend the *Public Sector Management Act 1988* to provide for the Council on the Cost of Government and the Public Employment Office and to make further provision with respect to executive officers, employee mobility and administrative changes; and for other purposes. [Assented to 25 September 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Management Amendment Act 1995*.

2 Commencement

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

3 Amendment of Public Sector Management Act 1988 No 33

The *Public Sector Management Act 1988* is amended as set out in Schedules 1–5.

4 Consequential amendment of Constitution Act 1902 No 32

Section 49 of the *Constitution Act 1902* is repealed.

5 Repeal of Administrative Changes Act 1976 No 61

The *Administrative Changes Act 1976* is repealed.

6 Consequential amendments

Each of the Acts specified in Schedule 6 is amended as set out in that Schedule.

Schedule 1 Amendments relating to establishment of Council on the Cost of Government

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Council means the Council on the Cost of Government established by this Act.

[2] Part 3, Division 1

Omit the Division. Insert instead:

Division 1 The Council on the Cost of Government

43 Establishment of Council

A Council on the Cost of Government is established.

44 Composition and procedure of Council

- (1) The Council is to consist of 7 members, as follows:
 - (a) 3 Department Heads, being the Director-General of the Premier's Department, the Director-General of the Cabinet Office and the Secretary of the Treasury,
 - (b) 4 persons appointed by the Governor on the recommendation of the Minister, being persons who are not public sector employees (as defined in subsection (3)).
- (2) The Minister may from time to time nominate some other Department Head in place of any of the Department Heads specified in subsection (1).
- (3) A public sector employee is a person who is an officer or temporary employee under this Act, or an employee or member of staff of a declared authority.

- (4) One of the members appointed by the Governor is, by the instrument of appointment as a member or by another instrument executed by the Governor, to be appointed as Chairperson of the Council.
- (5) Schedule 8 has effect with respect to the members and procedure of the Council.

45 Functions of Council

The Council has the following functions and is to exercise those functions with a view to achieving a cost effective and world class public sector:

- (a) reviewing management and operational effectiveness and efficiency in the public sector, including reporting and making recommendations to the Government on its reviews,
- (b) advising the Government on any changes that are necessary to ensure that the public sector provides “value for money” and quality services to its customers and the community within the framework of the Government’s policies,
- (c) developing and overseeing the implementation of reform initiatives for the achievement in the longer term of improvements in performance in the public sector and reduction in its costs and of such other public sector initiatives as the Minister may direct,
- (d) advising the Government on recommendations made by the Public Accounts Committee or the Auditor-General, including advice as to whether and how any such recommendations should be implemented, and monitoring the implementation of any of those recommendations that are to be implemented,
- (e) such other functions with respect to the review of matters concerning the public sector as the Minister may direct, including advising and reporting and making recommendations to the Government on the results of any such review and developing and overseeing the implementation of reform initiatives,

- (f) such other functions as are conferred or imposed on it by or under this Act or any other law.

46 Ministerial control

The Council is subject to the control and direction of the Minister, except in relation to the contents of any report or recommendation made by it.

47 Requests to Departments and declared authorities for information etc

- (1) For the purpose of the exercise of the Council's functions under this Act, a member of the Council authorised by the Council or an officer authorised by the Council may request a Department Head or declared authority:
 - (a) to produce any document in the custody of any member of staff of the Department or declared authority, or
 - (b) to provide any information, or
 - (c) to provide a report into such matters as are specified in the request.
- (2) If the Department Head or declared authority does not comply with the request, the Minister may require the Department Head or declared authority to comply with the request or with any other direction regarding the subject matter of the request.

47A Requests to Auditor-General for information

- (1) For the purpose of the exercise of the Council's functions under this Act, a member of the Council authorised by the Council or an officer authorised by the Council may request the Auditor-General to provide any information.
- (2) The Auditor-General may provide such information despite the provisions of section 38 (Secrecy) of the *Public Finance and Audit Act 1983*.

47B Management assistance and advice

The Council may provide a Department or declared authority or the Police Service with such assistance and advice as will foster improvement in the efficiency or management and organisational performance of the Department or declared authority or the Police Service.

47C Arrangements for use of staff of others

The Director-General of the Premier's Department may arrange for the use by the Council of the services of any staff (by secondment or otherwise) or facilities of a Department or declared authority.

47D Reports to the Minister

- (1) The Council is to prepare and forward to the Minister a report of the Council's work and activities for each consecutive period of 6 months commencing on the commencement of this section. The report for a period is to be prepared and forwarded to the Minister within 2 months after the end of the period.
- (2) The Minister is to lay each such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

47E Dissolution of Council

- (1) The Council is dissolved on the day that is 3 years after the day on which this Division (as inserted by the *Public Sector Management Amendment Act 1995*) commences.
- (2) On the dissolution of the Council, a person who held office as a member of the Council immediately before that dissolution:
 - (a) ceases to hold office as such a member, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.

[3] Part 3 Division 2 Management Reviews

Omit the Division.

[4] Schedule 8

Insert after Schedule 7:

**Schedule 8 Provisions relating to Members and
Procedure of the Council**

(Section 44)

1 Definitions

In this Schedule:

appointed member means a member referred to in section 44 (1) (b).

member means a member of the Council.

2 Deputy members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be the member.
- (3) A person while acting in the place of an appointed member is entitled to be paid such fees and allowances as the Minister may from time to time determine in respect of the person.

3 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Fees and allowances for appointed members

An appointed member is entitled to be paid such fees and allowances as the Minister from time to time determines in respect of the member.

