



New South Wales

Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011 No 48

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Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011 No 48

Act No 48, 2011

An Act to amend the *Public Sector Employment and Management Act 2002* to establish an ethical framework for the public sector, to create the office of Public Service Commissioner and to establish the Public Service Commission Advisory Board; and for other purposes. [Assented to 20 October 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011*.

2 Commencement

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

Schedule 1 Amendment of Public Sector Employment and Management Act 2002 No 43

1.1 Amendments relating to public sector ethics

Part 1.2

Insert after section 3:

Part 1.2 Ethical framework for the public sector

3A Objective of Part

This Part:

- (a) recognises the role of the public 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 public sector that implements the decisions of the Government of the day.

3B Public sector core values

The core values for the public 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 staff 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.

3C General provisions

- (1) The Public Service Commissioner has the function of promoting and maintaining the public 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.
- (4) For the purposes of this Part, the *public sector* comprises all the public sector services (other than special temporary employees under Part 2.5).

1.2 Amendments relating to the Public Service Commissioner and Public Service Commission Advisory Board

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Advisory Board means the Public Service Commission Advisory Board established under Part 1.4.

Commissioner (or *Public Service Commissioner*) means the Public Service Commissioner appointed under Part 1.3.

[2] Parts 1.3 and 1.4

Insert after section 3C (as inserted by this Act):

Part 1.3 Public Service Commissioner

3D Appointment of Commissioner

- (1) The Governor may appoint a Public Service Commissioner.
- (2) A person may only be appointed as Commissioner if the Advisory Board has recommended to the Premier that the person be appointed as the Commissioner.
- (3) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.
- (4) The Commissioner may only be removed from office:
 - (a) following an independent review of the performance or conduct of the Commissioner, and
 - (b) if the Advisory Board has recommended to the Premier that the Commissioner be removed from office.
- (5) Any such independent review may be initiated:
 - (a) by the Advisory Board at the request of the Premier, or
 - (b) by the Premier.
- (6) An independent review of the performance or conduct of the Commissioner is not required under this section before the Commissioner can be removed from office if the performance or conduct giving rise to the Advisory Board's recommendation for removal has been the subject of:
 - (a) an inquiry and report by the Independent Commission Against Corruption, a Special Commission of Inquiry or other body constituted by a judicial officer, or
 - (b) a finding by a court.
- (7) The Premier is, if the Commissioner is removed from office, to cause the reasons for the removal to be tabled in both Houses of Parliament.
- (8) The Commissioner must not be present during any deliberation of the Advisory Board on any matter that relates to the making of a recommendation under this section.
- (9) Schedule 2A contains ancillary provisions relating to the Commissioner, including term of office.

3E Principal objectives of Commissioner

- (1) The principal objectives of the Commissioner are as follows:
 - (a) to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the public sector,
 - (b) to improve the capability of the public sector to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations,
 - (c) to attract and retain a high calibre professional public sector workforce,
 - (d) to ensure that public sector recruitment and selection processes comply with the merit principle and adhere to professional standards,
 - (e) to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued,
 - (f) to build public confidence in the public sector,
 - (g) to support the Government in achieving positive budget outcomes through strengthening the capability of the public sector workforce.
- (2) For the purposes of this Part, the *public sector* comprises all the public sector services (including the service of a State owned corporation).

3F General functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) to identify reform opportunities for the public sector workforce and to advise the Government on policy innovations and strategy in those areas of reform,
 - (b) to lead the strategic development and management of the public sector workforce in relation to the following:
 - (i) workforce planning, including identifying risks and strategies to minimise risks,
 - (ii) recruitment, particularly compliance with the requirements relating to appointment and promotion on merit,
 - (iii) performance management and recognition,

