



**Public  
Service  
Commission**

## Personnel **Handbook**

**Version 12.4**

**Public Service Commission**

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### **Public Service Commission**

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## Foreword

### Foreword

The Personnel Handbook is compiled from legislation, awards, agreements, determinations and policy guidelines relating to conditions of employment in the NSW Public Service. The Handbook does not seek to replace these documents, but to draw their principal provisions together into a single reference source.

The Personnel Handbook is published by the Public Service Commission in consultation with Public Sector Industrial Relations, NSW Industrial Relations. This version reflects all legislation and human resources policy updates available at the time of publication. Content on industrial relation matters is contributed by Public Sector Industrial Relations.

The Personnel Handbook is reviewed regularly. Any suggestions to improve the next edition may be e-mailed to [enquiries-psc@psc.nsw.gov.au](mailto:enquiries-psc@psc.nsw.gov.au).

### Chief and Senior Executive Service

The Personnel Handbook does not apply to chief or senior executive positions. Guidelines relating to these positions may be accessed through publications on the DPC website: [Senior Executive Service](#).

### Enquiries

Industrial relations enquiries: [psir@services.nsw.gov.au](mailto:psir@services.nsw.gov.au)

All other enquiries: [enquiries-psc@psc.nsw.gov.au](mailto:enquiries-psc@psc.nsw.gov.au)

## Definitions

In this Handbook:

**The PSEM Act 2002** means the *Public Sector Employment and Management Act 2002 (PSEM Act 2002)*. All references to the *Public Sector Management Act 1988* are clearly identified.

**The Regulation** means the *Public Sector Employment and Management Regulation 2009*

**The Award** means the *Crown Employees (Public Service Conditions of Employment) Award 2009*.

**This Act or this Regulation or this Award** means the Act, Regulation or Award (other than those mentioned above) which is specified as having relevance to the particular section.

**Public servant** has the same meaning as member of staff defined in section 3 of the *PSEM Act 2002*, namely an officer, a temporary employee, or a casual employee and, unless otherwise stated, includes both full time and part time employees.

**Employee** is the term generally used rather than public servant unless it is necessary to distinguish between public servants employed under the *PSEM Act 2002* and employees of public sector agencies.

**Public Sector Agency** has the same meaning as public sector service defined in section 3 of the *PSEM Act 2002*.

## Naming of referenced Circulars and Memoranda

References to Circulars issued by Public Service Commission use the format: PSCC2012-99 Title.

References to Circulars issued by Public Sector Industrial Relations use the format: PSIR C2012-99 Title.

References to Circulars issued by Department of Premier and Cabinet use the format: C2012-99 Title.

References to Premiers Memoranda to Ministers use the format: M2012-99 Title.

References to Circulars issued by Public Employment Office use the format: P2012-99 Title

(2012-99 Title represents YYYY-XX where YYYY is the year and XX is number of the annual issue and Title is the subject title of the publication).

## DISCLAIMER

The Personnel Handbook is intended to be a helpful guide to human resources directors, managers, officers and employees. It is not written for jurists or lawyers and it has no legal status. In all matters subject to dispute, reference must be made to source documents such as legislation and industrial instruments. These references are generally included at the head of each section.

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## 1-1 Creating positions

Section 9 (2) of the *Public Sector Employment and Management Act 2002* provides that department heads may create, abolish or otherwise deal with any positions in their department other than the position of department head.

## 1-2 Classifying and grading positions

### 1-2.1 Sources of authority

- *Public Sector Employment and Management Act 2002*, Chapter 2, Part 2.1;
- C1995-34, Guidelines under the *Public Sector Management Amendment Act 1995*. This Circular still applies and the reference to section 8(3) of the *Public Sector Management Act 1988* is taken to be a reference to section 9(3) of the *Public Sector Employment and Management Act 2002*.
- C2009-18 NSW Public Sector Capability Framework and Job Evaluation Provisions. This Circular confirms that agencies should continue to use an accredited job methodology and may use desktop evaluation. The revised Job Evaluation Guidelines attached as Appendix 1A of this chapter explain the various job evaluation options available to agencies, including desktop and panel evaluation.
- C1997-35, Implementation of Job Evaluation Outcomes.
- C1998-50, Implementation of Job Evaluation Outcomes (to be read in conjunction with C1997-35).
- Chapter 2 of the Act applies only to the Public Service, that is Principal Departments and other agencies listed in Schedule 1 Part 1 of the *Public Sector Employment and Management Act 2002*. For the purpose of this Chapter the term "agencies" will be used to collectively describe these entities.

### 1-2.2 Scope of provisions

This section applies to positions up to and including that of Clerk Grade 12 or equivalent positions. See also section 1-3 Guidelines on Senior Officer classification.

### 1-2.3 General

Section 9 (3) of the *Public Sector Employment and Management Act 2002* requires department heads or their delegates to classify and grade non-SES positions in accordance with guidelines issued from time to time by the Public Sector Commission.

#### 1-2.3.1 Principles underpinning classifying and grading

Decisions on classifying and grading should be consistent with:

- government policies and priorities;
- classifications and grades established by appropriate industrial instruments;
- compliance with wage fixing principles;
- obtaining value for money by assessing work value in terms of the expected outcomes;
- employees being assigned duties appropriate to their classification and grade; and
- equal employment opportunity.

#### 1-2.3.2 Choosing the appropriate classification

Job evaluation is not only about ascertaining the size of a job relative to others in the department but also about its most appropriate classification. Once a classification decision has been made, the question of appropriate grading can then be determined.

The classification can be assessed from information contained in the position description.

#### 1-2.3.3 Qualifications

Appropriate emphasis should be given to the qualification requirements of the position and whether formal qualifications are essential to the position's functions.

Qualifications should only be required if they are necessary to fulfil the requirements of the position and where relevant experience is not sufficient.

A qualification is the recognition – accepted in NSW, nationally or internationally – that a person has attained a certain standard of education, knowledge and skill in a particular field. Qualifications include degrees, diplomas, certificates, grades of membership in a professional association or institution, or enrolment or licensing by legally recognized registration bodies such as courts or registration boards.

Qualifications are essential for many positions in the public service including Medical Officers, Legal Officers, Engineers, Architects and Surveyors.

Qualification requirements can usually be ascertained by referring to the relevant industrial instrument for the position. In the case of financial and accounting officers, see the Department of Premier and Cabinet C1999-69, Qualifications for Senior Financial Management and Accounting Positions.

Note that the three accredited job evaluation systems refer to formal qualifications in the descriptors for job expertise/knowledge, skills and experience. However, they also recognise the possibility of expertise being gained through experience, at all levels.

Refer to "2-10.7.3 Requirement for educational, trade and professional qualifications" and "2-10.7.4 Knowledge and experience" for a further discussion of qualification requirements in the context of recruitment.

### 1-2.4 Methods of classifying and grading

All agencies must have an accredited job evaluation methodology.

There are two methods of classifying and grading:

- The points factor system of job evaluation for salaried positions used by agencies that have implemented an evaluation system accredited by the Department of Premier and Cabinet



- Draft classification and grading by an agency that does not have an accredited job evaluation system, subject to review by the Public Service Commission before the agency head makes a final determination.

Any other situation is to be referred to the Public Service Commission on 9272 6000 email: [enquiries-psc@psc.nsw.gov.au](mailto:enquiries-psc@psc.nsw.gov.au).

#### 1-2.4.1 Accredited job evaluation systems

The three systems that have been accredited for use in grading public sector positions are:

- Mercer CED Job Evaluation System'
- Hay Job Evaluation System
- OCR Job Evaluation System

Merger now owns the Mercer CED and OCR systems and no longer provides updates or training for the OCR system.

Public sector agencies using the OCR system may continue to do so. Agencies implementing job evaluation for the first time or considering changing systems should select either the Mercer CED or Hay Job Evaluation System.

#### 1-2.4.2 Obtaining accreditation

To obtain the Public Service Commission's authorisation to use job evaluation methodologies to classify and grade positions, agencies must have successfully implemented one of the above three accredited systems. Agencies are advised to select the Mercer CED or Hay methodologies as OCR is no longer supported. Agencies should then make application to the Public Service Commission demonstrating that:

- the NSW Public Sector Job Evaluation Guidelines have been fully adopted (see Appendix 1A of this chapter);
- the agency can maintain the integrity of the job evaluation system; and
- there has been a transfer of job analysis and job evaluation skills from the consultants to the agency's employees.

The application should also include:

- the total number of salaried employees in the agency and the number in the classification;
- details of the sample group whose positions were evaluated to indicate how representative they are of the agency as a whole;
- the points-to-grade table for the classifications within the agency derived from the evaluations of the representative sample; and
- several completed position descriptions.

#### 1-2.5 Using accredited job evaluation methodologies

Job evaluation refers to the use of a methodology to assess the work value of a position. The process involves the systematic comparison of jobs to ascertain the relative size of each position in a classification or grading structure.

Jobs are analysed and compared by reference to different factors common to all jobs, such as skill, responsibility, decision-making, complexity, team work and contact with other people. Each factor is given a range of points. The maximum number of points allotted to it determines the relative importance or weighting of a factor

The Public Sector Capabilities website provides a range of resources to assist in designing and describing positions, including the Job Design and Description Guide, a model position description template and a guide to completing the template. See <http://www.pscapabilities.nsw.gov.au/hr-managers/job-design-and-description/>

##### 1-2.5.1 Implementing job evaluation outcomes

- If the work of a position has not changed substantially, but when evaluated using one of the three accredited job evaluation systems is found to be of a higher grade than the level at which it was established, C1997-35 provides that :
  - In certain circumstances approval may be given to the current occupant of the position being paid by way of allowance. Payment of the allowance is subject to the current occupant performing satisfactorily in

the position and having been appointed following a process of competitive merit selection (albeit to the pre-job evaluation level).

- The existing occupant may elect to compete for the position at its new higher level rather than be paid an allowance. C1998-50 deals with this option and emphasises that the decision to forego the allowance provided for in C1997-35 and to conduct a competitive process rests with the existing occupant, not management.

Where the work has changed substantially or the position falls vacant the position should be filled by merit selection.

- If the work of a position has not changed substantially, but when evaluated is found to be of a lower grade than the level at which it was established, agencies may
  - adjust the work assigned to the position to a level commensurate with the position's existing grade. The position should then be re-evaluated to confirm that the work value is appropriate to the grade; or
  - in consultation with the position occupant, redeploy the position occupant to another suitable position at their substantive grade.

##### 1-2.5.2 When the Public Service Commission's advice is to be sought

Agencies with accredited job evaluation systems are expected to classify and grade positions in accordance with the appropriate industrial instrument without reference to the Public Service Commission.

If the agency proposes to change the classifications and grades of most or all of the positions within a vocational group, or if there is uncertainty about the most appropriate award classification for a position, Public Sector Industrial Relations, NSW Industrial Relations, should be contacted on 9020 4644.

## 1-2.6 Agencies without job evaluation systems

Agencies that do not have an accredited job evaluation system are to refer all draft classification and grading recommendations for non-SES positions to the Public Service Commission for review before a final determination is made.

Agencies should provide the Public Service Commission with details of their draft job evaluations using an approved job evaluation methodology, and information on job analysis and job evaluation panel procedures. Otherwise, they must submit detailed justification for the recommended classifications and grades, together with copies of the position descriptions. (See [C1995-34](#), Guidelines under the *Public Sector Management Amendment Act 1995* where the reference to section 8(3) of the *PSM Act 1988* is taken to be a reference to section 9(3) of *PSEM Act 2002*).