5 Vacancy in office of appointed member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) becomes a public sector employee (as defined in subclause (3)), or
 - (f) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (h) becomes a mentally incapacitated person, or
 - (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Minister may remove an appointed member from office at any time.
- (3) A public sector employee is a person who is an officer or temporary employee under this Act, or an employee or member of staff of a declared authority.

6 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

7 Personal liability

A matter or thing done by the Council, a member of the Council or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

8 General procedure for calling and holding meetings of Council

The procedure for the calling and holding of meetings of the Council is to be determined by the Council.

9 Quorum

The quorum for a meeting of the Council is 4 of its members.

10 Presiding member and voting rights

- (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.

- (2) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Schedule 2 Amendments relating to establishment of Public Employment Office and abolition of Public Employment Industrial Relations Authority

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Industrial Authority* from section 3 (1).

[2] Section 8 Staff positions in a Department

Omit “with the approval of the Industrial Authority” from section 8 (3) (b).

Insert instead “in accordance with such guidelines as may be issued from time to time by the Public Employment Office”.

[3] Section 11 General responsibility of Department Heads

Omit “Industrial Authority” from section 11 (2).

Insert instead “Public Employment Office”.

[4] Section 28 Appointments on probation

Omit section 28 (2). Insert instead:

- (2) A person may be appointed to a position in the Public Service without being required to serve such a period of probation if the Department Head thinks it appropriate in the particular case.

[5] Section 28

Omit “Industrial Authority” from section 28 (3).

Insert instead “Public Employment Office”.

[6] Section 31 Advertising vacancies

Omit “Minister” from section 31 (2).
Insert instead “Public Employment Office”.

[7] Section 34 Restriction on temporary appointment

Omit “Industrial Authority” wherever occurring.
Insert instead “Public Employment Office”.

[8] Section 38 Appointment of temporary employees

Omit “Industrial Authority” wherever occurring.
Insert instead “Public Employment Office”.

[9] Section 41 Arrangements for the use of certain staff

Omit “Industrial Authority”.
Insert instead “Public Employment Office”.

[10] Part 3, Division 2A

Insert after Division 2:

Division 2A Public Employment Office

49A Public Employment Office

- (1) There is constituted by this Act a body corporate with the corporate name of the Public Employment Office.
- (2) The Public Employment Office is, for the purposes of any Act, a statutory body representing the Crown.

49B Commissioner for Public Employment

- (1) The affairs of the Public Employment Office are to be managed by the Commissioner for Public Employment.

- (2) Any act, matter or thing done in the name of, or on behalf of, the Public Employment Office by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Public Employment Office.
- (3) In this section, *Commissioner for Public Employment* means the Commissioner for Public Employment holding office as such under Part 2 of this Act.

49C Ministerial control

The Public Employment Office is subject to the control and direction of the Minister, except in relation to the following:

- (a) salaries, wages or other remuneration, and other conditions of employment,
- (b) a dispute relating to an industrial matter.

49D Principal functions of the Public Employment Office

The Public Employment Office has the following functions:

- (a) advising the Government on appropriate policies in relation to personnel management and industrial relations in the public sector and, in particular, appropriate policies in relation to the use of consultants by the public sector, standards of conduct for public sector employees and management-staff consultation,
- (b) monitoring the implementation of Government policies in those areas and assisting the implementation of those policies (including the issuing of implementation guidelines),
- (c) monitoring recruitment, appointment and promotion practices in the public sector and, in particular, compliance with requirements relating to appointment and promotion on merit,

- (d) co-ordinating and assisting in the redeployment of excess staff in the public sector,
- (e) advising the Minister on the creation, classification and grading of chief and senior executive officer positions within the public sector,
- (f) assisting in the recruitment, deployment and redeployment of executive officers within the public sector,
- (g) advising the Government on appropriate policies and practices in relation to such other public sector matters as the Minister may direct from time to time, and monitoring, co-ordinating and assisting the implementation of Government policies and practices in such other areas as the Minister may direct from time to time,
- (h) such other functions as are conferred or imposed on it by or under this Act or any other law.

49E Reports on personnel practices and policies

- (1) The Public Employment Office may require the appropriate Department Head or declared authority to provide the Public Employment Office with a report on such matters relating to the personnel policies and practices of a Department or declared authority as the Public Employment Office requires.
- (2) In particular, the Public Employment Office may require inclusion in the report of information of a kind specified by the Public Employment Office as to:
 - (a) the personnel policies and practices concerning the recruitment, selection, appointment, transfer, promotion or discipline of the staff of the Department or declared authority and the means by which the job satisfaction and opportunities for personal development of the staff are promoted, and
 - (b) the application of any such policies and practices to different groups of members of the staff.

- (3) The Department Head or declared authority concerned must comply with a requirement under this section within such time and in such manner as the Public Employment Office directs.
- (4) This section applies to the Police Service in the same way it applies to a Department, and for that purpose a reference to the Department Head is to be taken to be a reference to the Commissioner of Police.

49F Delegation by Public Employment Office

- (1) The Public Employment Office may delegate to a Department Head or any other officer of a Department any of the functions of the Public Employment Office, other than this power of delegation.
- (2) Any delegation of a function with respect to the making of a determination fixing salaries, wages or other remuneration of officers or temporary employees is subject to the condition that any such determination must be at a level that is lower than the lowest amount of the remuneration packages for executive officers determined for the time being under the *Statutory and Other Offices Remuneration Act 1975*.
- (3) In this section:
 - (a) a reference to the functions of the Public Employment Office includes a reference to any functions delegated to the Public Employment Office under this Act, and
 - (b) a reference to an officer of a Department includes a reference to a person holding an appointment to or in the Department and a reference to a temporary employee, and (where the Department is the group of staff attached to, but not comprising, a body, organisation or group specified in Schedule 1) a reference to a person holding an appointment to or in that body, organisation or group.