- (iv) equity and diversity, including strategies to ensure the public sector reflects the diversity of the wider community,
 - (v) general conduct and compliance with ethical practices,
 - (vi) learning and development,
 - (vii) succession planning,
 - (viii) redeployment, including excess employees,
 - (ix) staff mobility,
 - (x) executive staffing arrangements,
 - (c) to advise the Government on leadership structure for the public sector,
 - (d) to advise the Government on appropriate strategies, policies and practices in relation to the structure of the public sector workforce,
 - (e) to advise the Government on appropriate strategies, policies and practices in relation to such other public sector matters as the Minister may direct from time to time, and to monitor, co-ordinate and assist the implementation of Government strategies, policies and practices in such other areas as the Minister may direct from time to time,
 - (f) to develop and advise the Government on service delivery strategies and models for the public sector through collaboration with the private business sector, the not-for-profit sector and the wider community,
 - (g) to set standards, subject to any legislative requirements, for the selection of persons for appointment as members of boards or committees of public authorities (including Government business enterprises).
- (2) The Commissioner has and may exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.
- Note.** The other functions of the Commissioner include promoting and maintaining the public sector core values (see section 3C) and functions relating to EEO under Part 9A of the *Anti-Discrimination Act 1977*. The Commissioner may also issue guidelines under sections 9 (3) (b), 28 (2), 33 (3A), 38 (1), 44, 86 (9), 86A (11), 88, 88A, 89, 98 (6) and 100 (4) (c).
- (3) The Commissioner is to exercise his or her functions in accordance with the general policies and strategic directions determined by the Advisory Board.

3G Commissioner to report to Premier

- (1) The Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.
- (2) This section does not limit any other provisions of this Act relating to the exercise of the functions of the Premier or the Commissioner.

3H Annual reports of the Commissioner

- (1) The Commissioner is, as soon as practicable after 30 June in each year, to prepare and forward to the Premier:
 - (a) a report on the Commissioner's work and activities for the 12 months ending on that 30 June, and
 - (b) a report on the state of the public sector in relation to the period of 12 months ending on that 30 June.
- (2) The report on the state of the public sector is to include the following:
 - (a) an assessment of the performance of the whole of the public sector, including notable achievements, challenges and priorities,
 - (b) an analysis of public sector workforce data.
- (3) The Premier is to table any report under this section, or cause it to be tabled, in both Houses of Parliament as soon as practicable after it is received by the Premier.

3I Provision of reports and information by agencies

- (1) The Commissioner may require the head of a public sector agency to provide the Commissioner with a report on such matters relating to the staff of the agency, or to the personnel policies and practices of the agency, as the Commissioner requires.
- (2) In particular, the Commissioner may require inclusion in the report of information of a kind specified by the Commissioner as to:
 - (a) the personnel policies and practices concerning the recruitment, selection, appointment, transfer, promotion or discipline of the staff of the public sector agency 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 Commissioner may also require the head of a public sector agency to provide the Commissioner with information collected or held by the agency in dealing with matters relating to public sector staff.
- (4) The head of the public sector agency concerned must comply with a requirement under this section within such time and in such manner as the Commissioner directs.
- (5) Any law relating to the protection of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) does not operate to prevent the furnishing of information, or affect a duty to furnish information, under this section.
- (6) In this section, **public sector agency** includes any person or body, constituted by or under an Act, that is prescribed by the regulations for the purposes of this section, and the **head** of any such prescribed agency means the person prescribed by the regulations in relation to that agency.

3J Directions by Commissioner to public sector agencies

- (1) The Commissioner may, for the purposes of exercising his or her functions, give a direction in writing to the head of a public sector agency in relation to the staff of that agency.
- (2) Before giving a direction the Commissioner is to consult the head of the public sector agency to whom the direction is to be given and such other persons affected by the direction as the Commissioner considers appropriate.
- (3) The head of the public sector agency to whom a direction under this section is given must comply with the direction.
- (4) A direction under this section:
 - (a) must not be inconsistent with this Act or the principal objectives of the Commissioner referred to in section 3E, and
 - (b) must be made publicly available by the Commissioner as soon as practicable after it is given.

3K Inquiries by Commissioner into public sector agencies

- (1) The Commissioner or a person authorised by the Commissioner may conduct an inquiry into any matter relating to the administration or management of a public sector agency.
- (2) This section does not affect the operation of section 159.

3L Powers of entry and inspection

- (1) The Commissioner or a person authorised by the Commissioner may, for the purposes of enabling the Commissioner to exercise the Commissioner's functions or in connection with the conduct of an inquiry under section 3K:
 - (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 Commissioner or authorised person to exercise his or her functions.
- (2) A reference in this section 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.

3M Delegation

The Commissioner may delegate the exercise of any function of the Commissioner (other than this power of delegation) to:

- (a) the head of any public sector agency or a member of staff of any public sector agency, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

3N Staff of Commissioner

The staff of the Commissioner are to be employed under Chapter 1A.

3O Approvals or directions given by Commissioner

An approval or direction given by the Commissioner 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.