### 1-2.6.1 Endorsement for certain new positions

Agencies classifying and grading new positions without accredited job evaluation methodologies may regard the Public Service Commission's endorsement as given when:

- the new position(s) warrant the same classifications and grades as one or more similar positions already existing in the agency
- there are no significant differences in the descriptions of the duties and responsibilities of the new position(s) and the existing positions
- the maximum salary of the position(s) does not exceed the maximum salary for Clerk Grade 12 under the [Crown Employees \(Administrative and Clerical Officers – Salaries\) Award](#) (or equivalent).

**Table 1** Job evaluation methodology points

Senior Executive level	Senior Officer grade	Job evaluation methodology points		
		Mercer CED	Hay	OCR
SES Level 1	SO Grade 1	670 – 749	731 – 870	780 – 900
SES Level 2	SO Grade 2	750 – 849	871 – 1050	901 – 1045
SES Level 3	SO Grade 3	850 – 989	1051 – 1240	1046 – 1250

## 1-3 Guidelines on Senior Officer classification

### 1-3.1 Sources of authority

- [Public Sector Employment and Management Act 2002, Chapter 2, Part 2.1](#)
- [C1995-34](#), Guidelines under the *Public Sector Management Amendment Act*. This Circular still applies and the reference to section 8(3) of the *PSM Act 1988* is taken to be a reference to section 9(3) of the *PSEM Act 2002*
- [Crown Employees \(Senior Officers Salaries\) Award](#).
- [C2008-41 Reduction of Senior Executive Positions](#)
- [C2010-18 Staffing Freeze](#)

### 1-3.2 Introduction

The Senior Officer classification provides additional capacity to recognise the work value of non-senior executive positions. There are three grades within the classification.

Inclusion in the Senior Officer structure is by evaluation of positions by the agency head using an approved job evaluation methodology. Appointment as a Senior Officer is in accordance with the provisions of the *PSEM Act 2002*, including competitive merit selection for advertised vacancies.

For assistance with the Senior Officer classification, contact the Public Service Commission on 9272 6000 or email: [enquiries-psc@psc.nsw.gov.au](mailto:enquiries-psc@psc.nsw.gov.au).

Table 1 illustrates the points-to-grade structure of the classification and shows its parity in work value with comparable Senior Executive Service levels.

### 1-3.3 Senior Officer classification

#### 1-3.3.1 Purpose

The Senior Officer classification helps to:

- Provide continuity of employment;
- Improve career opportunities for employees;
- Obviate the need for skill shortage allowances being misapplied to recognising work value;
- Aid in the retention and attraction of skilled employees; and
- Give agency heads the flexibility to establish a Senior Executive Service contract position or a Senior Officer continuous employment position of equal work value.

#### 1-3.3.2 Classification structure

The Senior Officer classification, introduced by Determination under section 63 (1) of the *Public Sector Management Act 1988*, was subsequently made as the [Crown Employees \(Senior Officers 1997 Salaries\) Award](#). It applies to departments listed under Schedule 1 of the *Public Sector Employment and Management Act 2002*.

### **1-3.3.3 Progression**

Positions are to be created, classified and graded as Senior Officer Grade 1, Grade 2 or Grade 3. There is no broadbanding. Only single grades can be created.

Movement within a salary grade is by incremental progression subject to satisfactory performance, as for other non-Senior Executive positions.

### **1-3.3.4 Guidelines on Senior Officer classifications**

Agency heads create, classify and grade Senior Officer positions under section 9 of the *PSEM Act 2002*.

Under the provisions of [C2008-41](#) and [C2010-18](#) there are restrictions on the creation of Senior Executive and Senior Officer positions beyond agencies' approved ceilings.

### **1-3.3.5 Evaluating positions**

Positions are to be included within the Senior Officer classification structure following an evaluation using an approved job evaluation methodology. Evaluations are to be undertaken in the usual way.

### **1-3.3.6 Employee related benefits**

Under the [Crown Employees \(Senior Officer Salaries 2007\) Award](#) Senior Officers are eligible to salary package up to 50% of their salary in accordance with the non-SES salary packaging guidelines first set out in C2002-61 and as updated from time to time. Items that may be packaged include motor vehicles, lap-tops and superannuation contributions.

Unlike other non-SES staff who are limited to salary packaging motor vehicles on a 100% novated lease (ie 100% private) basis, Senior Officers retain the option to salary package motor vehicles under the same conditions applying to the SES as determined by the Public Service Commission from time to time. This involves packaging a vehicle on either a 100 percent private usage basis through

State Fleet, or on a business /private basis through State Fleet with the private portion being funded by the Senior Officer by way of salary sacrifice.

### **1-3.3.7 Appointment**

Positions that are evaluated as being within the Senior Officer classification should be filled in accordance with the provisions of the *Public Sector Employment and Management Act 2002*, including those of Chapter 2 Part 2.3 requiring advertising and selection based on merit.

There are no appeal rights against promotion to Senior Officer positions.

## Appendix 1A: NSW Public Sector Job Evaluation Guidelines March 2011

### 1A-1 Job evaluation

1A-1.1 Job evaluation is a systematic method of determining the relative work value of jobs in an organisation. The process assesses the nature, impact and accountabilities of jobs to establish job grades, which in turn determines levels of pay.

1A-1.2 Departments included in Part 1 of Schedule 1 of the *Public Sector Employment and Management Act (PSEMA) 2002* should use only the methodology of accredited firms Mercer (Australia) Pty Ltd (Mercer CED Evaluation system and OCR Job Evaluation system) and the Hay Group (the Hay Guide Chart-Profile).

1A-1.3 The job evaluation system is applied to job positions and their actual requirements rather than the skills and experience of a particular incumbent. Therefore, it is important to establish a clear understanding of the work required of the position as opposed to the capacity of the individual.

1A-1.4 This guide aims to provide principles of best practice for job evaluation, regardless of the job evaluation system and approach used.

### 1A-2 Approaches to job evaluation

Agencies have a number of options for job evaluation, as follows:

#### 1A-2.1 Desk top evaluation

1A-2.1.1 Desktop evaluation is undertaken by a single evaluator. The desktop evaluator is usually attached to the agency's human resources area, or shared services provider, is formally trained and accredited in the methodology selected by the agency, and has technical expertise and experience in its application.

1A-2.1.2 Desktop evaluation is considered to be the most cost-effective and efficient approach to job evaluation in most circumstances; but more importantly, it enhances

the validity of evaluation within the agency as the evaluator, as a human resource practitioner, has a degree of independence from other business areas. That is, they have no vested interest in grading outcomes. Conflicts of interest are more likely to arise where representatives of the business area are involved in determining evaluation outcomes.

1A-2.1.3 The quality of job evaluation within the agency is also enhanced as the desktop evaluator is able to determine internal relativities based on their total organisational perspective, their understanding of the role and functions of positions across the agency and the environment in which they operate, and the dynamics of organisational change. They also have access to the agencies' databases to facilitate the application of consistency.

#### 1A-2.2 Consultants

1A-2.2.1 Agencies may use consultants routinely, for example, to evaluate executive positions or when job evaluation is not a frequent requirement in the agency. They may also use them when additional expert resources are needed, such as when a large number of position descriptions require evaluation.

#### 1A-2.3 Job evaluation panels

1A-2.3.1 Evaluation panels, when used, should comprise a convenor and representative/s of management and employees with training and experience in the use of the job evaluation system. A person with detailed knowledge of the role and responsibilities of the position to be evaluated (other than the occupant of the position) may be invited to advise the panel with regard to the specifics of the role. Panels should include both women and men.

1A-2.3.2 The members of the panel should individually assess the position against each factor relative to the evaluation system being used, and then compare their views. If initial assessments are different, the panel

should follow a process of discussion and review to reach a consensus on the assessment for each factor. If a panel cannot reach consensus on the evaluation of a position, the majority and minority views should be recorded. Either the panel, or the convenor, should then translate the agreed assessments for each factor into a total point score for the position, using the scoring method for the system. All panel members should sign the evaluation report.

1A-2.3.3 All panel members should have adequate training and a clear understanding of their role on the panel. Selection of the convenor should be made on the basis of their formal training in the job evaluation system and expertise in its use, and their skills in reconciling diverse points of view.

1A-2.3.4 The convenor of the panel should arrange for the panel's evaluations to be submitted for consideration in accordance with the department's decision-making arrangements.

### 1A-3 Capable and experienced job evaluators

1A-3.1 Only people trained in the job evaluation methodology used by the agency should undertake job evaluation.

1A-3.2 Agencies should ensure that only capable and experienced evaluators undertake desktop job evaluations and that evaluators do not evaluate their own positions or positions where there is any conflict of interest.

### 1A-4 Employee awareness

1A-4.1 Successful implementation and use of job evaluation is dependant on a shared understanding within the agency of the objectives of systematic and equitable assessment of the relative work value of positions for classification and grading purposes, and how the system operates to achieve these objectives.

1A-4.2 All employees should be aware of the job evaluation system used and how they will be involved. This is essential for job evaluation to be successful.

1A-4.3 As soon as practicable managers should provide information about job evaluation to employees affected by job evaluation.

1A-4-4 If there is a current substantive occupant they should be given the opportunity to comment on the accuracy of the position description, before it is evaluated.

### 1A-5 Access to information

1A-5.1 Information on the system, how it operates and inputs required should be freely available.

1A-5.2 The outcome of job evaluation should be made available to position occupants on request, only after final grading decisions have been made by the agency head or delegate.

### 1A-6 Training

1A-6.1 All employees undertaking job evaluation need sufficient training to be proficient in the use of the system.

### 1A-7 Good quality job information

1A-7.1 Regardless of the system and approach used, good quality job information is fundamental to the quality, integrity and credibility of job evaluation.

1A-7.2 The job evaluator should ensure that their assessments relating to the factor headings used in the job evaluation methodology are information-based, and do not make assumptions about aspects of the job.

1A-7.3 The chief source of quality job information is an up to date and accurate position description. A model position description has been developed as a guide to capturing and presenting the information needed for the evaluation of positions. This is available at [www.pscapabilities.nsw.gov.au](http://www.pscapabilities.nsw.gov.au)

1A-7.4 The position occupant and the manager of the position should discuss the position description and, ideally, any difference of opinion should be resolved between them, with assistance from a trained job analyst if needed.

1A-7.5 Other key sources that may be accessed if necessary include:

- A job expert such as a human resources practitioner,
- Information used by the job analyst in developing the position description, such as questionnaires completed by, or records of interviews with a representative position holder and/or their manager,
- Other organisational information eg the website, major project briefs, business plans etc.

### 1A-8 Developing up to date and accurate position descriptions (the job analysis process)

#### 1A-8.1 The process

Job analysis is the process of gathering information about a job from various sources, analysing it and using it to write a description of the job. It is one of the most important steps in the evaluation process. It requires highly developed analytical and communication skills, particularly skills in listening, recording and presenting the outcome of the analysis in clear, concise written form.

#### 1A-8.2 Application of the process

Application of the process will vary for each specific position. Developing position descriptions for new or changing functional areas may require quite extensive information collection and analysis. Tailoring a generic position from the Capability Framework Library or updating an existing position description for a job that is largely unchanged and operating satisfactorily are usually simpler tasks.

