



New South Wales

Public Sector Employment and Management Amendment Act 2012 No 19

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Public Sector Employment and Management Amendment Act 2012 No 19

Act No 19, 2012

An Act to amend the *Public Sector Employment and Management Act 2002* with respect to excess employees and performance management. [Assented to 11 April 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Employment and Management Amendment Act 2012*.

2 Commencement

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

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

[1] Section 3F General functions of Commissioner

Omit “and 100 (4) (c)” from the note to section 3F (2).

Insert instead “, 100 (4) (c) and 101A”.

[2] Section 56

Omit the section. Insert instead:

56 Excess officers of Departments

- (1) If the appropriate Department Head is satisfied that the number of officers employed in the Department or in any part of the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the Department or part of the Department:
 - (a) the Department Head is to take all practicable steps to secure the transfer of the excess officers to on-going public sector positions, and
 - (b) the Department Head may, with the approval of the Commissioner, dispense with the services of any such excess officer who is not transferred to an on-going public sector position.
- (2) An officer does not cease to be an excess officer merely because the officer is engaged (on a temporary basis) to carry out other work in a public sector agency.
- (3) In this section:
on-going public sector position means a position in a Department, or in any other public sector service, that is not temporary.

[3] Section 57 Excessive salaries of officers of Departments

Omit section 57 (1) (b). Insert instead:

- (b) the Department Head has taken all practicable steps to secure the transfer of the officer to an on-going public sector position (within the meaning of section 56) that is appropriate to the salary of the officer.

[4] Section 101A

Insert before section 102:

101A Performance management systems for public sector staff

- (1) The head of a public sector agency is to develop and implement a performance management system with respect to members of staff of the agency.
- (2) The Commissioner is to issue guidelines to public sector agencies on the essential elements of such a performance management system.

Note. See section 3J in connection with directions to agencies by the Commissioner.

[5] Section 103A

Insert after section 103:

103A Excess employees—jurisdiction of Industrial Relations Commission

- (1) In this section:
excess employee means an excess officer referred to in section 56 or any member of staff of a public sector agency who has been notified by the head of the agency:
 - (a) that his or her position or work in the agency has been abolished or terminated, and
 - (b) that he or she is an excess or displaced employee.Any such person does not cease to be an excess employee merely because the person is engaged (on a temporary basis) to carry out other work in the same or any other public sector agency.
termination of the employment of a person includes dispensing with the services of the person.
- (2) Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* (Unfair contracts) does not apply to contracts of employment of members of staff of any public sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:
 - (a) when and how members of staff become excess employees,

- (b) the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),
- (c) the termination of the employment of excess employees.

[6] Section 160 Certain other Acts not to be affected

Omit “or 72” from section 160 (2). Insert instead “, 72 or 103A”.

[7] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Public Sector Employment and Management Amendment Act 2012

[8] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Public Sector Employment and Management Amendment Act 2012

Operation of amendments

- (1) In this clause, *amending Act* means the *Public Sector Employment and Management Amendment Act 2012*.
- (2) Section 103A, as inserted by the amending Act, extends to members of staff of a public sector agency who were excess employees on the date that notice was given in Parliament for the introduction of the Bill for the amending Act and to proceedings instituted on or after that date under Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996*.

- (3) Nothing in this clause affects any order of the Industrial Relations Commission or a court that is made before the commencement of the amending Act.

[Agreement in principle speech made in Legislative Assembly on 7 March 2012
Second reading speech made in Legislative Council on 3 April 2012]

BY AUTHORITY