49G Regulations relating to functions of Public Employment Office

- (1) The regulations may make provision for or with respect to the principles, practices and procedures to be observed in connection with the exercise of the functions of the Public Employment Office.
- (2) In particular, the regulations may:
 - (a) prescribe the circumstances in which an approval by the Public Employment Office under this or any other Act may be regarded as having been given, or
 - (b) prescribe the procedure for obtaining any such approval.

49H Approvals or directions given by the Public Employment Office

An approval or direction given by the Public Employment Office under this Act may be given so as to apply to a particular case, or to all cases within a class of cases or generally.

[11] Section 50 Transfers within Department or between Departments

Omit “the Industrial Authority and” from section 50 (2).

[12] Section 51 Excess staff

Omit “Industrial Authority” from section 51 (3).
Insert instead “Public Employment Office”.

[13] Section 51

Omit “the Industrial Authority and” from section 51 (4).

[14] Section 52 Excessive salaries

Omit "Industrial Authority" from section 52 (3).
Insert instead "Public Employment Office".

[15] Section 52

Omit "the Industrial Authority and" from section 52 (5).

[16] Section 53 Officer refusing transfer

Omit "Industrial Authority" from section 53 (1).
Insert instead "Public Employment Office".

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

Omit "Minister" from section 53A (3).
Insert instead "Public Employment Office".

[18] Part 4, Division 1

Omit the Division.

[19] Part 4, Division 2

Omit "Industrial Authority" wherever occurring.
Insert instead "Public Employment Office".

[20] Section 88 Declared authorities to comply with directions of Public Employment Office on industrial matters

Omit "Industrial Authority" wherever occurring.
Insert instead "Public Employment Office".

[21] Section 96A

Insert after section 96:

96A Delegation by Minister

The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

[22] Section 99 Deductions for rent etc in certain cases

Omit "Industrial Authority" wherever occurring.
Insert instead "Public Employment Office".

Schedule 3 Amendments relating to Public Sector Executives

(Section 3)

[1] Section 42R Right to return to public sector for certain executive officers

Insert after section 42R (2):

- (2A) Despite any other provision of this section, an executive officer may not make an election under this section after the commencement of this subsection (as inserted by the *Public Sector Management Amendment Act 1995*) unless an election by the executive officer under this section was in force immediately before the commencement of this subsection.

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

Omit “one year” from section 42S (4). Insert instead “38 weeks”.

[3] Section 92 Compensation for office holder following removal

Omit “one year” from section 92 (3). Insert instead “38 weeks”.

Schedule 4 Amendments relating to Departments and other administrative changes

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Administrative Office*.

[2] Section 3

Omit the definition of *Department*. Insert instead:

Department means a department of the Public Service specified in Schedule 1 (being the group of staff with the title so specified or the group of staff attached to the body or organisation so specified).

[3] Section 3

Omit the definition of *Department Head* or *Head*.

Insert instead:

Department Head or *Head* means a Department Head referred to in section 10.

[4] Section 8 Staff positions in a Department

Omit section 8 (4). Insert instead:

- (4) A Department Head may establish, or abolish, or change the name of, any branch of the Department.

[5] Section 8 (5)

Omit “section 49 of the *Constitution Act 1902*”.

Insert instead “section 55A (Creation and change in relation to departments)”.

[6] Section 9 Creation of Department Head positions

Section 9 (1)

Insert “if it is not created by some other Act” after “Act”.

[7] Section 9 (2)

Insert “created by virtue of this Act” after “a position”.

[8] Section 9 (3)

Insert “, being a position created by virtue of this Act” after “Schedule 1”.

[9] Section 10 Department Heads

Omit section 10 (1) and (2). Insert instead:

- (1) The person holding the position specified in Column 2 of Schedule 1 opposite the title or other description of a department, body, organisation or group is, for the purposes of this Act, the Department Head in relation to the Department concerned.

[10] Section 10 (3) and (6)

Omit “Schedule 1 or 2” wherever occurring.
Insert instead “Schedule 1”.

[11] Section 10 (3)

Insert “department,” before “body” wherever occurring.

[12] Section 10 (3)

Omit “either of those Schedules”.
Insert instead “that Schedule”.

[13] Section 10 (4) and (7)

Omit the subsections.

[14] Section 10A Appointments to public service Department Head positions

Insert “in the Public Service” after “positions” in section 10A (1).

[15] Section 10A (4)

Omit the subsection.

[16] Section 10B Acting appointments to Department Head positions

Insert “in the Public Service” after “position” in section 10B (1).

[17] Section 12 Delegation by Department Head

Omit section 12 (3) (b) (ii). Insert instead:

- (ii) where the Department is the group of staff attached to a body, organisation or group specified in Schedule 1—a reference to a person holding an appointment to or in that body, organisation or group, and

[18] Section 15 Merit appointments

Insert “, 26A (Eligibility lists)” before “and 31” in section 15 (1).

[19] Section 15 (2)

Omit section 15 (2). Insert instead:

- (2) A Department for the purposes of the application of section 26 (3) includes all senior executive positions in the Public Service or the Education Teaching Service.

[20] Section 23 Administrative units

Omit the section.

[21] Section 26 Selection for appointment to be on merit

Omit “administrative unit” wherever occurring from section 26 (3).
Insert instead “Department”.