#### 1A-8.3 Information sources

There are a number of sources of relevant information that agencies can use to develop or update position descriptions. These include:

- Organisational information (organisation charts, corporate and business plans, annual reports, review reports etc).
- Job questionnaires completed by current/former position incumbents or managers.
- Existing position descriptions for the job or similar jobs drawn from:
  - The Agency's own library of position descriptions
  - The Capability Framework Position Description Library of generic position descriptions at [www.pscapabilities.nsw.gov.au](http://www.pscapabilities.nsw.gov.au)
  - Public job search sites including [www.jobs.nsw.gov.au](http://www.jobs.nsw.gov.au) and commercial sites.
- A broad range of other sources such as industry/professional standards
- Job analysis interviews conducted by the job analyst with subject experts, who may include individual employees, groups of employees, a sample of employees with similar responsibilities or external experts. Job analysis interviews seek deeper understanding of the job and clarification of any gaps, inconsistencies or obscurities in the information gathered to date.

#### 1A-8.4 Position description format

- The position description should be written in the agency's standard format. There is a model format for the sector at [www.pscapabilities.nsw.gov.au](http://www.pscapabilities.nsw.gov.au). Agencies have flexibility to vary the model format, provided that their own standard format captures all information required for job evaluation.
- Agency position descriptions should draw on the NSW Public Sector Capability Framework to describe the capabilities (knowledge, skills and abilities) required for the position.

### 1A-8.5 Avoiding bias

1A-8.5.1 The standard questionnaire and standard position description have been designed to avoid any inherent bias based on gender, race or other diversity issues. Job analysts and evaluators should ensure that they are aware of equity issues when undertaking their roles.

1A-8.5.2 One of the strengths of points factor job evaluation is that it demands a more systematic and open analysis of the actual content of the work done in the position to be evaluated. This process is intended to ensure a better understanding of the role, responsibilities and characteristics of the position.

## 1A-9 The NSW Public Sector Capability Framework Position Description Library

1A-9.1 A library of sample position descriptions has been developed to assist job analysts and evaluators. The library includes jobs that are common in the public sector and indicative evaluation profiles prepared in consultation with unions. The library is available at [www.psccapabilities.nsw.gov.au](http://www.psccapabilities.nsw.gov.au)

1A-9.2 These position descriptions are a resource for agencies to use at their discretion, and may be adapted to suit the agency. Contextual material such as information on organisation environment, organisation charts, and position dimensions (eg budgets, key delegations/ authority to make decisions) should be added when using these generic position descriptions. Once added the position description will require desktop evaluation.

## 1A-10 Quality assurance

### 1A-10.1 Quality assurance process

Agencies have a range of options to ensure the quality of the job evaluation process and to identify process improvements required to meet the organisation's needs. The quality assurance process adopted in each agency must be multi-dimensional to avoid the risk of a single point of failure in the evaluation process.

### 1A-10.2 Quality assurance options

Options range from routine quality checks of individual evaluation reports to reviews of the efficiency and effectiveness of the whole system. Some examples follow:

#### 1A-10.2.1 Consistency checks

1A-10.2.1.1 Checking evaluation outcomes with other like examples, or within job families is a key quality assurance requirement of the evaluation systems. Agencies have developed substantial databases of position descriptions and job evaluation profiles, providing a sound basis for monitoring and quality assuring the feasibility and consistency of position evaluation and grading.

1A-10.2.1.2 Implementation of the NSW Public Sector Capability Framework (PSCF) and adoption of a position description format which incorporates capabilities will further encourage consistency, particularly where agencies identify and develop generic position descriptions and evaluations for families of jobs across the agency.

1A-10.2.1.3 Access to the PSCF Library of Position Descriptions and Indicative Evaluations Profiles provides agencies with a useful reference for moderation of agency evaluations, although contextual factors and information specific to positions such as delegations and budgets may influence final evaluation outcomes.

#### 1A-10.2.2 Second evaluator

A second evaluator may review the job evaluation process, evaluation report and outcome. This is known as a "peer review" process.

#### 1A-10.3 Third party/external consultant

The agency's Human Resources Unit or shared services provider may opt to seek the advice of a third party or consultant who is expert in the evaluation system.

### 1A-10.4 Agency sign-off

A senior human resource manager who has a broad overview of positions and position grades across the agency and an understanding of job evaluation signs off the job evaluation process and outcomes. Approvals are in accordance with agency delegations

### 1A-10.5 Evaluation feedback and review – individual cases

The manager, position incumbent or position incumbent with their employee representative may seek feedback and a further review if not satisfied with an evaluation outcome. Agencies are not obligated to agree to a review but it is recommended that requests for a review are favourably considered unless there is a good reason not to do so. Agencies may determine their own approach to reviewing job evaluation outcomes.

### 1A-10.6 Feedback and review – agency system

The agency may undertake periodic reviews of the effectiveness of the agency's job evaluation processes, which should include feedback from stakeholders including managers, staff and job evaluators.

## 1A-11 Job evaluation records

1A-11.1 Job evaluation records provide a means for: checks on previous evaluations for jobs with similar features, consistency checks, resolution of queries, and periodic system reviews.

1A-11.2 The conclusions of the evaluator on the assessment of factors and the total point scores for positions should be recorded in the format specified by the job evaluation system, and that document should be retained as an auditable document. These documents should be retained for a minimum of five years after action is completed, in accordance with the requirements of the State Records Authority, General retention and disposal

authority: personnel records, PERSONNEL-EVALUATION (6.1.1) see [www.records.nsw.gov.au/recordkeeping/government-recordkeeping-manual](http://www.records.nsw.gov.au/recordkeeping/government-recordkeeping-manual).

## 1A-12 Job evaluation outcomes

### 1A-12.1 Status of evaluation outcomes

Job evaluation assessments should be regarded as reports to the agency/department head in relation to the exercise of classification and grading powers under the *Public Sector Employment and Management Act 2002*.

### 1A-12.2 Pay outcomes

The final outcome of the evaluation process should be a decision by the agency head, or delegate, on the classification, grade and salary range of the positions evaluated.

## 1A-13 Good practice job evaluation

### Do

- Assess the requirements and characteristics of the job
- Ensure the position description or other job information used is accurate and up-to-date
- Clarify job information where there is any aspect of the job which is unclear
- Ensure job evaluators are trained and experienced in the use of the relevant job evaluation system
- Use system, feasibility and organisational consistency checks to test for evaluator and system errors and ensure the quality of job evaluation outcomes
- Ensure evaluation rationale and records are clearly documented for the periodic audits/reviews
- Follow-up on issues in a job evaluation review where information is unclear

### Don't

- Assess the person currently in the position
- Make assumptions about a job and/or evaluation outcome where job information is missing or not available
- Bypass system, feasibility and organisational consistency checks

## Chapter 2 **Recruitment, selection and appointment**



## 2-1 Sources of authority

### 2-1.1 Sources of authority

- [Public Sector Employment and Management Act 2002](#)
- [Public Sector Employment and Management Regulation 2009](#)
- Commentary and [Guidelines on Temporary Employment and Casual Employment](#)
- [Anti-Discrimination Act 1977](#)
- [C2008-02](#), Removal of Common Selection Criteria
- [C2008-29](#), Amendments to *Public Sector Employment and Management Act* and Regulation
- [C2009-01](#), Further Amendments to the *Public Sector Employment and Management Act 2002*
- [M2012-12](#) Government Advertising Reform
- [M2011-11](#) Changes to the Management of Excess Employees
- [Managing Excess Employees Policy](#)
- [Case Management and Redeployment Guidelines](#)
- [Agency Change Management Guidelines](#)
- [Voluntary Redundancy: Taxation and Superannuation Implications](#)
- [Managing Excess Employees Advice To Agencies No 1 Of 29 June 2011 Parental Leave](#)
- [Managing Excess Employees Advice To Agencies No 2 Of 7 July 2011 Workers Compensation](#)
- [Managing Excess Employees Advice to Agencies No 3 of 1 September 2011 Agency Case Management and Redeployment Policies](#)
- [Merit Selection Guide for NSW Public Sector panels – Picking the best person for the job](#)
- [C2009-32](#), Public Sector Employment and Management Regulation 2009
- [C2010-18](#) Staffing Freeze.
- [C2011-12](#) Variation to the Crown Employees (Public Service Training Wage) Award 2008

- [C2011-24](#) Whole of NSW government Expression of Interest (EOI) website
- [PSIR C2012-01](#) Crown Employees (Public Sector Salaries – 2008) Award

## 2-2 Employment policy

### 2-2.1 Objective

The NSW Government aims to create a world class Public Service that brings excellent services to the people of this State. NSW needs a Public Service which is informed and responsive, able to change, adapt and contribute to the building of a competitive economy and a fairer society.

To achieve this aim and in the public interest, the Government has made a commitment to the firm application of the merit principle encompassing ethical and transparent recruitment and selection processes.

#### 2-2.1.1 Public interest

The public interest is best served in relation to public employment through:

- use of competitive merit selection policies and processes which are non-discriminatory
- achievement of EEO outcomes
- appointment of long term temporary employees to permanent positions
- provision of entry level recruitment as well as traineeships and apprenticeships
- retention and improvement of the skills and knowledge of employees
- use of capabilities as a basis for training and development as well as career progression
- access to key human resource information which aids strategic workforce planning.

### 2-2.1.2 Professional development of staff

The NSW Government recognises that its employees are its most valuable resource and the key to an innovative, professional and service oriented Public Service.

The Public Service is therefore committed to the development of employees on a fair and equitable basis to ensure that:

- employees increase their knowledge and skills to perform better in their current positions and to enhance their potential to achieve promotion on merit
- satisfaction is increased and employees are encouraged to participate in the continuing improvement of their own and their organisation's performance
- the Public Service improves organisational effectiveness and increases its capability to meet future requirements.

### 2-2.2 Purpose of merit selection

Merit selection aims to ensure that:

- all eligible members of the community have a fair chance to gain a job with the Government
- selection is based only on a person's ranking against the selection criteria
- the best person is selected, resulting in a quality public sector workforce capable of effectively designing and delivering services and programs to the people of NSW.

This ensures that quality Government services are delivered to the community by a highly skilled and diverse workforce. Accordingly, the community must have fair and equitable access to Government employment.

It is important that:

- merit selection policies and procedures integrate employment equity principles
- the highest standards of integrity and probity are observed
- cost effectiveness and timeliness of procedures are achieved

- there is a focus on transparent and accountable outcomes.

### 2-2.3 Principles of merit selection

To give agencies the flexibility to meet their needs and meet their responsibility to the people of NSW, the following guiding principles apply:

**Ethical** practices that demonstrate:

- integrity
- impartiality
- professional conduct
- clear accountabilities
- confidentiality.

**Fair** practices that:

- are free from discrimination
- value and deliver diversity in the workplace
- provide community access to Government employment
- are transparent and provide a clear audit trail
- are understood by prospective applicants
- enable appropriate feedback to candidates
- prescribe minimum standards of process.

**Effective** practices that provide employers with:

- support for their business needs
- timely and quality outcomes
- clear, simple and flexible processes to manage
- value for money.

### 2-2.4 Merit selection

Merit selection is achieved in a variety of ways, primarily by advertising vacant positions through various channels, which may include the NSW Government's recruitment website [jobs.nsw](http://jobs.nsw), the press or community publications. The Government ensures equitable and fair access to Public Service jobs through these measures. Complementary strategies include:

- special employment programs for EEO target group members
- traineeships, apprenticeships, cadetships and scholarships
- job rotations
- transfers
- redeployment of excess employees
- acting opportunities and temporary appointments
- temporary employment.

