



New South Wales

Public Sector Employment and Management Further Amendment Act 2008 No 104

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New South Wales

Public Sector Employment and Management Further Amendment Act 2008 No 104

Act No 104, 2008

An Act to amend the *Public Sector Employment and Management Act 2002* to make further provision with respect to public sector employment and management; and for other purposes. [Assented to 4 December 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Employment and Management Further Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

**3 Amendment of Public Sector Employment and Management Act 2002
No 43**

The *Public Sector Employment and Management Act 2002* is amended as set out in Schedule 1.

**4 Amendment of Public Sector Management (Goods and Services)
Regulation 2000**

The *Public Sector Management (Goods and Services) Regulation 2000* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Public Sector Employment and Management Act 2002

(Section 3)

[1] Section 19 Merit appointment

Omit section 19 (1) (b). Insert instead:

- (b) the qualifications, experience, standard of work performance and capabilities of those persons that are relevant to the performance of those duties.

[2] Section 19 (3) and (3A)

Omit section 19 (3). Insert instead:

- (3) In deciding to appoint a person to a vacant position in a Department that has not been advertised in accordance with this Part:
 - (a) the appropriate Department Head may only select a qualified member of staff of the Department, and
 - (b) the appropriate Department Head must, from among those qualified members of staff, select the member of staff who has, in the opinion of the Department Head, the greatest merit.
- (3A) For the purposes of subsection (3), a *qualified member of staff of a Department* is:
 - (a) an officer employed in the Department, or
 - (b) a Departmental temporary employee who is employed in the Department and whose employment as such an employee in that or any other Department falls within a continuous period of at least 2 years.

[3] Section 19 (4)

Insert “or a Departmental temporary employee” after “officer”.

[4] Section 23 Appointments on probation

Insert after section 23 (1):

- (1A) A period of probation may be extended for such further period as the appropriate Department Head directs. Any such direction may be made at any time before the person’s appointment is confirmed or annulled under this section.

[5] Sections 31 (3) (d) and 86 (6D) (c)

Omit “relevant skills, qualifications, experience, work performance standards and personal qualities” wherever occurring.

Insert instead “qualifications, experience, standard of work performance and capabilities”.

[6] Sections 33 (1), 34 (2) (d), (3) and (4), 36 (1), 37, 65 (2), 68 (2), 86 (9), 88 (1) (b), 100 (4) (c) and 121 (1) and clause 2 of Schedule 3A

Omit “Premier’s Department” wherever occurring.

Insert instead “Department of Premier and Cabinet”.

[7] Section 36 Delegation by Director-General

Omit “section 15” from section 36 (2). Insert instead “section 4F”.

[8] Section 49 Suspension of officers from duty pending decision in relation to misconduct or criminal charge

Insert “(or any action that the Department Head is considering taking under section 48)” after “the criminal charge” in section 49 (1).

[9] Section 54 Requirements as to citizenship or permanent residency

Insert after section 54 (2):

- (3) The Director of Public Employment may exempt a person from the operation of this section in any case the Director considers appropriate.

[10] Section 86 Temporary staff transfers (secondments between agencies)

Omit section 86 (2).

[11] Section 86A

Insert after section 86:

86A Temporary staff transfers (internal secondments)

- (1) A member of staff of a public sector agency may transfer temporarily to another position or other employment within the agency with the approval of the head of the agency.
- (2) A temporary transfer under this section may be:
 - (a) at the request, or with the consent, of the member of staff concerned (*an employee-initiated temporary transfer*), or
 - (b) at the direction of the head of the public sector agency (*an employer-initiated temporary transfer*).