[22] Section 41 Arrangements for use of Education Teaching Service Staff

Omit section 41 (1). Insert instead:

- (1) The appropriate Department Head may, with the approval of the Director-General of the Department of School Education, on such terms and conditions as may be arranged, make use of the services of any member of the Education Teaching Service.

[23] Part 3A

Insert after Part 3:

Part 3A Administrative Changes

Division 1 Orders concerning departments of the Public Service

55A Creation and change in relation to departments

- (1) The Governor may by order:
 - (a) establish, abolish or change the name or other description of any department of the Public Service or any branch of any department of the Public Service, or
 - (b) remove a branch from any department of the Public Service, or
 - (c) add a branch to any department of the Public Service.

- (2) Any other Act may establish, abolish or change the name or other description of a department of the Public Service by amendment of Schedule 1 to insert, omit or change the name or other description of the Department, respectively.

55B Orders amending or replacing Schedule 1

The Governor may by order:

- (a) amend Column 1 of Schedule 1 by inserting, omitting or changing the name or other description of a department of the Public Service, or
- (b) amend Column 2 of Schedule 1 by inserting the title or other description of an office or position opposite an entry in Column 1 of that Schedule, or by omitting or amending a title or other description in Column 2 of that Schedule, or
- (c) omit Schedule 1 and insert in its place a Schedule containing in Column 1 the names or other descriptions of departments of the Public Service and containing in Column 2 the titles or other descriptions of offices or positions.

55C Orders specifying responsible Minister

The Governor may by order specify the Minister who is to be responsible for a department of the Public Service.

Division 2 Other administrative changes orders

55D Interpretation

In this Division:

administrative change means:

- (a) the fact of there ceasing to be a Minister, Department or officer of a particular description, or

- (b) the transfer of the administration of an Act, or a part of an Act, from a Minister to another Minister, or
- (c) the transfer of a function from a Minister, Department or officer to another Minister, Department or officer, respectively.

Department includes any branch or other part of a Department.

description includes title.

Minister means a Minister of the Crown.

officer means a member of staff of a Department.

reference, in relation to a Minister, Department or officer, includes a reference that (whether by or under this or any other Act) is to be read or construed as, or taken to be, or deemed to be, or otherwise treated as, a reference to that Minister, Department or officer.

statutory instrument means an instrument made under an Act or under an instrument made under an Act, and includes a regulation, rule, by-law or ordinance made under an Act.

55E Orders to change references in Acts

- (1) The Governor may make orders containing provisions requiring a reference in any Act or statutory instrument, or in any other instrument, or in any contract or agreement, to a Minister, Department or officer by a specified description to be construed as a reference to a Minister, Department or officer, respectively, by another specified description.
- (2) Such a provision does not apply to or in respect of any Act or statutory instrument, or any other instrument, or any contract or agreement, enacted, made or entered into after the date of publication in the Gazette of the order in which the provision is contained, or the date on which the provision takes effect, whichever is the later.

- (3) An order under this section need not be consequential on or incidental to administrative change.

55F Orders re administrative change and other matters

- (1) The Governor may make orders containing such provisions as in the opinion of the Governor are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on administrative change, the making of an order under this Division or a requirement imposed by an order under this Division.
- (2) The provisions that may be made by an order under this section include provisions for the transfer of any property, rights and liabilities held, enjoyed or incurred by a superseded authority, and provisions of a transitional or savings nature, including any of the following provisions:
- (a) provisions for the carrying on or completion of anything commenced by, or under the authority of, or in relation to, a superseded authority,
 - (b) provisions for the continuity of any body constituted by, or having amongst its members, a superseded authority,
 - (c) provisions for the substitution, in any legal proceedings, of a Minister or officer for a superseded authority.
- (3) In this section:
- superseded authority* means a Minister, Department or officer who is, or whose description is, the subject of an order under this Division.

Division 3 Requirements concerning orders

55G Publication and commencement of orders

- (1) An order under this Part is to be published in the Gazette.

- (2) The order takes effect on the date of its publication in the Gazette, or on such other date as may be specified in the order. The commencement date can be a date that is earlier than the date of publication of the order in the Gazette (including earlier than the commencement of this Part).

55H Limited, general and differential application of orders

An order under this Part may be made so as:

- (a) to apply generally or be limited in its application by reference to specified exceptions or factors, or
- (b) to apply differently according to different factors of a specified kind.

55I Operation of orders

- (1) An order under this Part does not invalidate anything done or omitted to be done before the date of its publication in the Gazette.
- (2) To the extent to which an order under this Part takes effect from a date that is earlier than the date of its publication in the Gazette, the order does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

55J Combination orders

An order may be made under this Part combining any 2 or more of the provisions authorised by this Part, including provisions authorised under different sections.

[24] Section 97 Construction of certain references

Omit section 97 (2).

[25] Sections 103, 104

Omit the sections.