#### 2-2.4.1 Demonstrating merit

The ways in which these principles may be demonstrated are through practices which ensure that recruitment and selection decisions:

- recruiting the most suitably qualified person
- have regard to a department's short and long term corporate objectives
- establish a quality workforce capable of effectively delivering programs and services
- are made within reasonable cost restraints and avoid unnecessary delays
- provide the whole community with open access and opportunity to apply for vacancies
- are made by selection panels with appropriate expertise and understanding of integrity and equity issues.

Processes need to ensure that all applicants:

- are advised of the selection arrangements and given the same information
- are assessed against job related criteria with a range of appropriate and unbiased selection techniques.

### 2-2.5 Merit

Section 19 of the *Public Sector Employment and Management Act 2002* sets merit as the criterion for employee selection. The Act describes **merit** as the abilities, qualifications, experience, standard of work performance and capabilities of applicants considered

in relation to the work to be done. All selection decisions should be based on merit, by objectively assessing the best evidence obtainable. All such decisions must be able to withstand scrutiny and be publicly defensible.

Integrity and equity are advanced when:

- everyone with an interest has a reasonable chance to know of and apply for vacancies
- all applicants receive the same information about the position and the selection process
- all applicants are assessed against the same selection criteria
- the selection criteria have been proven relevant to the work to be done
- decisions are made with expertise and are based on evidence.

Particular care must be taken to eliminate all unlawful direct and indirect discrimination on the grounds set out in the *Anti-Discrimination Act 1977*.

Equity in recruitment will contribute towards the ability of the Government to respond to the values and diversity of the community it serves.

### 2-2.6 Effectiveness and efficiency

#### 2-2.6.1 Resources and costs

The resources allocated to recruitment procedures and processes must be appropriate to the level of risk involved and the cost to the department of a poor outcome. Exhaustive information gathering may not be appropriate for engaging employees with readily available skills. On the other hand it would be false economy to skim on selection when the overall cost of a poor decision would be greater than the cost of more rigorous selection.

Poor recruitment decisions can incur costs for further recruitment, induction and training, employee burnout, lost opportunities, impaired reputation, impaired morale and loss of other valued employees.

### 2-2.6.2 Timeliness

All elements of the recruitment process must be carried out with the greatest speed consistent with the level of rigour referred to in the previous paragraph. Delays can be costly for all parties and should be avoided as far as possible. They are potentially distressing for applicants and stressful for employees required to compensate for the vacant position. A flow chart of the recruitment and selection process is set out in the chart at [2-3 Recruitment and selection process](#).

Information technology used effectively and fairly can greatly expedite recruitment.

## 2-2.7 Ensuring equity in recruitment and selection

### 2-2.7.1 Policy statement

Equal Employment Opportunity (EEO) is Government policy consistent with the requirements of the [Anti-Discrimination Act 1977](#). It should be integrated into all stages of the recruitment and selection process to ensure that equal employment outcomes are achieved for women, Aboriginal people and Torres Strait Islanders, people from racial, ethnic or ethno-religious minority groups, and people with a disability.

The Government's commitment to EEO in the Public Sector has been reinforced by the inclusion of equitable management of staff as a specific responsibility of department heads under section 14 of the *Public Sector Employment and Management Act 2002*. [Section 14 \(3\)](#) states that a department head is responsible for the equitable management of staff of the department. This provision complements the EEO obligations of all public employers contained in [Part 9A](#) of the *Anti-Discrimination Act 1977* and the equity obligations of employers contained in the *Industrial Relations Act 1996 (NSW)*.

Through a range of policies and practices the following principles of EEO must be maintained:

- fair practices in the workplace;

- management decisions being made without bias;
- recognition and respect for the social and cultural backgrounds of all employees;
- employment practices that produce employee satisfaction and job commitment; and
- improving productivity by guaranteeing that:
  - the best person is recruited or promoted
  - skilled employees are retained
  - training and development are linked to employee and client needs; and
  - the workplace is efficient and free from harassment and discrimination.

In general, all jobs (including traineeships and apprenticeships) must be open to all people on the basis of merit, and only merit. This means that a person's sex, race, age, marital status, disability, homosexuality, transsexuality, carer's responsibilities, ethnicity and ethno-religious background, pregnancy or infectious disease must not prevent them or adversely affect them being properly considered for the job. There may be cases when an exemption may need to be sought from the Anti-Discrimination Board before advertising a job. This is for special needs programs where selection is open only to people from a particular group.

### 2-2.7.2 Departmental requirements

Departments are required to implement EEO and contribute to the achievement of the following sector-wide [EEO benchmarks and targets](#):

- Representation of women – 50%
- Representation of Aboriginal people and Torres Strait Islanders – 2.6%
- Representation of people from a non-English speaking background – 19%
- Representation of people with a disability requiring workplace adjustment – 1.5% by 2012-13 - new incremental target to be achieved. Data on the

representation of people with a disability will be collected for monitoring purposes but a benchmark level has not been set.

In addition agencies must:

- specifically identify structural barriers to workforce participation by EEO groups and plan strategies and time frames for their removal
- implement work-related adjustments for employees with a disability
- incorporate performance indicators in relation to all these matters in the performance agreement of each department head.

New EEO reporting requirements came into effect in December 2007. Following amendments to the *Anti-Discrimination Act 1977*, agencies are now required to include a report of their EEO achievements during the reporting year, and their planned outcomes proposed for the following year, in their annual reports only. Smaller agencies (with less than 200 employees) need only report on a triennial basis. Treasury Circulars NSW TC [11/03](#) and [08/08](#) apply.

Agencies are also required to prepare and submit EEO management plans to the Director of Equal Opportunity in Public Employment.

For further information and a sample annual report table and EEO Management Plan, go to: [EEO Management Plans & Reporting](#)

## 2-2.8 Review, evaluation and validation

Effective management demands that departments continually review their recruitment procedures including:

- the effectiveness of their advertising
- the success of active recruitment programs
- the information supplied to potential applicants
- the composition of their selection panels
- training standards and competencies for members of selection panels

- the validity of assessment processes
- the satisfaction of the executive, managers and supervisors with the outcomes of recruitment action
- recruitment outcomes in relation to EEO objectives
- the overall cost effectiveness of recruitment procedures.

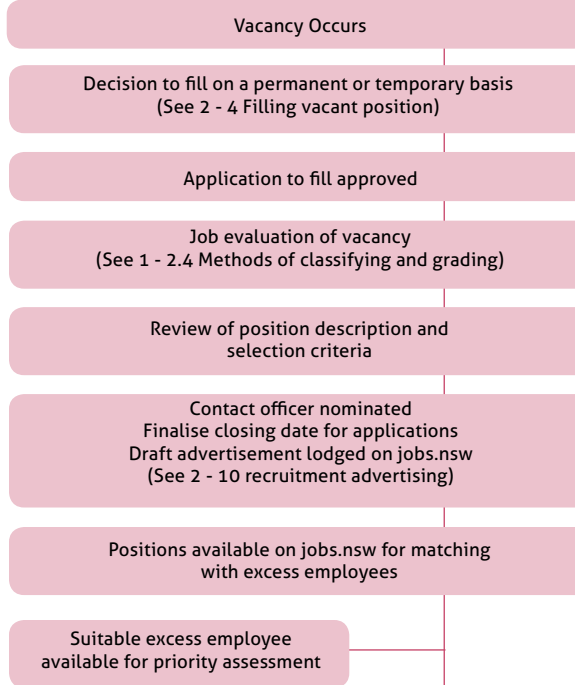
This would usually be the responsibility of the human resources branch.

Options include interviewing a random sample of successful and unsuccessful applicants for their impressions of their experience; structured interviews with supervisors and managers to determine the extent to which a successful applicant met or failed to meet specified requirements.

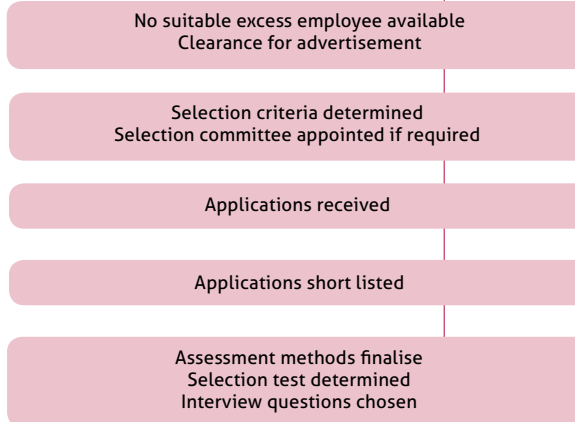
All assessment processes used – applications, reference checks, employment tests and interviews need to be validated using standard validation techniques. Even though commercially available employment tests have been normalised for Australian standards, they will still need to be specifically validated for individual departments using them or for a group of departments with similar needs.

## 2-3 Recruitment and selection process

### Week 1 - 2

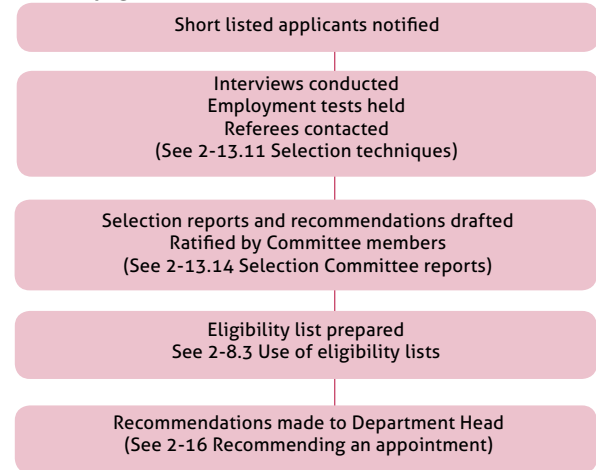


### Week 3 - 4

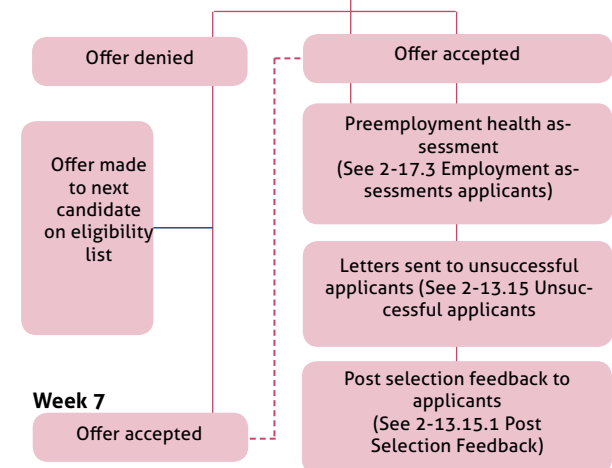
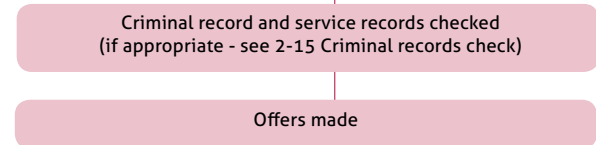


See [2-16 Recommending an appointment](#).

### Week 4 - 5



### Week 6



## 2-4 Filling vacant positions

Vacant positions can be filled in a number of ways and the method chosen will depend on whether the position is to be filled permanently or temporarily. Departments should not assume that creating and filling positions is the only or best option.