3P Confidentiality of personal information

- (1) The Commissioner is, to the extent that it is reasonable and practicable to do so, remove any personal information from any report or other document prepared by the Commissioner under this Part that is, or is to be, publicly available.
- (2) In this section:
personal information means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.

Part 1.4 Public Service Commission Advisory Board

3Q Advisory Board

- (1) There is to be a Public Service Commission Advisory Board.
- (2) The Advisory Board is to consist of the following members:
 - (a) a person appointed by the Premier as the Chairperson of the Advisory Board,
 - (b) 4 other persons appointed by the Premier,
 - (c) the Commissioner or a senior member of staff of the Commissioner nominated by the Commissioner,
 - (d) the Director-General of the Department of Premier and Cabinet or a member of staff of that Department nominated by the Director-General.
- (3) The members appointed by the Premier are to be persons who together have expertise in human resources management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.
- (4) Schedule 2B contains ancillary provisions relating to the members and procedure of the Advisory Board.

3R Functions of Advisory Board

- (1) The Advisory Board has the following functions:
 - (a) to determine general policies and strategic directions in relation to the functions of the Commissioner,
 - (b) to provide the Premier, either at the request of the Premier or on its own initiative, with advice on any matter relating to the management and performance of the public sector.
- (2) The Advisory Board has such other functions as are conferred or imposed on it by or under this or any other Act.

[3] Schedule 1 Divisions of the Government Service

Insert in Division 2 of Part 1 of Schedule 1 before the matter relating to the Office of the Director of Public Prosecutions in Columns 1 and 2, respectively:

Public Service Commission

* Public Service Commissioner

[4] Schedules 2A and 2B

Insert after Schedule 2:

Schedule 2A Provisions relating to Public Service Commissioner

(Section 3D)

1 Basis of office of Commissioner

- (1) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.
- (2) Chapter 1A does not apply to or in respect of the appointment of the Commissioner.

2 Terms of office

- (1) Subject to this Schedule, the Commissioner holds office for such term not exceeding 7 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Commissioner for terms totalling more than 7 years.

3 Remuneration

The Commissioner is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Premier may from time to time determine.

4 Vacancy in office

The office of Commissioner becomes vacant if the holder:

- (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 Governor, or
- (d) 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
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by 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, or
- (g) is removed from office by the Governor under section 3D.

5 Filling of vacancy

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

6 Appointment of acting Commissioner

- (1) The Premier may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of the Commissioner. The person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner (including as a member of the Advisory Board).
- (2) The Premier may, at any time, remove a person from office as acting Commissioner.

- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine.

Schedule 2B Members and procedure of Public Service Commission Advisory Board

(Section 3Q)

Part 1 Preliminary

1 Definitions

In this Schedule:

appointed member means the Chairperson of the Advisory Board or other member of the Advisory Board who is appointed by the Premier.

member means an appointed or ex-officio member of the Advisory Board.

Part 2 Members

2 Terms of office of appointed members

- (1) Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be an appointed member for consecutive terms totalling more than 6 years unless the Premier determines otherwise.

3 Remuneration of appointed members

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

4 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 Premier, or
 - (d) is removed from office by the Premier under this clause, or
 - (e) is absent from 3 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Premier or unless the member is excused by the Premier for having been absent from those meetings, or
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by 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 Premier may remove an appointed member from office at any time.

5 Filling of vacancy in office of appointed member

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

6 Appointed members not prevented from holding other offices

If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

7 Relationship with other provisions of this Act

Chapter 1A does not apply to or in respect of the appointment of an appointed member.

8 Disclosure of pecuniary or other interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Board.
- (2) A disclosure by a member at a meeting of the Advisory Board that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Advisory Board otherwise determines:
 - (a) be present during any deliberation of the Advisory Board with respect to the matter, or
 - (b) take part in any decision of the Advisory Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Board under subclause (4), a member who has a direct

or indirect pecuniary or other interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Advisory Board for the purpose of making the determination, or
 - (b) take part in the making by the Advisory Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Board.

Part 3 Procedure

9 General procedure

The procedure for the calling of meetings of the Advisory Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Board.

10 Quorum

The quorum for a meeting of the Advisory Board is a majority of the members for the time being.

11 Presiding member

- (1) The Chairperson of the Advisory Board (or, in the absence of the Chairperson, a person elected by the members of the Advisory Board who are present at a meeting of the Advisory Board) is to preside at a meeting of the Advisory Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

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

13 Transaction of business outside meetings or by telephone

- (1) The Advisory Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Board.