[26] Schedule 1 Departments

Omit the Schedule. Insert instead:

Schedule 1 Departments

(Sections 3, 9, 55B)

Column 1	Column 2
Department	Department Head
Department of Aboriginal Affairs	Director-General of the Department
Ageing and Disability Department	Director-General of the Department
Department of Agriculture	Director-General of the Department
Ministry for the Arts	Secretary of the Ministry
Attorney General's Department	Director-General of the Department
The Audit Office of New South Wales	* Auditor-General
Office of the Board of Studies	General Manager of the Office
Building Services Corporation	General Manager of the Corporation
Department of Bush Fire Services	Commissioner of Bush Fire Services
Department of Business and Regional Development	Director-General of the Department
Cabinet Office	Director-General of the Office
Community Services Commission	* Commissioner for Community Services

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Amendments relating to Departments and other administrative changes Schedule 4

Column 1	Column 2
Department	Department Head
Department of Consumer Affairs	Director-General of the Department
Department of Corrective Services	Commissioner of Corrective Services
New South Wales Crime Commission	* Chairperson of the Commission
New South Wales Dairy Corporation	* General Manager of the Corporation
Darling Harbour Authority	General Manager of the Authority
Department of Community Services	Director-General of the Department
Office of the Director of Public Prosecutions	* Director of Public Prosecutions
Department of Energy	Director-General of the Department
Environment Protection Authority	Director-General of the Authority
Ethnic Affairs Commission	Chairperson of the Commission
NSW Fisheries	Director of NSW Fisheries
Forestry Commission (except State Forests)	* Commissioner constituting the Forestry Commission
Department of Gaming and Racing	Director-General of the Department
Department of Health	Director-General of the Department
Health Care Complaints Commission	* Commissioner of the Health Care Complaints Commission
Home Purchase Assistance Authority	Chief Executive Officer of the Authority
HomeFund Commissioner's Office	* HomeFund Commissioner
Department of Housing	Director of Housing
Department of Industrial Relations	Director-General of the Department
Department of Juvenile Justice	Director-General of the Department
Department of Land and Water Conservation	Director-General of the Department
Legal Aid Commission	* Director of the Commission
Department of Local Government	Director-General of the Department
Department of Mineral Resources	Director-General of the Department

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Schedule 4 Amendments relating to Departments and other administrative changes

Column 1	Column 2
Department	Department Head
Motor Accidents Authority	General Manager of the Authority
National Parks and Wildlife Service	Director-General of National Parks and Wildlife
New South Wales Fire Brigades	Commissioner of New South Wales Fire Brigades
New South Wales Meat Industry Authority	* Chairman of the Authority
Olympic Co-ordination Authority	Director-General of the Authority
Ombudsman's Office	* Ombudsman
Parliamentary Counsel's Office	Director-General of the Cabinet Office
Ministry for Police and Emergency Services	Director-General of the Ministry
Premier's Department	Director-General of the Department
Public Trust Office	* Public Trustee
Department of Public Works and Services	Director-General of the Department
Royal Botanic Gardens and Domain Trust	Director of the Royal Botanic Gardens and Domain
Rural Assistance Authority	* Chief Executive of the Authority
Department of School Education	Director-General of the Department
Department of Sport and Recreation	Director of the Department
Department of State Development	Director-General of the Department
State Electoral Office	* Electoral Commissioner
State Emergency Service	Director-General of the Service
State Forests, Forestry Commission	Managing Director of State Forests
Tourism New South Wales	* General Manager
Department of Training and Education Co-ordination	Director-General of the Department
Department of Transport	Director-General of the Department
The Treasury	Secretary of the Treasury

Column 1	Column 2
Department	Department Head
Department of Urban Affairs and Planning	Director-General of the Department
Department for Women	Director-General of the Department
WorkCover Authority	General Manager of the Authority

***Note.** The positions above marked with an asterisk are positions that are created by another Act and are not Public Service positions. The other positions are created by this Act (see section 9) and are Public Service positions. This note is an explanatory note and does not form part of this Schedule.

[27] Schedule 2 Administrative Offices

Omit the Schedule.

[28] Schedule 3A Chief Executive Positions

Omit Parts 1 and 2. Insert instead:

Part 1 Heads of Government Departments

Positions specified in Column 2 of Schedule 1, except the following positions:

Auditor-General

Director of Public Prosecutions

HomeFund Commissioner

Ombudsman

Public Trustee

Chairperson of the State Crime Commission

Electoral Commissioner

[29] Schedule 3B Senior Executive Positions

Schedule 3B, Part 1

Insert at the beginning of the list of Department of Corrective Services positions:

Deputy Commissioner (2 positions)

[30] Schedule 3B, Part 1

Insert at the beginning of the list of Motor Accidents Authority positions:

Deputy General Manager

[31] Schedule 3B, Part 2

Omit the following positions:

Deputy Commissioner of Corrective Services

Deputy General Manager of the Motor Accidents Authority

Schedule 5 Miscellaneous Amendments

(Section 3)

[1] Section 26A

Insert after section 26:

26A Eligibility lists

- (1) When a vacant position is advertised in accordance with this Act, the appropriate Department Head may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (2) An eligibility list for a position is a list of eligible applicants (namely the persons who duly applied for appointment to the position and are eligible for appointment) arranged in order of merit (with merit determined by the appropriate Department Head in accordance with section 26 (1)). An eligibility list for a position remains current for 6 months after the position was advertised.
- (3) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (4) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the appropriate Department Head determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.
- (5) In deciding to make a recommendation for the appointment of a person to a vacant position that has not been advertised in accordance with this Act, the appropriate Department Head may (despite section 26 (3)) select from among the persons who are on an eligibility list that is current and applicable to the

position (and who are available for appointment) the person with the greatest merit according to the order of merit in the eligibility list.

[2] Section 100A

Insert after section 100:

100A Mobility in public sector

Schedule 5A has effect.

[3] Schedule 5 Extended leave for officers etc of public service

Schedule 5, clause 1 (6) (a)

Omit "*Teaching Service Act 1970*".

Insert instead "*Teaching Services Act 1980*".