Departments should examine current resources including people, skills and funds, to determine whether they could be used more productively. Job redesign, employee retraining, or a more appropriate use of technology may enable the needed work to be done without recruiting.

Having confirmed that the position is necessary, that the job description, classification and grading are correct and that funds are available, the department head may decide to fill the position by:

- transfer (redeployment) of excess employees
- acting appointment of a member of staff
- temporary staff transfer (secondment)
- departmental temporary employment of a person with appropriate capabilities
- permanent appointment.

The NSW Public Sector – [Employment Options table](#) provides an overview of options for filling positions, including, situations when each option might be used effectively.

### 2-4.1 Merit selection

As a general principle, substantive vacancies are to be filled by competitive selection except in cases of:

- transfer of an officer on grade or temporary higher duties
- redeployment of an excess employee
- reappointment of a formerly medically retired officer
- appointment following merit selected trainee or apprentice
- appointment following merit selected long term secondee

- appointment following merit selected long term temporary employee
- major restructuring occurring within the department.

### 2-4.2 Permanent or departmental temporary employment

The NSW Public Sector – Employment Options table provides an overview of options for filling positions, including, situations when each option might be used effectively.

Vacancies should generally be filled by permanent appointment. Section 7(3) of the *Public Sector Employment and Management Act 2002* provides that the usual basis for the employment of staff is to be the employment of (permanent) officers. Excess employees must be considered as a priority in filling vacancies. Departmental temporary employment should be confined to short term projects or obtaining specific expertise. Departmental temporary employment should not be abused and departmental temporary employees should not be retained for ongoing duties. The Commentary and Guidelines on Temporary Employment and Casual Employment provide guidance on the use of temporary staff and casual staff.

To resolve inequities in status and benefits between permanent (officers) and departmental temporary employees, section 31 of the Act provides a process for the appointment of long-term temporary employees to (permanent) officer positions. See [“2-8.2 Appointment of long term departmental temporary employees”](#).

## 2-5 Major restructuring within agencies

Special provisions apply to filling positions during a major departmental restructure. See the [Agency Change Management Guidelines](#).

## 2-5.1 Placing current departmental employees

Every effort should be made to place current employees as described in this section.

### 2-5.1.1 More positions than people

If there are more vacant positions than affected people within a grade or level, affected employees who will be suitable, or who may be suitable if provided with appropriate retraining and support, can be directly appointed. Refer to the [Case Management and Redeployment Guidelines](#) for information on appropriate salary matching when directly appointing.

### 2-5.1.2 More people than positions

If there are more people than positions within a grade or level, there should be an internal competitive assessment process which ranks the suitability of affected employees for appointment to vacant positions. Refer to the [Case Management and Redeployment Guidelines](#) for information on appropriate salary matching to suitable vacancies.

### 2-5.1.3 Other unfilled positions

Positions that are not filled through “2-5.1.1 More positions than people” or “2-5.1.2 More people than positions” More people than positions can be opened as promotional opportunities through internal merit selection under section 18 of the *PSEM Act 2002*, provided that the department head is satisfied more potentially excess employees can be placed through this process. The power to approve a position not be externally advertised has been delegated to Department Heads only in circumstances of a major restructure – See [Manual of Delegations 2012](#).

Positions which are not filled by suitable employees, or for which the department head is not satisfied that retraining of excess or potentially excess employees will be effective within a reasonable time, can be filled through competitive merit selection.

In all cases, the reasons for the decision on each individual employee must be documented clearly and approved by the delegated officer.

## 2-6 Excess employees

### 2-6.1 Sources of authority

- *Public Sector Employment and Management Act 2002* sections [56](#), [57](#), [87](#) and [89](#)
- [M2011-11](#) Changes to the Management of Excess Employees
- [Managing Excess Employees Policy](#)
- [Case Management and Redeployment Guidelines](#)
- [Agency Change Management Guidelines](#)
- [Voluntary Redundancy: Taxation and Superannuation Implications](#)
- [Managing Excess Employees Advice To Agencies No 1 Of 29 June 2011 Parental Leave](#)
- [Managing Excess Employees Advice To Agencies No 2 Of 7 July 2011 Workers Compensation](#)
- [Managing Excess Employees Advice to Agencies No 3 of 1 September 2011 Agency Case Management and Redeployment Policies](#)
- [C98-50](#), Implementation of job evaluation outcomes

### 2-6.2 Policy statement

A new policy for the management of excess employees in the NSW Government Service came into effect on 1 August 2011. The policy helps NSW Government agencies manage their workforces more effectively to meet changing priorities and to deliver high quality, cost-effective services to the people of NSW. The arrangements give excess employees the choice of a voluntary redundancy package or the opportunity to seek redeployment during a three month retention period.

### 2-6.3 Mobility

The mobility provisions of the *Public Sector Employment and Management Act 2002* ([section 87](#)) allow redeployment of excess employees across the Government sector. The head of a public sector agency may transfer a member of staff of that agency to the service of another public sector agency if the head of that agency approves and there has been consultation with the member of staff. Public sector agency includes a State Owned Corporation, a department and all agencies covered under the definition of public sector service in [section 3](#) of the Act.

Section 87 applies to all transfers within the public sector, with the requirement for the approval by the Public Service Commissioner having been delegated to Department Heads – See [Manual of Delegations 2012](#).

As such a department head can transfer an employee to another department if the head of the other department agrees. A department head can also transfer an employee to another public sector agency if the head of the agency agrees and the Public Service Commissioner approves. See "3-14 Employer-sponsored permanent transfers (s87)".

See "[Chapter 3 Commentary and guidelines on staff mobility](#)" for details.

### 2-6.4 Redeployment

Excess employees may be redeployed to positions within their department or in another department or public sector agency. During the retention period, excess employees are to be provided with priority access to redeployment opportunities within their own department and across the Government Service. Refer to the [Managing Excess Employees Policy](#) and the [Case Management and Redeployment Guidelines](#) for more information.

### 2-6.5 Redeployment job matching using e-recruitment system

All vacancies – both temporary and permanent – are made available for matching to an excess employee prior to advertising.

The NSW Government e-recruitment system generates the Mobility Candidates Report which is sent to agency case managers on the morning of each working day. Agency case managers are responsible for discussing potential matches with excess employees and liaising with recruiters to organise priority assessments for excess employees.

For further information about redeployment and job matching refer to the [Case Management and Redeployment Guidelines](#).

#### 2-6.5.1 Time frames for redeployment job matching using jobs.nsw

Each morning case managers receive a report of jobs newly available for matching. Case managers have three business days (the day that the report is received plus two more days) to contact the recruiting agency to arrange a priority assessment.

#### 2-6.5.2 Voluntary redundancy

Every excess employee must be provided with an offer of voluntary redundancy when they are declared excess. Upon being declared excess, employees have two weeks from the date of written advice to decide whether to accept a voluntary redundancy or to opt to pursue redeployment during the three month retention period. If the excess employee accepts the voluntary redundancy, they must leave the service within two weeks or at a time nominated by the agency. Refer to the [Managing Excess Employees Policy](#) for more information..

See also "4-9.3.2 Voluntary redundancy".

### 2-6.5.3 Forced redundancy

Excess employees who remain without a substantive position at the conclusion of the retention period are to be made forcibly redundant by their department head. Where an excess employee has secured a temporary secondment, and the retention period has ended, the excess employee is to be made forcibly redundant at the conclusion of the secondment. Refer to the [Managing Excess Employees Policy](#) for more information

## 2-7 Acting appointments

### 2-7.1 General

Under [section 24](#) of the *Public Sector Employment and Management Act 2002* a department head may appoint a member of staff of any Department to act in a position which is either vacant or the position holder is suspended sick or absent.

Generally section 24 is most effective where a senior executive officer position is temporarily vacant in the Public Service.

For filling temporarily vacant non senior executive positions in the public sector, the most effective method is through the use of [section 86](#) (secondments) section 86A (internal secondments) in conjunction with [section 27](#) (departmental temporary employees). See Chapter 3 Mobility in relation to secondment, and the [Commentary and Guidelines on Temporary Employment and Casual Employment](#).

#### 2-7.1.1 Merit and equity

The basic principles of effectiveness, merit, equity and accountability apply to acting appointments no less than to permanent appointments.

### 2-7.1.2 Acting Appointments

A department head making an acting appointment to a position under section 24 may temporarily appoint a member of staff from either within the department, or from another department with the agreement of the other department head.

This method of placement benefits both departments and members of staff who widen their experience. Usually the members of staff take up positions at the same or similar pay rate. Acting appointment opportunities may be advertised, although this is not mandatory when there is no change in salary involved.

### 2-7.1.3 Redeployment of excess employees

Excess employees are eligible for temporary appointment to vacant positions.

See "[2-6 Excess employees](#)".

## 2-7.2 Temporary employees

Temporary employees include:

- departmental temporary employees employed temporarily for departmental work under [section 27](#) of the *Public Sector Employment and Management Act 2002*;
- special temporary employees employed temporarily under [section 33](#) of the *Public Sector Employment and Management Act 2002* by the Director-General of the Department of Premier and Cabinet to work for Ministers, Parliamentary Secretaries or the Leader of the Opposition. They are employed for an indefinite term or for a period specified in their instrument of employment. The employment of special temporary employees terminates:
  - if the relevant political office holder resigns, dies or otherwise ceases to hold office
  - if they are dismissed by the Director-General of the Department of Premier and Cabinet
  - if they resign
  - on the day of the next general election.

### 2-7.2.1 Departmental temporary employees

The *PSEM Act* provides that the usual basis for employment of staff is to be the employment of permanent officers (section 7(3)).

As such, positions should only be filled temporarily in accordance with criteria set out in the *PSEM Act 2002*. A person may be employed as a Departmental temporary employee:

- for the duration of a specified task or project
- to carry out the duties of a position that is temporarily vacant
- to provide additional assistance in a particular work area
- in connection with the secondment or exchange of staff
- to undertake a traineeship or cadetship
- for any other temporary purpose.

The maximum period for which a Departmental temporary employee may be employed at any one time is 3 years.

**Table 2** A departmental temporary employee may only be employed for a period exceeding 12 months at any one time if the employee is selected on merit.

### 2-7.3 Merit selection for temporary appointment

Requirements relating to merit selection for temporary employees are set out in the [Commentary and Guidelines on Temporary Employment and Casual Employment](#).

#### 2-7.3.1 Advertising

Departments may choose to advertise a temporary vacancy to broaden the field of applicants. Doing so can improve both the effectiveness and the merit of the outcome. Departmental temporary vacancies may be advertised on [jobs.nsw](#), in the media, or within the department (by seeking Expressions of Interest). Expressions of Interest may also be invited across departments to broaden the field of applicants and provide cross-sector development opportunities. For example, departments with a shared corporate services provider use their provider to seek Expressions of Interest across client departments.

All advertisements should indicate the appropriate section(s) of the *Act*. See [2-10 Recruitment advertising](#).

### 2-7.3.2 Using labour hire suppliers for temporary staff

A labour hire supplier may be the most efficient way of filling short term vacancies. A number of labour hire suppliers under the C100 NSW State Contract can provide temporary staff to Government departments. The website of the [NSW Procurement](#) (Finance and Services) lists the labour hire suppliers under contract.