- (2) The Advisory Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

14 Frequency of meetings

The Advisory Board is to meet at least on a quarterly basis each year (but no more than 6 times each year).

15 First meeting

The Premier may call the first meeting of the Advisory Board in such manner as the Premier thinks fit.

1.3 Miscellaneous and consequential amendments

[1] Part 1.1, heading

Insert before section 1:

Part 1.1 Introductory

[2] Section 3 Definitions

Omit the definition of *Director of Public Employment*.

[3] Section 3 (1), definition of “public sector agency”

Insert in alphabetical order:

public sector agency means the whole or a part of a public sector service or an employer constituting, or within, a public sector service and *head* of a public sector agency means:

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

Note. A *public sector agency* would include a Division of the Government Service.

[4] Section 3 (1), definition of “public sector service”

Insert “(including the service of any NSW Government agency)” after “any other service of the Crown” in paragraph (f) of the definition.

[5] Section 4 Act does not apply to judicial or parliamentary officers

Renumber the section as section 158A and transfer it to Chapter 8.

[6] Section 4B Employment of staff in the Government Service

Omit the note to section 4B (2). Insert instead:

Note. For example, Chapter 2 regulates the employment of staff in Divisions comprising the Public Service.

[7] Section 4D Division Heads

Insert at the end of section 4D (2):

Note. Section 129 provides that the Director-General of the Department of Premier and Cabinet is taken to be the employer of the staff of the Public Service in any industrial proceedings.

[8] Section 4H

Omit the section.

[9] Section 9 Staff positions in a Department for officers

Omit “by some other Act” from section 9 (1) (a).

Insert instead “otherwise than under section 10”.

[10] Sections 9 (3) (b), 14 (2), 18 (2), 23 (3), 28 (2), 29 (3), 31 (2), 38 (1), 44, 54 (3), 56 (2), 57 (2), 63 (4), 87 (1) (a), 89 (1), 90 (2), 91 (3) and (4) (b) and 98 (6)

Omit “Director of Public Employment” wherever occurring.

Insert instead “Commissioner”.

[11] Section 10 Creation of Department Head positions

Omit section 10 (1). Insert instead:

- (1) Each position specified in Column 2 of Part 1 of Schedule 1 is taken to be created by virtue of this section unless it is created by another provision of this Act or by any other Act.

[12] Section 10 (2)

Omit “created by virtue of this Act”.

Insert instead “created by virtue of this section”.

[13] Sections 29 (3) and 54 (3)

Omit “the Director” wherever occurring. Insert instead “the Commissioner”.

[14] Section 33 Employment of special temporary employees

Insert after section 33 (3):

- (3A) Without limiting subsection (3), the employment of special temporary employees is to be in accordance with such guidelines as are issued by the Commissioner from time to time.

[15] Section 65 Composition of Senior Executive Service

Omit “the website of the Department of Premier and Cabinet” from section 65 (2).

Insert instead “a Government website”.

[16] Sections 68 (2), 86 (9), 86A (11), 88 (1) (b) and 100 (4) (c) and clause 2 (1) of Schedule 3A

Omit “Director-General of the Department of Premier and Cabinet” wherever occurring.

Insert instead “Commissioner”.

[17] Section 77 Removal of executive officers from office

Omit “Director of Public Employment” from section 77 (9).

Insert instead “Director-General of the Department of Premier and Cabinet”.

[18] Section 85 Definitions

Omit the section.

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

Omit the definition of *public sector agency* from section 86 (10).

[20] Section 86A Temporary staff transfers (internal secondments)

Omit section 86A (12).

[21] Section 87 Employer-sponsored permanent transfers

Insert after section 87 (3):

- (4) In this section, *public sector agency* includes a State owned corporation.

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

Insert “or a State owned corporation” after “local authority” in section 88 (5).