[4] Schedule 5, clause 2

Insert after clause 2 (2):

- (3) Any officer may elect, on termination of the officer's services, to be paid the money value of extended leave under subclause (1) or may elect to have the *Transferred Officers Extended Leave Act 1961* apply to the periods of service for which the leave has accrued.

[5] Schedule 5A

Insert after Schedule 5:

Schedule 5A Provisions relating to mobility of public sector employees

(Section 100A)

1 Definitions

(1) In this Schedule:

employee means a person who is:

- (a) a member of the Public Service, or
- (b) a member of the Education Teaching Service, or
- (c) a member of the Police Service, or
- (d) employed in the service of a declared authority or other statutory body representing the Crown, or
- (e) employed in a position referred to in section 4 (1) (c), or
- (f) employed in any other public sector service.

public sector service means:

- (a) the Public Service, or
- (b) the Education Teaching Service, or
- (c) the Police Service, or
- (d) the service of a declared authority or other statutory body representing the Crown, or
- (e) either House of Parliament, or the President or Speaker, or the President and the Speaker jointly, or
- (f) any other service of the Crown, or
- (g) the service of an area health service constituted under the *Area Health Services Act 1986*, or

- (h) the service of a hospital, separate institution, organisation or institution mentioned in the Second, Third, Fourth or Fifth Schedule to the *Public Hospitals Act 1929*, or
 - (i) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed, or that is of a class prescribed, for the purposes of this paragraph.
- (2) A reference in this section to cessation of employment is a reference to the cessation of employment by resignation, retirement or otherwise.

2 Schedule applies despite awards and agreements

This Schedule has effect despite any provision of any award or agreement.

3 Extended (long service) leave

- (1) Each public sector service that is not covered by the *Transferred Officers Extended Leave Act 1961* is declared to be a State authority for the purposes of that Act.
- (2) A public sector service is regarded as “not covered” by the *Transferred Officers Extended Leave Act 1961* if service in or with that public sector service would not (in the absence of this clause) be Governmental service under that Act.

4 Annual leave

- (1) This clause is taken to have commenced on 3 May 1993.
- (2) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service may elect to be paid the money value of the employee’s accrued annual leave or to retain the entitlement to that accrued annual leave.

(3) An employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other public sector service, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.

(4) In this clause:

accrued annual leave means annual leave owing to an employee (but not taken), and includes any such leave accrued because of the operation of this clause.

5 Sick leave

(1) This clause is taken to have commenced on 3 May 1993.

(2) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service is taken to have, on commencing that employment, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.

(3) The eligibility of an employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's current employment.

(4) In this clause:

accrued sick leave means the amount of sick leave to which the employee would have been entitled in the event of illness, and includes any such leave accrued because of the operation of this clause.

6 Maternity leave etc

- (1) This clause is taken to have commenced on 3 May 1993.
- (2) This clause applies for the purposes of determining whether an employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service is entitled to maternity leave, paternity leave, adoption leave or any other leave (other than extended leave) for which a condition of eligibility is a minimum period of service.
- (3) For the purposes of determining an employee's entitlement to leave referred to in this clause:
 - (a) service with the employee's previous employer is taken to be service with the employee's current employer, if the previous employment was in another public sector service and if that period of service was continuous with the employee's current employment, and
 - (b) service with any other former employers is taken to be service with the person's current employer, if the service was in other public sector services and the periods of service with those bodies were continuous with each other and the employee's previous employment in a public sector service.
- (4) Except as provided by this clause, the eligibility of an employee for leave referred to in this clause is to be determined in accordance with the conditions applying to that leave in the employee's current employment.
- (5) A reference in this clause to service with a previous or former employer extends to include a reference to any such service before the commencement of this clause.

7 Access to forfeited sick leave-transitional arrangements

- (1) If an employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.

- (2) An employee's "forfeited sick leave" is the total amount of sick leave that the employee ceased to be entitled to up to the commencement of this clause, being sick leave that he or she would presently be entitled to had clause 5 been in force from when the employee was first employed in a public sector service.
- (3) Once any period of an employee's forfeited sick leave has been granted as sick leave under this clause, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this clause (whether by the same or a different employer).
- (4) For the purposes of this clause, the employer of an employee is the person who exercises the functions of chief executive officer in relation to the public sector service in which the employee is employed (being the appropriate Department Head in the case of a member of the Public Service for example).
- (5) In determining whether or not an employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of clause 5.
- (6) The Public Employment Office may issue guidelines to employers of employees as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

8 Funding of leave entitlements

The Treasurer may give directions and issue guidelines requiring the transfer of funds between public sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Schedule and Schedule 5, or liabilities with respect to extended or long service leave.

[6] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Public Sector Management Amendment Act 1995.

[7] Schedule 7, Part 5

Insert at the end of the Schedule:

**Part 5 Provisions consequent on enactment of
Public Sector Management Amendment Act
1995**

27 Definitions

In this Part:

Industrial Authority means the Public Employment Industrial Relations Authority as constituted under this Act before its abolition by the 1995 Act.

the 1995 Act means the *Public Sector Management Amendment Act 1995*.

28 Abolition of Industrial Authority

The Public Employment Industrial Relations Authority is abolished on the commencement of section 49A of this Act. The assets, rights and liabilities of that Authority immediately before its abolition become assets, right and liabilities of the Public Employment Office.

29 References to Industrial Authority

After the abolition of the Industrial Authority, a reference to that Authority in any other Act, or in any instrument made under any Act or in any other instrument of any kind, is taken to be a reference to the Public Employment Office.