### 2-7.3.3 Acting appointment for employee development

When a vacancy could be filled by either a permanent or an acting appointment, then the option of an acting appointment under [section 24](#) of the [Public Sector Employment and Management Act 2002](#) can be offered as a career development opportunity. After 6 months, consideration should be given to whether a further opportunity could be made available for another person to fill the position temporarily. While acting appointments under section 24 can be used for a range of temporary vacancies, they are best used for senior executive positions. See [2-7 Acting appointments](#).

Expressions of interest should be sought from those who would benefit from such an opportunity and merit selection applied to the applicants.

Any subsequent substantive filling of the position must be by open competitive merit selection.

### 2-7.3.4 Expressions of interest

Seeking expressions of interest internally for positions vacant for short periods can be both an effective use of resources and provide career development opportunities for employees.

To widen the field of applicants and provide cross-sector development opportunities, expressions of interest may also be sought from both internal employees and external public sector employees. For example, departments with a shared corporate service provider may choose to advertise the opportunity across all client agencies of the

provider. Large departments responsible for a number of smaller agencies may advertise the vacancy in all reporting agencies.

Additionally, departments and agencies may use the whole of NSW government [Expression of Interest \(EOI\) website](#) to broaden the potential pool of applicants for a particular role. Widening the reach of EOIs across all departments may result in a more competitive field and is aligned with cross agency mobility and merit principles. The whole of NSW government [EOI Guidelines](#) are available here.

For more information, refer to [C2011 – 24](#) Whole of NSW government Expression of Interest (EOI) website.

While the expression of interest process need not be as structured as a full merit selection process, selection of applicants must nevertheless adhere to the principles of merit selection and be accountable. That is, vacancies should be advertised, at least internally, applications called for, appropriate selection criteria and methods determined, and an open and transparent selection process used.

## 2-8 Permanent appointments

### 2-8.1 Vacancies must be advertised

[Section 18](#) of the [Public Sector Employment and Management Act 2002](#) requires the department head to advertise the vacancy on the NSW Government's recruitment website and in such publication (if any) as the department head determines, before making an appointment. The NSW Government's recruitment website is [jobs.nsw](#)

- see [C2008-29](#) Amendments to Public Sector Employment and Management Act and Regulation
- See "[2-10 Recruitment advertising](#)" for further information.

#### 2-8.1.1 General situations exempt from advertising

Generally, vacant positions need not be advertised if any one of the following apply:

- the vacancy is to be filled by the lateral transfer of an employee
- the vacancy is to be filled as part of a rotational program (lateral transfer of employees of the same grades) or an exchange scheme
- because of reorganisation of structures, of redundancy or of diminished effectiveness, it becomes necessary to appoint an employee earning a salary equal to or greater than that attached to the vacancy.

#### 2-8.1.2 Situations requiring exemption approval

Department heads are not required to advertise a vacancy if the Public Service Commissioner so approves under section 18(2) of the [Public Sector Employment and Management Act 2002](#). This includes situations in which the department head considers that because of the particular circumstances of the position, a suitable applicant with the necessary skills and knowledge, or with the ability to acquire such skills and knowledge within a reasonable period, is highly unlikely to be found outside the department.

If the Public Service Commissioner grants an exemption from advertising the vacancy, the department head must select an officer from within the department in which the vacant position exists, and must select the officer with the greatest merit as prescribed in [section 19\(3\)](#) of the *Act*. Conducting internal competitive selection is a transparent way to fulfil this requirement.

#### 2-8.1.3 Advertising SES positions

Information on advertising or dispensing with SES/CES vacancies can be found in the [SES Guidelines](#)

### 2-8.2 Appointment of long term departmental temporary employees

[Section 31](#) of the [Public Sector Employment and Management Act 2002](#) enables a department head to recommend the permanent appointment of a departmental temporary employee who has been employed continuously for at least 2 years (i.e. long term). Recommendations for



the appointment of long term departmental employees to permanent (officer) positions must be approved by the Public Service Commissioner.

The requirements that need to be satisfied for the appointment of a long term departmental temporary are:

- at some stage during temporary employment the employee has performed duties at the same or similar grade to the officer position they are to be appointed to, and was selected on merit to perform the duties at the same or a similar grade to that position
- the position does not pay more than the maximum rate applicable to grade 12 in the administrative and clerical classification; and
- the department head is satisfied that the work is ongoing and that the employee has the relevant skills, qualifications, experience, work performance standards and capabilities.

Where a temporary employee was initially contracted through a recruitment agency or labour hire firm, department heads need to be sure that the employment process satisfied the core NSW Government principles of equity and equal employment opportunity, cultural and workforce diversity and merit selection.

### 2-8.3 Appointment of long term public sector secondees

Section 86 of the *Public Sector Employment and Management Act 2002* outlines the arrangements for secondments between public sector agencies and section 86A outlines the arrangements for internal secondments within the same public sector agency.

**Sections 86 (6) (a) (b) and (c)** enable a person on an employee-initiated staff transfer to become a permanent employee of the host agency if the transfer has continued for at least 2 years and the employee and host agency head consent.

An employee who transfers under this category may be appointed to a new position at a different grade to the employee's original position in the home agency if certain

requirements are satisfied. Appointment may be at the same grade (or similar) or at a higher grade, and made without advertising or a probation period.

The two requirements that need to be satisfied for any appointment under this section are:

- the new position does not pay more than the maximum rate applicable to grade 12 in the administrative and clerical classification
- the agency head is satisfied that the work is ongoing and that the employee has the relevant skills, qualifications, experience, work performance standards and capabilities.

The two additional requirements that need to be satisfied for appointment without advertising to a position at a higher grade to the employee's original position in the home agency are:

- the employee has been performing duties in the host agency at a grade that is the same (or similar to) the grade of the new position
- the employee was selected as the person with the greatest merit to perform these duties following some form of open competition.

**Sections 86(6) and 86(6A-6E)** only apply to employees who have been seconded to another agency that is not their home agency (i.e.- the 'host agency'). Section 86A only applies to employees seconded within their own agency.

## 2-8.4 Eligibility lists

### 2-8.4.1 Definition

An eligibility list for an advertised position is a list of one or more applicants who are eligible for appointment to the position but not selected for appointment. An eligibility list may contain only one person or a number of people. It does not need to include all eligible people, only those of greatest merit, and must be arranged in order of merit. For departments the provisions relating to eligibility lists are in **section 20** of the *Public Sector Employment and Management Act 2002*

### 2-8.4.2 Currency and use

An eligibility list remains current for 12 months after the list was created and may be used for a single vacancy or multiple vacancies in any of the following cases:

- where a recommended applicant declines appointment to an advertised position
- when the department head decides to postpone an appointment after selection panel action
- where an appointment is made, but after taking up duty the appointee vacates the position
- to fill a position that is substantially the same as the advertised position within the department or in another department.

Excess employees must have priority over applicants on an eligibility list. Before activating an eligibility list agencies should determine if any excess employees can be matched and priority assessed for the position.

### 2-8.4.3 Option to use an eligibility list

Department heads do not have to use an eligibility list if it seems fairer or more appropriate to conduct a new selection process or take other action. Further, department heads should assess the benefits of appointing from an eligibility list against other means of filling positions (e.g. temporary appointments, secondments and transfers on grade, or retesting the labour market through external advertisement). The means of filling the position will depend on the agency's existing workforce skills and future needs, its capabilities and staff development needs.

The department head should select the person with the greatest merit in accordance with **section 19** of the Act.

### 2-8.4.4 Application within and across departments

An eligibility list applies not only to the position for which it was created but also for any other position, either within that department or in another department, as long as the department head (who is filling the vacant position) determines the positions are substantially the same.

Department heads should be practical in determining whether two positions are substantially the same, taking into account:

- the similarity of key selection criteria
- the similarity of duties and accountabilities
- the similarity of attributes and capabilities required
- the similarity of grades or salaries.

If applicants on an eligibility list consent to being included in a cross-department eligibility list, departments may determine whether or not to release their eligibility lists to other departments.

Departments should establish internal processes for releasing and/or accessing eligibility lists, including identifying responsible staff members. Details of eligible applicants should be released one applicant at a time, as required, in order of merit.

See Appendix 2B.

#### **2-8.4.5 Eligible applicant's confidentiality and consent**

The confidentiality constraints covered in "2-12.3.4 *Confidentiality and security of applications*" and "2-13.15.1 *Confidentiality*"

Applicants who apply through the Government's recruitment website (jobs.nsw) consent to the personal information they provide being used for the purpose of assessing whether they may be suitable to fill other vacant positions that arise in the same or another NSW Government agency. Where applicants apply through other means, letters sent to applicants who are placed on an eligibility list should include a statement about the cross-department eligibility list system and a consent section that can be signed and returned. Eligible applicants who do not consent still remain on the eligibility list for positions within the department that created the list. Applicants who do not return the consent form are taken not to consent unless the department contacts them prior to forwarding their application to another agency. See Appendix A for a sample eligibility letter.

The departments that created the eligibility list (the owner department) may release the job application (claim for position, resume and other supporting documents) of the highest ranked consenting applicant to the department using the eligibility list (receiving department). The selection panel report, referee reports and appointment approval should not be released. The receiving department should only release the eligible applicant's documents to staff within the department who are involved in the recruitment process for the position.

#### **2-8.4.6 Assessment and appointment by another department**

The receiving department may select from among the persons who are on an eligibility list, and available for appointment, the person with the greatest merit according to the order of merit in the list. Some time may have lapsed since the creation of the eligibility list. It is therefore recommended that the receiving department undertake a further interview and discussion with the eligible applicant and conduct their own referee checks when considering whether to recommend the applicant.

The receiving department head then has discretion to approve the recommendation. After approval the receiving department is responsible for completing the required appointment processes and informing the owner department, so the eligibility list can be updated.

If the highest ranked eligible applicant is not recommended, no further applicant on the list may be assessed.

If the highest ranked eligible applicant is not available for appointment, the department may consider the suitability of the next highest ranked eligible applicant.

## **2-9 Using recruitment service providers**

Some departments may wish to contract private recruitment consultants. Agencies must seek approval from the Public Service Commissioner to use executive search hire or recruitment companies to manage any recruitment

activity C2010-18 Staffing Freeze. When considering seeking such approval, agencies should have regard to Government policies on efficient corporate services and avoiding unnecessary spending on consultancies.

In filling vacancies, department heads are legally responsible for choosing the person with the greatest merit from among applicants. That responsibility applies when using recruitment service providers. Department heads also remain responsible for compliance with Government policies on equity, equal employment opportunity for target groups, and cultural diversity.

### **2-9.1 Issues in using recruitment service providers**

Some of the matters which might be considered in deciding whether to engage recruitment service providers are outlined below

- Departments need to balance the costs of the recruitment against the value that the department can gain or lose as a result of a successful or unsuccessful outcome
- Whether the standard recruitment process has already failed to attract any applicants, or any suitable applicants
- Recruitment is a competitive market and departments can be selective if they choose to use service providers.
- This market includes high profile sales organisations, professional and expensive international firms and boutique specialists knowledgeable in providing high value to a particular industry.
- The use of recruitment service providers may be appropriate in exceptional circumstances, such as for positions critical to the department, or those requiring specialised or scarce knowledge and skills.
- An advertised vacancy that is expected to result in a large volume of applications or enquiries may justify using service providers to undertake preliminary screening if there are demonstrable gains in cost effectiveness.