[23] Section 88A

Insert after section 88:

88A Other temporary assignments

- (1) The head of a public sector agency and the person responsible for the employment of persons in or by a relevant body may enter into an arrangement under which a person:
- (a) who is employed in or by the public sector agency is temporarily assigned to carry out work in or for the relevant body, or
 - (b) who is employed in or by the relevant body is temporarily assigned to carry out work in or for the public sector agency,
- in accordance with the arrangement and with such guidelines as are issued from time to time by the Commissioner.
- (2) Without limiting subsection (1):
- (a) any such assignment may be made for the purposes of utilising the person’s services in connection with a special project or event, and
 - (b) the arrangement under which a person is assigned may provide for the person to carry out work in or for the public sector agency or relevant body concerned on a full-time or part-time basis.
- (3) A person who is employed in or by a relevant body may not be temporarily assigned under this section to carry out work in or for a public sector agency unless the head of the public sector agency is satisfied that the temporary assignment is justified because of the special skills of the person or the special circumstances of the case.

- (4) The maximum period for which a person may be temporarily assigned under this section to carry out work in or for a public sector agency at any one time is 12 months.
- (5) A person's employment in or by a public sector agency (including the continuity of that employment) is not affected by the temporary assignment under this section of the person to carry out work in or for a relevant body.
- (6) In this section:
private sector entity means any person or body (whether incorporated or unincorporated) who or which is not a public sector agency or public authority, and includes any such person or body in the not-for-profit sector.
relevant body means any of the following:
- (a) a private sector entity,
 - (b) a public authority or government agency of the Commonwealth or of another State or Territory,
 - (c) a university.

[24] Section 105 Other orders in relation to Divisions

Omit "section 4H" from section 105 (c). Insert instead "section 124".

[25] Section 116 Removal of term appointee from office

Insert at the end of section 116 (4) (c):

, or

- (d) the Public Service Commissioner.

[26] Chapter 6, heading

Omit "Director of Public Employment".

Insert instead "Industrial relations functions".

[27] Parts 6.1 and 6.2

Omit the Parts. Insert instead:

Part 6.1 Preliminary

121 Definition

In this Chapter:

Director-General means the Director-General of the Department of Premier and Cabinet.

122 Director-General not subject to Ministerial control

The Director-General is not subject to the control and direction of the Minister in:

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

123 Delegation

- (1) The Director-General may delegate any of the Director-General's functions under this Chapter (other than this power of delegation) to the head of a public sector agency or any other member of staff of a public sector agency.
- (2) Any delegation of a function with respect to the making of a determination fixing salaries, wages or other remuneration of staff 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 reference to a member of staff of a public sector agency includes:
 - (a) a reference to a person holding an appointment to or in the agency, and
 - (b) 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.
- (4) The power of delegation conferred by this section is in addition to and does not limit the power conferred by section 4F.

Part 6.2 General public sector industrial relations functions

124 Compliance with directions of Director-General on industrial matters

- (1) This section applies to a Division of the Government Service that is specified in Part 2 of Schedule 1 as a Division to which this section applies.

- (2) The Director-General may, with the approval of the Minister and by notice in writing to the Division Head of a Division to which this section applies, require the Division Head:
 - (a) to notify the Director-General of such industrial matters affecting the Division as may be specified in the notice, and
 - (b) to exercise the Division Head's functions in respect of any such industrial matter in such manner as may be specified in the notice.
- (3) A notice may specify the manner and the time within which industrial matters must be notified.
- (4) A Division Head must comply with a requirement under this section.

125 Advisory and monitoring functions

- (1) The Director-General has the following functions:
 - (a) advising the Government on appropriate strategies and policies regarding employment conditions (including wages) and industrial relations in the public sector,
 - (b) monitoring the implementation of Government strategies and policies on employment conditions (including wages) and industrial relations in the public sector and assisting the implementation of those strategies and policies (including the issuing of implementation guidelines).
- (2) The Director-General must consult with the Commissioner before exercising any such function.

[28] Sections 129, 130 (1) and (3), 131 (1) and (4) and 132

Omit "Director of Public Employment" wherever occurring.
Insert instead "Director-General".

[29] Section 131 Director-General may enter into agreements

Omit "of the Director" from section 131 (4).
Insert instead "of the Director-General".

[30] Section 132 Authorised officer may enter Department's premises etc

Omit "the Director's functions" from section 132 (1).
Insert instead "the Director-General's functions under this Part".

[31] Section 158A (as renumbered by item [4] of this subschedule)

Omit the note to the section. Insert instead:

Note. Parliamentary officers do, however, comprise a *public sector service* (see paragraph (e) of that definition in section 3). Accordingly, provisions of this Act relating to public sector ethics (Part 1.2), the functions of the Public Service Commissioner (Part 1.3), staff mobility (Part 3.2) and certain other provisions that generally deal with employees in a public sector service (such as sections 100, 102 and 103) apply to parliamentary officers.