30 Agreements

Any agreement between the Industrial Authority and any association, organisation or person with respect to industrial matters (including any enterprise agreement) that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been entered into between the Public Employment Office and the association, organisation or person.

31 Determinations of remuneration by Industrial Authority

Any determination by the Industrial Authority under this Act of the salary, wages or other remuneration of officers and temporary employees that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been made by the Public Employment Office.

32 Approvals, delegations, directions and notifications given by the Industrial Authority

Any approval, delegation, direction or notification given by the Industrial Authority under this Act that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been given by the Public Employment Office.

33 Transitional arrangements for compensation entitlements of executive officers and term appointees

The amendment made to section 42S or 92 by the 1995 Act does not apply in respect of a person during a term of office as an executive officer (even as an unattached officer) or term appointee that commenced before the commencement of the amendment.

34 Saving of Constitution Act proclamations

A proclamation under section 49 of the *Constitution Act 1902* is taken to have been made as an order under Division 1 of Part 3A of this Act (and may be amended or repealed accordingly).

35 Saving of Administrative Changes Act orders

An order under the *Administrative Changes Act 1976* is taken to have been made under Division 2 of Part 3A of this Act (and may be amended or repealed accordingly).

36 Existing appointments under Darling Harbour Authority Act not affected

The amendments to the *Darling Harbour Authority Act 1984* made by the 1995 Act do not affect the appointment or term of office of any part-time member of the Authority under that Act.

37 Saving of existing Department Head appointments

- (1) A position specified in Column 1 of the Table to this clause is referred to in this clause as an abolished position and the position specified opposite that position in Column 2 of that Table is referred to in this clause as the equivalent Department Head position for the abolished position.
- (2) The person holding office in an abolished position immediately before its abolition by the 1995 Act is taken to have been appointed under this Act to the equivalent Department Head position for the abolished position. Such an appointment is for the remainder of the period of appointment to the abolished position.
- (3) Appointment by virtue of this clause to an equivalent Department Head position does not change the contract of employment under Part 2A between the person as an executive officer and the executive officer's employer. The contract is taken to be with the executive officer's employer in the equivalent Department Head position.
- (4) A person holding an appointment (whether as deputy or otherwise) to act in the office of the holder of an abolished position immediately before its abolition by the 1995 Act is taken to have been appointed by the

Governor under section 10B to act in the equivalent Department Head position (even if the person appointed is not an officer of the Public Service). This subclause only applies to an appointment for 6 months after the commencement of this clause (unless the appointment is sooner terminated by the Governor under section 10B).

Table

Column 1	Column 2
Abolished position	New public service position
Director of Planning under the Environmental Planning and Assessment Act 1979.	Director-General of the Department of Urban Affairs and Planning.
Director-General of National Parks and Wildlife under the National Parks and Wildlife Act 1974.	Director-General of National Parks and Wildlife.
Commissioner of Corrective Services under the Prisons Act 1952.	Commissioner of Corrective Services.
Deputy Commissioner of Corrective Services under the Prisons Act 1952.	Deputy Commissioner of Corrective Services.
General Manager of the Motor Accidents Authority under the Motor Accidents Act 1988.	General Manager of the Motor Accidents Authority.
Deputy General Manager of the Motor Accidents Authority under the Motor Accidents Act 1988.	Deputy General Manager of the Motor Accidents Authority.
General Manager of the Darling Harbour Authority under the Darling Harbour Authority Act 1984.	General Manager of the Darling Harbour Authority.
Chief Executive Officer of the Home Purchase Assistance Authority under the Home Purchase Assistance Authority Act 1993.	Chief Executive Officer of the Home Purchase Assistance Authority.

Public Sector Management Amendment Act 1995 No 36

Schedule 5 Miscellaneous Amendments

Column 1	Column 2
Abolished position	New public service position
Chairperson of the Ethnic Affairs Commission under the Ethnic Affairs Commission Act 1979.	Chairperson of the Ethnic Affairs Commission.
General Manager of the Workcover Authority under the Workcover Administration Act 1989.	General Manager of the Workcover Authority.
Director-General of the Environment Protection Authority under the Protection of the Environment Administration Act 1991.	Director-General of the Environment Protection Authority.

Schedule 6 Amendment of other Acts

(Section 6)

6.1 Building Services Corporation Act 1989 No 147

[1] Section 3 Definitions

Omit the definition of *General Manager* from section 3 (1).
Insert instead:

General Manager means the General Manager of the Corporation holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 111 Staff of the Corporation

Omit section 111 (1).

[3] Section 111

Omit “other staff” from section 111 (2). Insert instead “staff”.

6.2 Darling Harbour Authority Act 1984 No 103

[1] Section 3 Definitions

Omit the definition of *General Manager* from section 3 (1).
Insert instead:

General Manager means the General Manager of the Authority holding office as such under Part 2 of the *Public Sector Management Act 1988*.

Insert instead:

Director means the Director-General of the Department of Urban Affairs and Planning holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 13 Director of Planning

Omit section 13 (1) and (3).

[3] Section 13

Omit section 13 (4). Insert instead:

- (4) A reference in any Act or statutory instrument, or in any other instrument, to the Director of Environment and Planning or to the Director of Planning is to be read as a reference to the Director under this Act.

[4] Section 14 Acting Director

Omit the section.

[5] Schedule 1 The Director

Omit the Schedule.

6.4 Ethnic Affairs Commission Act 1979 No 23

[1] Section 5 Definitions

Omit the definition of *Chairperson*. Insert instead:

appointed commissioner means a commissioner appointed under section 7 (1) (b).