- When information and telecommunications technology are employed in the recruitment process, departments must ensure that potential applicants lacking the technology are not excluded from access.
- Recruitment service providers must be fully briefed on the selection criteria needed for the position. Determining these selection criteria requires the special knowledge of the department's representatives in collaboration with internal or external recruitment specialists.
- Departments must ensure that service providers are fully briefed on Government policies on merit, equality of opportunity, and cultural diversity.
- The responsibilities of the department and of the service providers must be clearly defined. If recruitment service providers are engaged they must be contractually bound to meet Government requirements, and departments must carefully monitor compliance.

## 2-10 Recruitment advertising

### 2-10.1 .1 Advertising guidelines

M2012-12 Government Advertising Reform and the NSW Government Advertising Guidelines.

Agencies should use these guidelines in conjunction with recruitment policies in this chapter and current Department of Premier and Cabinet Circulars and Premier's Memoranda.

### 2-10.2 Advertising on the Government's recruitment website

Vacancies must be advertised on the Government's recruitment website ([jobs.nsw](http://jobs.nsw)). See "2-8.1 Vacancies must be advertised" for details.

Advertising in other publications within budget constraints encourages a diverse, wide pool of applicants for selection. See "2-10.3 Advertising in other media" for further information about current arrangements.

Advertisements should be published on [jobs.nsw](http://jobs.nsw) prior to appearing in any other publication.

### 2-10.3 Advertising in other media

- C2010-18 Staffing Freeze describes restrictions to advertising jobs in other media.

### 2-10.4 Seeking applicants with a disability

There are numerous services that promote employment for people with disabilities. See the Department of Premier and Cabinet website for further information: [www.eeo.nsw.gov.au/people\\_with\\_a\\_disability/employment\\_services](http://www.eeo.nsw.gov.au/people_with_a_disability/employment_services)

Community radio stations such as 2RPH and 2SER will advertise vacancies for people with a disability.

### 2-10.5 Sources of information

#### 2-10.5.1 Public Service Commission

The Public Service Commission provides advice about recruitment and redeployment policies and the NSW government e-Recruitment system

#### 2-10.5.2 Department of Services

Strategic Communications and Government Advertising can provide advice about the NSW Government Advertising Guidelines.

### 2-10.6 Format and content of advertisements

#### 2-10.6.1 Advertisement fields on jobs.nsw

Agencies can access user guidelines on the [jobs.nsw](http://jobs.nsw) agency website for information about the mandatory and non mandatory fields in job advertisements and how to enter the information.

Information about the content of key advertisement fields are detailed below.

#### 2-10.6.1a Agency role statement

Describes the principal role of the agency, not the Division or Section.

#### 2-10.6.1b Job title, position number and salary

The title, position number and salary range of the position should be included in the advertisement, for example:

Recruitment Clerk, position number 00/106. Salary \$YY,YYY – \$ZZ,ZZZ).

Advertisements for all positions below SES level should show a salary range so the job search functionality function works efficiently.

#### 2-10.6.1c Position description/job role

Should be consistent with the position description.

#### 2-10.6.1d Term of employment

If the vacancy is for a limited duration, the advertisement should indicate that the position offers only temporary employment and the employing section under the relevant act.

#### 2-10.6.1e Information and enquiries

The advertisement must include the name and contact details of a person willing and able to provide detailed information on the job, the context and the workplace; to advise callers and to answer questions helpfully and patiently. The nominated contact officer may be the convener of the panel. It must be ascertained that the person nominated will generally be on duty when the advertisement appears.

#### 2-10.6.1f Receiving applications

Applicants may lodge applications either online at [jobs.nsw](http://jobs.nsw) via email or a postal address provided in the information package by the agency.

### 2-10.6.1g Closing date for applications

The closing date should be at least the Friday two weeks after the day of actual publication. When setting a closing date, consider the access of *all* prospective applicants to the advertisement including those in country areas, members of disadvantaged groups, part time officers and, when appropriate, interstate and overseas applicants. In such cases an extended closing date is appropriate.

In exceptional circumstances, such as a priority position vacant in a small department, the minimum closing date for applications may be the Friday in the week following the date the vacancy goes live on *jobs.nsw*. When appropriate, advertisements may appear in the press before they appear on *jobs.nsw*, using the closing date for applications appearing on *jobs.nsw*.

Strategic Communications and Government Advertising and Information should be given advance notice if a closing date of less than two weeks is required.

### 2-10.6.1h Duties of the position

The duties of the position appearing in the advertisement should be based on a position description. The advertisement should cover the current duties of the position in the form of a general, abbreviated statement. If the position description does not reflect the current duties of the position then the position description should be revised and, if necessary, the position re-evaluated.

### 2-10.6.1i Selection criteria

- ["2-10.7 Selection criteria"](#)

### 2-10.6.2 Online advertising media

See the [NSW Government Advertising Guidelines](#) for online advertisement templates.

### 2-10.6.3 Anti-Discrimination Act 1977 exemptions and authorisations

#### 2-10.6.3a Authorised occupational qualifications

The [Anti-Discrimination Act 1977](#) requires equality of opportunity in employment but recognises people of a particular race, sex, marital status or age may

be essential to the effective performance of duties.

The *Anti-Discrimination Act 1977* provides that in some jobs a person's race ([section 14](#)), sex ([section 31](#)), marital status ([section 46](#)) or age ([section 49](#)) is a genuine occupational qualification and such employment is therefore exempted from the general provisions of the *Act*. In cases when such a position is advertised, a small footnote should be included such as:

In this position, an applicant's ..... is a genuine occupational qualification and is authorised by section ..... of the *Anti-Discrimination Act 1977*.

#### Section 126

A department or authority may establish a program to target recruitment to people from a particular group covered by the *Anti-Discrimination Act 1977*. In these circumstances an exemption from the *Act* would be obtained from the Minister administering the *Act* (section 126). In this case a footnote would need to be attached to the advertisement stating:

This position is targeted for employment of a ..... in accordance with the department's.....strategy/program which has been granted an exemption from the provisions of the *Anti-Discrimination Act 1977* by the Attorney General.

#### Section 126A

A department or authority may establish a special needs program to provide an opportunity to employ people from a group covered by the *Anti-Discrimination Act 1977*. In these circumstances the Minister administering the *Act* is required to exempt the program as a special needs program (section 126A). In this case a footnote would need to be attached to the advertisement stating:

This position is identified/targeted for employment of a.....in accordance with the department's special needs program for .....people and is authorised by the Attorney-General pursuant to section 126A of the *Anti-Discrimination Act 1977*.

#### Part 9A Section 122J

A department or authority may provide strategies in its Equal Employment Opportunity Management Plan for targeting employment in a range of positions to members of an EEO group as part of its EEO program. In these circumstances exemption from the provisions of the *Anti-Discrimination Act 1977* is provided by Section 122K of Part 9A. In this case a footnote would need to be attached to the advertisement stating:

This position is targeted to employment of a..... and is authorised by the department's EEO Management Plan in accordance with Part 9A of the *Anti-Discrimination Act 1977*.

## 2-10.7 Selection criteria

### 2-10.7.1 Removal of common selection criteria

See [C2008-02](#) Removal of Common Selection Criteria for information about the removal of the requirement to include common selection criteria in all Public Sector vacancies.

If any of the four core public sector principles (cultural diversity, equal employment opportunity (EEO), ethical practice or occupational health and safety (OH&S)) are a key part of a position's role, they should form part of the (maximum 8) selection criteria.

### 2-10.7.2 Description of selection criteria

Selection criteria describe those specific capabilities (knowledge, skills and abilities) needed to do the job. See the [Merit Selection Guide for NSW](#) public sector panels – picking the best person for the job for more information about developing selection criteria.

Selection criteria should be listed in priority order and must be limited to eight criteria. All criteria should be written in plain English. Avoid using jargon, particularly terms that would be unfamiliar to applicants who have not worked in the Public Service.

Selection criteria are displayed in *jobs.nsw*. It is important that agencies complement selection criteria with a comprehensive information package (see "[2-12.2 Information packages](#)").

### **2-10.7.3 Requirement for educational, trade and professional qualifications**

Qualifications should be required only if they are essential to effective performance in the position.

Nationally accredited competencies are an equitable way of ensuring that there is evidence for meeting the key selection criteria.

Some qualifications are required by the law that regulates the profession: for example, the practice of medicine, nursing, law or surveying. In some cases, such as medicine, both registration and the appropriate degree are a legal requirement. In other cases, the requirement becomes legal by the operation of an industrial instrument. These must be included as selection criteria in the advertisement.

Other than this, criteria should focus on capability that you are seeking, rather than a specific qualification that might be one way of demonstrating that capability.

See also "[2-13.13 Qualifications](#)"

### **2-10.7.4 Knowledge and experience**

Departments should consider a wide variety of evidence of knowledge and experience in assessing applicants. For example, experience in voluntary or community groups, raising a family, coaching sports teams all provide evidence of generic knowledge, experience and skills relevant to paid employment.

Departments need to look beyond the attributes of the present or previous incumbent in specifying the capabilities (knowledge skills and abilities) needed as selection criteria for a position. This will ensure consideration of a wider range of applicants as suitable and prevent bias towards an acting incumbent.

## **2-11 Employment and training initiatives**

### **2-11.1 Policy statement**

All departments should consider recruitment options that combine paid work and training as a workforce planning strategy for developing essential skills and attracting talented employees to the NSW public sector.

### **2-11.2 Apprenticeships and Traineeships**

#### **2-11.2.1 Overview**

Apprenticeships and traineeships combine structured training with work that can be full-time, part-time or school based. They lead to a nationally recognised qualification and are available to anyone of working age, including young people who are new or recent entrants to the workforce, people re-entering the workforce or changing careers, and existing workers. Apprenticeships generally align with traditional trades and have a nominal term of 3 or 4 years, including 2-3 years of training. Traineeships from Certificate II to Diploma levels are available for wide ranging occupations and generally range from 6 months to 3 years. Progression can be fast tracked, depending on the ability of the apprentice/trainee, the scheduling of formal training and specific job requirements.

Apprenticeship and traineeship programs are oversighted by Commonwealth and State governments. The term 'Australian Apprenticeships' is used at a national level to encompass all apprentices and trainees. Australian Apprenticeship Centres (AAC) are contracted by the Australian Government to provide assistance to employers, apprentices/trainees and training providers. Key steps for employers in the establishment of an apprenticeship or traineeship include selecting an AAC, recruiting the apprentice or trainee (or identifying existing employees), choosing a training provider, and working with the AAC to develop a training contract and plan. Both levels of government provide different types of incentive funding to employers. National **funding** is available to statutory

authorities but not departments. State funding is available for apprentices and new entrant trainees but not existing worker trainees (phone 13 28 11).

Further information: A Guide to the Employment of Apprentices and Trainees in the NSW Public Sector. Australian Government [Australian Apprenticeships](#) telephone 13 38 73 (AAC). NSW Department of Education & Training [State Training Services](#) telephone 13 28 11.

#### **2-11.2.2 Employment and recruitment**

Wages and conditions for apprentices and trainees are provided in accordance with the provisions of the relevant award or other appropriate industrial instrument. The Crown Employees (Public Service Training Wage) Award 2008 provides rates of pay and some conditions of employment for trainees (including part time and school-based trainees) in departments; see [C2011-12](#) Variation to Crown Employees (Public Service Training Wage) Award 2008. All other conditions of employment are as per the Crown Employees (Public Service Conditions of Employment) Award

A range of employment pathways is available for apprentices and trainees:

- Recruited on a permanent basis, pending successful completion of the traineeship or apprenticeship, at which time the employee would be appointed to an appropriate permanent position.
- Recruited on a temporary basis for the period of the apprenticeship or traineeship, at which time the employee may be considered for further temporary employment and should be encouraged to apply for permanent positions. Apprentices/trainees in departments may be employed under PSEMA s27 and after two years employment may be eligible for permanent appointment under PSEMA s31.
- Employed by two or more public sector agencies, in accordance with cross-agency employment provisions in PSEMA s100, for instances where a single agency cannot employ an apprentice/trainee for the full term of

the training contract. The agencies concerned agree on arrangements under which the employment and training responsibilities for the period are to be shared.