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- (3) A person may be temporarily transferred under this section at the person's existing level of remuneration or at a different level of remuneration. However, an employer-initiated temporary transfer cannot be made at a lower level of remuneration.
- (4) If, in the case of an employee-initiated temporary transfer, the transfer has continued for at least 2 years, the head of the public sector agency may appoint the person to a position in the agency (*the new position*) that is:
- (a) at the same grade as (or at a grade similar to) the person's original position in the agency, or
 - (b) at any grade higher than the person's original position in the agency.
- (5) The new position may, but need not, be advertised. Accordingly, if the new position is a position in the Public Service and it is not advertised, an appointment under subsection (4) is not an appointment to which section 19 applies.
- (6) If the person is appointed to the new position, the head of the agency may decide to make the appointment without requiring the person to serve any period of probation.
- (7) The person may be appointed to the new position only if each of the following requirements is satisfied:
- (a) the rate of salary or wages payable to the person at the time of appointment to the new position must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,
 - (b) the head of the agency must be satisfied that ongoing work is available in respect of the person in the agency,
 - (c) the head of the agency must be satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties of the new position.
- (8) Without limiting subsection (7), if:
- (a) the grade of the new position is higher than the grade of the person's original position in the agency, and
 - (b) the new position has not been advertised,
- the person may be appointed to the new position only if the person has been performing duties in the agency at a grade that is the same as (or similar to) the grade of the new position and was performing those duties following some form of open competition that involved the selection of the person as the

person who, in the opinion of the head of the agency, had the greatest merit among the candidates concerned.

- (9) In the case of an employee-initiated temporary transfer, a permanent appointment may be made to the original position of the person if:
- (a) the transfer has continued or is likely to continue for more than 12 months, and
 - (b) the person is advised of the proposed appointment, and
 - (c) the person is given a reasonable opportunity to terminate the transfer and return to his or her original position.
- (10) In the case of an employer-initiated temporary transfer, a permanent appointment cannot be made to the person's original position except with the consent of the person.
- (11) The following is to be determined in accordance with such guidelines as are issued from time to time by the Director-General of the Department of Premier and Cabinet:
- (a) the procedures for obtaining the consent of an employee under this section,
 - (b) the circumstances in which an employer-initiated temporary transfer to a different workplace location in the State may be made.
- (12) In this section:
public sector agency does not include a State owned corporation.

[12] Section 88 Temporary assignment of public sector staff to other agencies

Insert "or to assist in disaster recovery activities" after "event" in section 88 (2).

[13] Section 100 Cross-agency employment

Insert after section 100 (1):

- (1A) A separate staff position (however described) is not required to be created in each of the Departments, or in each of the public sector services, in which the person is employed.

[14] Section 100A

Insert after section 100:

100A Appointment may be made to position pending vacation of position

- (1) This section applies in relation to:
 - (a) a chief executive position or senior executive position (whether or not in the Government Service), or
 - (b) any other position in the Government Service.
- (2) If a person who holds any such position (*the incumbent officer*) notifies the person's employer in writing that the person:
 - (a) intends to resign or retire from the position on a specified date, or
 - (b) does not intend to seek re-appointment to the position on completion of the current term of employment,the employer may, before the position becomes vacant, take action to recruit and appoint another person (*the new officer*) to the position.
- (3) The appointment of the new officer may, if the instrument of appointment so provides, take effect before the incumbent officer vacates the position.
- (4) In any such case, the incumbent officer and the new officer:
 - (a) both hold the same position, and
 - (b) may jointly exercise the functions of the position.
- (5) If in the joint exercise of any statutory function of the position any inconsistency arises in connection with the exercise of that function, the decision of the incumbent officer in relation to the matter prevails.
- (6) In this section:

employer means:

 - (a) in the case of a person who is a chief executive officer or senior executive officer—the person's employer as referred to in section 63 (2), or
 - (b) in any other case—the appropriate Division Head.

[15] Section 101 Arrangements for use of Teaching Service staff by Departments

Omit the section.

[16] Section 124 Delegation by Director of Public Employment

Omit section 124 (1). Insert instead:

- (1) The Director of Public Employment may delegate to the head of a public sector agency or any other member of staff of a public sector agency any of the functions of the Director of Public Employment, other than this power of delegation.

[17] Section 124 (3) (b)

Omit the paragraph. Insert instead:

- (b) a reference to a member of staff of a public sector agency includes:
 - (i) a reference to a person holding an appointment to or in the agency, and
 - (ii) a reference to a person holding an appointment to or in a body or organisation having functions that are exercised by the staff of that agency.

[18] Section 124 (4)

Insert after section 124 (3):

- (4) In this section, *head* of a public sector agency and *public sector agency* have the same meanings as in section 85.