[32] Section 159A Inquiries by Director-General into public sector agencies

Omit the definitions of *public sector agency* and *public sector service* from section 159A (1).

[33] Section 159A (2A)

Insert after section 159A (2):

- (2A) An inquiry cannot be conducted under this section into any matter that is the subject of an inquiry by the Commissioner under section 3K except with the concurrence of the Commissioner.

[34] Section 159A (5)

Omit “section 132”. Insert instead “section 3K, 132”.

[35] Section 159A (6)

Insert after section 159A (5):

- (6) This section does not apply to or in respect of:
- (a) the NSW Police Force, or
 - (b) the public sector agency comprising the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly.

[36] Section 162A

Insert after section 162:

162A Personal liability of Commissioner and certain other persons

- (1) A matter or thing done (or omitted to be done) by:
- (a) the Commissioner, or
 - (b) the Advisory Board, or

(c) a person acting under the direction of the Commissioner or the Advisory Board,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this or any other Act, subject the Commissioner, a member of the Advisory Board or a person so acting personally to any action, liability, claim or demand.

(2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer functions on the Commissioner or the Advisory Board.

[37] Section 164 Regulations

Insert after section 164 (1):

(1A) In particular, the regulations may:

(a) 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 Commissioner, and

(b) prescribe the circumstances in which an approval by the Commissioner under this or any other Act may be regarded as having been given, or

(c) prescribe the procedure for obtaining any such approval.

[38] Schedule 1 Divisions of the Government Service

Omit the note at the end of Part 1. Insert instead:

Note. The positions in Column 2 that are marked with an asterisk are positions that are statutory offices. All other positions referred to in this Part are created under section 10 and are Public Service positions.

[39] Schedule 1, Part 2, note

Omit “section 4H”. Insert instead “section 124”.

[40] Schedule 1, Part 3

Omit “Director of Public Employment” wherever occurring.

Insert instead “Public Service Commissioner”.

[41] Schedule 2 Executive positions (other than non-statutory SES positions)

Insert “Public Service Commissioner,” after “Ombudsman,” in Part 1.

[42] Schedule 2, Part 3

Omit “Director of Equal Opportunity in Public Employment”.

[43] Schedule 3A Recognition of prior government service for public sector employees extended leave entitlements

Omit “offices of the Department of Premier and Cabinet” from clause 2 (3).
Insert instead “Public Service Commission”.

[44] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011

[45] Schedule 4, Part 9

Insert after Part 8:

Part 9 Provisions consequent on enactment of Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011

31 Definition

In this Part:

amending Act means the *Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011*.

32 Recommendation of appointment of first Commissioner

The person appointed as the first Commissioner is to be a person whose appointment is recommended by a committee chaired by a person appointed by the Premier (whether before or after the commencement of this clause) as the Chairperson of the Public Service Commission Advisory Board.

33 Construction of references to Director of Public Employment

A reference, in any other Act, or in any instrument made under any other Act or in any other instrument of any kind, to the Director of Public Employment is to be read:

- (a) as a reference to the Public Service Commissioner, or
- (b) as a reference to the Director-General of the Department of Premier and Cabinet if the reference relates to the functions exercised by the Director of Public Employment

Public Sector Employment and Management Amendment (Ethics and
Public Service Commissioner) Act 2011 No 48

Schedule 1 Amendment of Public Sector Employment and Management Act 2002 No 43

under Part 6.3 (as in force immediately before the
amendments to that Part by the amending Act).

Schedule 2 Amendment of other legislation

2.1 Anti-Discrimination Act 1977 No 48

[1] Section 4 Definitions

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

[2] Section 122A Definitions

Insert in alphabetical order:

Commissioner means the Public Service Commissioner.

[3] Sections 122A (definition of “reference”), 122I (1) (c) (ii) and (2)–(4), 122J (6), 122M, 122O, 122P and 122R

Omit “Director” wherever occurring. Insert instead “Commissioner”.

[4] Part 9A, Division 2, heading

Omit “The Director of Equal Opportunity in Public Employment”.

Insert instead “EEO functions of Commissioner”.

[5] Sections 122E, 122F, 122HE and 122HG

Omit the sections.

[6] Section 122I EEO functions of Commissioner

Omit “the Director” from section 122I (1) where firstly occurring.

Insert instead “the Commissioner under this Part”.