Chairperson means the Chairperson of the Commission holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 7 The commissioners

Section 7 (1)

Omit section 7 (1). Insert instead:

- (1) The Commission is to consist of not more than 15 commissioners, being:
 - (a) the Chairperson, and
 - (b) not more than 14 other commissioners appointed by the Governor.

[3] Section 7 (2)

Omit “the commissioners”.

Insert instead “the appointed commissioners”.

[4] Section 7 (2) (a)

Omit section 7 (2) (a).

[5] Section 7 (2A)

Insert “other than the Chairperson” after “commissioner”.

[6] Section 7 (4) (a)

Omit “under subsection (7)”.

Insert instead “under the *Public Sector Management Act 1988*”.

[7] Section 7 (6)

Omit “a commissioner”.

Insert instead “an appointed commissioner”.

[8] Section 7 (7)

Omit “of a commissioner”.

Insert instead “of an appointed commissioner”.

[9] Section 7 (7)

Omit “Chairperson or the Deputy Chairperson, the functions of the Chairperson or Deputy Chairperson, as the case may be”.
Insert instead “Deputy Chairperson, the functions of the Deputy Chairperson”.

6.5 Fair Trading Act 1987 No 68

[1] Section 4 Definitions

Omit the definition of *Commissioner* from section 4 (1).
Insert instead:

Commissioner means the Director-General of the Department of Consumer Affairs holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 6

Omit the section. Insert instead:

6 Control and direction by Minister

The Commissioner is, in the exercise of functions as Commissioner, subject to the control and direction of the Minister except in relation to the contents of a report or recommendation.

6.6 Home Purchase Assistance Authority Act 1993 No 15

[1] Section 3 Definitions

Omit the definition of *Chief Executive Officer*. Insert instead:

Chief Executive Officer means the Chief Executive Officer of the Authority holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 9 Chief Executive Officer

Omit the section.

6.7 Motor Accidents Act 1988 No 102

[1] Section 86

Omit the section. Insert instead:

86 General Manager and Deputy General Manager

- (1) The General Manager of the Authority is the General Manager holding office as such under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Deputy General Manager of the Authority is the Deputy General Manager holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Schedule 3 General Manager and Deputy General Manager of the Authority

Omit the Schedule.

6.8 National Parks and Wildlife Act 1974 No 80

[1] Section 5 Definitions

Omit the definition of *Director-General* from section 5 (1).
Insert instead:

Director-General means the Director-General of National Parks and Wildlife holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 7 Director-General

Omit the section.

[3] Section 9 Acting Director-General

Omit the section.

6.9 Police Service Act 1990 No 47

[1] Section 53 Compensation etc where executive officer has no right to return to the public sector

Omit “one year” from section 53 (4) (a).
Insert instead “38 weeks”.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 9 Provisions consequent on enactment of Public Sector Management Amendment Act 1995

30 Transitional arrangements for compensation entitlements of executive officers

The amendment made to section 53 (Compensation etc where executive officer has no right to return to public sector) by the *Public Sector Management Amendment Act 1995* does not apply in respect of a person during a term of office as an executive officer that commenced before the commencement of that amendment.

6.10 Prisons Act 1952 No 9

[1] Section 4 Definitions

Omit the definitions of *Commissioner* and *Deputy Commissioner* from section 4 (1). Insert instead:

Commissioner means the Commissioner of Corrective Services holding office as such under Part 2 of the *Public Sector Management Act 1988*.

Deputy Commissioner means a Deputy Commissioner of Corrective Services holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 6 Commissioner

Omit section 6 (1).

[3] Section 7 Deputy Commissioners

Omit section 7 (1).

[4] Section 7A Provisions relating to appointment etc of Commissioner and Deputy Commissioners

Omit the section.

[5] Schedule 3 Provisions relating to the Commissioner and Deputy Commissioners

Omit the Schedule.

6.11 Protection of the Environment Administration Act 1991 No 60

[1] Section 3 Definitions

Omit the definition of *Director-General* from section 3 (1).
Insert instead:

Director-General means the Director-General of the Environment Protection Authority holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 18 Director-General

Omit the section.

6.12 Strata Titles Act 1973 No 68

[1] Section 5 Definitions

Omit the definition of *commissioner* from section 5 (1).

Insert instead:

Commissioner means the Director-General of the Department of Consumer Affairs holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Section 97 Staff

Omit section 97 (a).

6.13 Strata Titles (Leasehold) Act 1986 No 219

Section 4 Definitions

Omit the definition of *Commissioner* from section 4 (1).

Insert instead:

Commissioner means the Director-General of the Department of Consumer Affairs holding office as such under Part 2 of the *Public Sector Management Act 1988*.

6.14 Transferred Officers Extended Leave Act 1961 No 13

Section 2 Definitions

Omit the definition of *State authority* from section 2 (1).

Insert instead:

State authority means:

- (a) any department, commission, board, authority or instrumentality declared by the Governor, pursuant to subsection (2), to be a State authority for the purposes of this Act, or
- (b) any public sector service declared by clause 3 of Schedule 5A to the *Public Sector Management Act 1988* to be a State authority for the purposes of this Act.

6.15 Workcover Administration Act 1989 No 120

[1] Section 7

Omit the section. Insert instead:

7 General Manager

The General Manager of the Authority is the General Manager holding office as such under Part 2 of the *Public Sector Management Act 1988*.

[2] Schedule 2 Provisions relating to General Manager

Omit the Schedule.

[Minister's second reading speech made in—
Legislative Assembly on 31 May 1995
Legislative Council on 19 September 1995]