[19] Section 137 Membership and procedure of Board

Omit section 137 (1). Insert instead:

- (1) The Board is to consist of the following members:
 - (a) a person appointed by the Minister as the Chairperson of the Board,
 - (b) at least 3 other persons appointed by the Minister to represent public sector agencies that use goods and services supplied in accordance with this Chapter and the regulations made under it.

[20] Section 143 Regulations

Omit “the public sector service”. Insert instead “the public sector services”.

[21] **Section 159A**

Insert after section 159:

159A Inquiries by Director-General into public sector agencies

- (1) In this section:
Director-General means the Director-General of the Department of Premier and Cabinet.
public sector agency means the whole or a part of a public sector service or an employer constituting, or within, a public sector service.
public sector service does not include:
 - (a) the NSW Police Force, or
 - (b) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly.
- (2) The Director-General or a person authorised by the Director-General may conduct an inquiry into any matter relating to the administration or management of a public sector agency.
- (3) The Director-General or a person authorised by the Director-General may, for the purposes of conducting an inquiry under this section:
 - (a) enter and inspect the premises of a public sector agency, and
 - (b) require the production of, and take copies of, any documents in the custody of a member of staff of the public sector agency, and
 - (c) for the purposes of further examination, take possession of, and remove, any of those documents, and
 - (d) require a member of staff of the public sector agency to answer questions, and
 - (e) require a member of staff of the public sector agency to provide such assistance and facilities as is or are necessary to enable the Director-General or authorised person to exercise functions under this section.
- (4) A reference in subsection (3) to a member of staff of a public sector agency includes a reference to any person who is engaged by the agency (whether directly or indirectly) under a contract for services.
- (5) This section does not affect the operation of section 132 or 159.

[22] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Public Sector Employment and Management Further
Amendment Act 2008*

[23] Schedule 4, Part 6

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
Public Sector Employment and
Management Further Amendment Act 2008**

28 Operation of amendments

- (1) In this clause, *amending Act* means the *Public Sector Employment and Management Further Amendment Act 2008*.
- (2) **Existing appointments on probation**
Section 23 (1A), as inserted by the amending Act, extends to any person who was appointed to a position on probation before the commencement of the amending Act and whose appointment has not been confirmed or annulled as at that commencement.
- (3) **Existing internal secondments**
A member of staff of a public sector agency who, immediately before the commencement of the amending Act, was the subject of a temporary transfer under section 86 to another position or other employment within that agency is, on the commencement of the amending Act, taken to have transferred to that other position or employment under section 86A (as inserted by the amending Act). Accordingly, section 86A extends to a person who is the subject of any such existing temporary transfer.
- (4) **Existing delegations by Director of Public Employment**
The amendments to section 124 by the amending Act do not affect the operation of any delegation in force under that section immediately before the commencement of the amending Act.
- (5) **Existing members of State Contracts Control Board**
A person holding office as a member of the State Contracts Control Board (including as the Chairperson of the Board) immediately before the commencement of the amending Act is, on that commencement, taken to have been appointed as a

member or as the Chairperson of the Board (as the case requires) under section 137 (1) as substituted by the amending Act.

(6) Inquiries into public sector agencies

Section 159A, as inserted by the amending Act, extends to conduct occurring (or any other matter arising) before the commencement of the amending Act.

Schedule 2 Amendment of Public Sector Management (Goods and Services)
Regulation 2000

Schedule 2 Amendment of Public Sector Management (Goods and Services) Regulation 2000

(Section 4)

[1] Clause 18 Board may arrange supply or disposal for other public bodies

Insert after clause 18 (4) (f):

- (f1) a public authority of any other jurisdiction (but only if it carries on activities in this State),

[2] Schedule 2 Provisions relating to procedure of Board

Omit clause 2. Insert instead:

2 Quorum

The quorum for a meeting of the Board is 4 members or a majority of the members appointed for the time being (whichever is the greater).

[Agreement in principle speech made in Legislative Assembly on 14 November 2008
Second reading speech made in Legislative Council on 27 November 2008]

BY AUTHORITY