[7] Section 121I (3) and (4)

Omit “Director’s functions” wherever occurring.

Insert instead “Commissioner’s functions under this Part”.

[8] Section 124 Obstruction

Omit “the Director or an officer of the Director” from section 124 (b).

Insert instead “the Public Service Commissioner or a member of staff of the Public Service Commission”.

2.2 Defamation Act 2005 No 77

Schedule 1 Additional publications to which absolute privilege applies

Omit clause 9 (1) (e). Insert instead:

- (e) to or by the Public Service Commissioner or a member of staff of the Public Service Commission.

2.3 Fire Brigades Act 1989 No 192

[1] Section 68

Omit the section. Insert instead:

68 Definition

In this Division:

Director-General means the Director-General of the Department of Premier and Cabinet.

[2] Sections 70 (1), 71 (1), 72 (1) and 74 (2)

Omit “Authority” wherever occurring. Insert instead “Director-General”.

2.4 Health Services Regulation 2008

Clause 18 Construction of references to HealthQuest

Insert “immediately before the repeal of that definition by the *Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Act 2011*” after “2002” in the definition of *Director of Public Employment* in clause 18 (7).

2.5 Local Government Act 1993 No 30

Sections 346 (2) and 347 (1)

Omit “Director of Equal Opportunity in Public Employment” wherever occurring.

Insert instead “Public Service Commissioner”.

2.6 Non-Indigenous Animals Act 1987 No 166

Section 9 Staff of the advisory committee

Omit “Public Employment Office” from section 9 (1) (b).

Insert instead “Public Service Commissioner”.

2.7 Parliamentary Electorates and Elections Act 1912 No 41

Section 21AP Remuneration of appointed officials

Omit “Director of Public Employment”.

Insert instead “Public Service Commissioner”.

2.8 Police Act 1990 No 47

Section 60 Executive officer mobility

Omit “Public Employment Office” from the note to the section.

Insert instead “Public Service Commissioner”.

2.9 Police Regulation 2008

[1] Clause 69 Application of Public Service conditions of service and selection procedures

Omit “Public Employment Office” from clause 69 (2).

Insert instead “Public Service Commissioner”.

[2] Clause 69 (2A)

Omit “clause 9 (2) (b) of the *Public Sector Employment and Management (General) Regulation 1996*”.

Insert instead “clause 5 (2) (b) of the *Public Sector Employment and Management Regulation 2009*”.

2.10 Public Finance and Audit Act 1983 No 152

Schedule 3 Departments

Insert after the matter relating to the Department of Premier and Cabinet in Columns 1 and 2, respectively:

Public Service Commission

Public Service Commissioner

2.11 Public Sector Employment and Management Regulation 2009

[1] Clauses 6, 9 (1) and 13 (8) (definition of “nominated medical assessor”)

Omit “Director of Public Employment” wherever occurring.

Insert instead “Public Service Commissioner”.

[2] Clauses 15 (1), 17 (5), 22 (3) and 25

Omit “Director of Public Employment” wherever occurring.

Insert instead “Director-General of the Department of Premier and Cabinet”.

[3] Clause 24

Omit the clause. Insert instead:

24 Determinations and approvals

- (1) A determination or an approval of a relevant person under this Regulation is to be published or notified in such manner as the person considers necessary in order to bring the determination or approval to the notice of the members of staff to whom it applies.
- (2) A determination or an approval of a relevant person under this Regulation may do either or both of the following:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind.
- (3) In this clause:

relevant person means any of the following:

 - (a) the Public Service Commissioner,
 - (b) the Director-General of the Department of Premier and Cabinet,
 - (c) a Department Head.

2.12 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1 Public offices

Insert at the end of the Schedule:

Public Service Commissioner

2.13 Teaching Service Act 1980 No 23

Section 92 Deduction from salary or wages for use of building or provision of services

Omit “Public Employment Office” from section 92 (1).

Insert instead “Public Service Commissioner”.

2.14 Transport Administration Act 1988 No 109

[1] Section 88V Temporary staff placement with ARTC (secondments)

Omit “Public Employment Office” from section 88V (8) and (9) wherever occurring.

Insert instead “Public Service Commissioner”.

[2] Section 88V (10), definition of “Public Employment Office”

Omit the definition.

[Agreement in principle speech made in Legislative Assembly on 15 September 2011
Second reading speech made in Legislative Council on 13 October 2011]

BY AUTHORITY