- Employed by a group training organisation, where agencies cannot provide the full range of training, supervisory or ongoing employment opportunities. The GTO is the legal employer responsible for recruitment, wages etc and the department where the apprentice/trainee works is a 'host' employer. Trainees and apprentices employed by a GTO may be encouraged to apply for public sector positions at the successful conclusion of their training contract.
- School based pathway, where public sector agencies employ senior school students who are undertaking school-based apprenticeships or traineeships part-time. Students generally work one day per week during term and full-time during part of the holidays.

Recruitment strategies can include the following:

- advertise on [jobs.nsw](http://jobs.nsw) or on agency websites
- advertise in local and metropolitan newspapers
- use a recruitment service
- use a group training organisation.

Public sector agencies should use merit selection in recruitment processes and target identified EEO groups. They should maximise opportunities for young people whenever feasible to improve their under representation across the public sector.

### **2-11.2.3 Cadetships, Internships and Graduate Trainee Programs**

These may be agency or sector wide programs, involving recruitment either to base level professional occupations or above entry level clerical and administrative positions.

Permanent appointment is available for disadvantaged groups under PSEMA Regulation 6 on successful completion of the training period.

## **2-12 Handling enquiries and applications**

### **2-12.1 Role and responsibilities of the contact person**

The role of the contact person named in the vacancy advertisement is to provide prospective applicants for the position honestly and objectively with as much information and detail as they seek about the job, the workplace environment, working conditions and the department.

It is in the department's interest that potential applicants be as fully informed as they reasonably can be about all aspects of the position. Therefore the contact person should be knowledgeable about the position and the competencies and other attributes required of the successful applicant.

#### **2-12.1.1 Choosing the contact person**

The contact person should be an appropriately senior employee and preferably the convener of the selection panel. A person who is to shortly vacate or who has recently vacated the position may not be the best choice. It should **not be** the person who is leaving the job, a person currently acting in the position or a potential applicant.

The contact person must be readily available to answer enquiries during normal working hours. An alternative contact person should be nominated if, during the period of lodgement of applications, the principal contact officer may be absent for any lengthy period either on duty or on leave. E-mailed enquiries should be dealt with fairly in the same way as telephoned enquiries.

#### **2-12.1.2 Special conditions or needs**

It is essential that the contact person be receptive to enquiries from all sections of the community. Applicants who prefer to enquire in person should be encouraged to make an appointment to visit the workplace and meet the contact person.

Prospective applicants should be made aware at this stage of any special conditions of service relating to the position such as country travel or overtime. Care should be taken not to indicate any guarantee of overtime being available.

The contact person should ascertain any special needs of prospective applicants such as wheelchair access, provision of translation services, including signing for people with hearing impairment.

### **2-12.2 Information packages**

The convener of the panel should organise a suitable information package. The information package provides an opportunity to attract job seekers to both the organisation and the specific role and should include information about both, including:

- a copy of the advertisement
- details of the selection criteria which contain the specific capabilities (knowledge, skills and abilities) needed to do the job
- a position description or current statement of duties that is easy to read and clearly explains what the position holder does
- a copy of the relevant sections of the agreement or award when the position is advertised with qualifications in accordance with an agreement or award
- clear information about public sector recruitment processes, including selection criteria and selection methods
- details about the Government's principles of cultural diversity, equal employment opportunity (EEO), ethical practice and occupational health and safety (OH&S)
- details of the current context of the branch where the position is located: departmental structure; positions, classifications and grades, reporting lines, objectives and tactics, budget, and the branch's place and role in the department

- some information about the department including, if relevant, annual reports, corporate plans or organisational charts, codes of conduct, policies on cultural diversity, EEO, OH&S, flexible work practices, recent publications, customer service charter
- any other information the convener sees as integral to the requirements of the position.

The information package should be made available on jobs.nsw as well as in hard copy (ie. by mail). Procedures should be in place to provide material in alternative format for people with a visual impairment.

### 2-12.3 Processing applications

Projecting a courteous and professional image of the department requires the following procedures for applications:

#### 2-12.3.1 Acknowledging and date stamping

The date of receipt should be recorded on each hard copy application and an immediate acknowledgment sent to the applicant.

#### 2-12.3.2 Recording applications received

The contact person keeps a list of all applications received and sees that a copy is kept with the applications at all times.

#### 2-12.3.3 Conveners have the discretion to accept late applications, but only before shortlisting starts

Late applications that are not accepted should be marked accordingly.

#### 2-12.3.4 Confidentiality and security of applications

Strict confidentiality must be observed during recruitment. Applications must be opened and processed only by appropriate recruitment employees. The person responsible for receiving the applications must ensure they are stored in a secure place and kept confidential. Applications must only be made available to selection panel members.

## 2-13 Roles and responsibilities of selection panels

### 2-13.1 Policy statement

The role of a selection panel (also known as a selection committee) is to assess the relative merit of the applicants for a vacant position and to advise the department head of the applicant judged to have the greatest merit.

The members of a selection committee must be knowledgeable, experienced and well trained in employee selection. They must at all times be independent, thorough, conscientious, fair and professional in exercising their responsibilities. Departments should support selection committees with adequate resources for their task.

The department head is legally responsible for determining the applicant with the greatest merit and does not have to accept a selection committee's recommendation.

There need not be a selection committee if the department head so determines.

### 2-13.2 Sources of authority

- Public Sector Employment and Management Act 2002
- Public Sector Employment and Management Regulation 2009, Clause 5
- Department of Premier and Cabinet, Model Code of Conduct for NSW public agencies – Policy and Guidelines, May 1997

### 2-13.3 Composition of panel

#### 2-13.3.1 Number of members

Selection panels must have at least two people. Depending on the nature of the recruitment, additional people may be included where appropriate.

#### 2-13.3.2 Attributes of selection panel

Selection panels must at all times act, and be seen to act, ethically and independently in exercising their duties.

See the [Merit Selection Guide](#) for NSW Public Sector Panels: [Picking the Best Person](#) for the job for guidance on panel composition and responsibilities. Selection panels (whether two or more people) must include the following:

- one convener who leads the selection panel
- one male and one female, other than in exceptional circumstances. Panels should normally be gender balanced, particularly if:
  - there are likely to be both male and female applicants for the position
  - the agency's EEO Management Plan or other workforce planning strategies include attracting more women into its workforce
- one independent member. This person may be from any of the following areas:
  - same agency as the vacancy as long as the person is from a different branch/business unit/part of the agency to the vacancy
  - another public sector agency
  - outside the public sector if the position is specialised. You should inform prospective independents from outside the public sector that they are not usually paid for their attendance (department heads or their delegates may approve the payment of a fee or expenses)
- members who have completed merit selection training (on the first occasion, classroom style training; on subsequent occasions, refresher training) in the previous three years. [Merit Selection Techniques Refresher Training](#)
- This is not essential for independents from outside the public sector as long as the convener briefs them on the public sector merit selection process before they participate in the process, for example by reading NSW Public Sector merit selection guidelines

- at least one member who is thoroughly familiar with the vacant position, its duties, its environment and the skills, knowledge and experience needed to do the job, including expert or technical aspects. This is usually the convener
- as far as possible, all members with a higher grading or salary than that of the vacancy
- as far as possible, a diversity of backgrounds, particularly if the nature of the job or the background of applicants requires an understanding of certain communities (for example, people with disabilities, Aboriginals or Torres Strait Islanders, or people from a non English speaking background).

### 2-13.4 Ethics

Ethics in recruitment and selection comprise impartiality, accountability, competition, openness and integrity.

Departments must ensure that appropriate accountabilities are in place for resolving ethical issues arising from selection panels.

Panel members are to be advised that the merit selection principles and standards include ethical behaviour. Any breach could lead to disciplinary action and may constitute corrupt conduct under the *Independent Commission Against Corruption Act 1988*.

Conveners must, and panel members should, be familiar with the Independent Commission Against Corruption's case study selection, *Best practice, best person: Integrity in public sector recruitment and selection* (May 1999).

These case studies are intended to promote the values the Commission believes should apply to recruitment and selection, namely:

**Impartiality** All stages of the recruitment process must be conducted impartially and objectively.

**Accountability** Those involved in the recruitment process must be accountable for all their decisions and must ensure proper records are kept to support those decisions.

**Competition** The pool of potential applicants must be maximised to the extent practicable and appropriate.

**Openness** The factors impacting on recruitment and selection decisions must be clear to those involved. The process by which decisions are made must be transparent. Confidentiality must be maintained.

**Integrity** Recruitment and selection practices must be carried out in accordance with any guidelines, codes or rules that govern such practices and the behaviour of public officials performing public official duties.

### 2-13.5 Confidentiality

All panel members as well as departmental employees managing and assisting the recruitment program must be aware of and respect the confidentiality of the recruitment and selection process. Members must not jeopardise the integrity of the process by divulging information to anyone outside the selection panel.

### 2-13.6 Conflict of interest

Each selection panel member is required to disclose in a written declaration any professional or personal relationship with any candidate or other panel member, or any conflict of interest, and signify that they will respect the confidentiality of candidates and outcomes.

A panel member who becomes aware that a person with whom they have a relationship or connection is an applicant for the position must advise the convener of the panel immediately, or if the member is the convener, must advise the department head. It may be unavoidable, or even desirable, for a person who has a connection or relationship with an applicant to be the convener or a member of the selection panel, but fairness and transparency demand that the circumstances be declared to the convener or the department head.

The applicant who has the relationship or the connection with the panel member could be either advantaged or disadvantaged as result. It is important that the risk of either outcome is minimised and that the fairness of the outcome remains apparent and open to scrutiny.

If there is any doubt about the fairness of the outcome, the department head should review the panel's procedures and recommendation and, if appropriate, convene a new panel or re advertise the vacancy or both.

Further information and guidance about conflicts of interest and ethical decision making are available in *Model Code of Conduct*.

#### 2-13.6.1 Suspension of the panel

The convener should suspend a selection panel when there is any suggestion of bias, prejudice or conflict of interest. Such cases must be reported in detail immediately to the department head or delegate.

Members must also take individual responsibility for ensuring that selection processes are fair. Any member may seek the suspension of the panel if they believe there has been a conflict of interest, prejudice or unfair process. They should submit a report to the department head or delegate if they believe this has occurred.

### 2-13.7 Training

Selection panel members and conveners should be trained both in the theory and practice of employee selection and in interviewing techniques. All panel members should have undertaken training or refresher training in the previous 3 years. The exception is for independent panel members from outside the public sector, as long as the convener briefs the independent on the NSW public sector merit process before the recruitment commences.

EEO group members should be particularly encouraged to participate on selection panels and receive the required training.



Employees from EEO groups should be nominated to undertake training in employee selection techniques and should be encouraged to participate on selection panels.

## 2-13.8 Responsibilities of the convener

The responsibilities of the convener include: -

- taking care of necessary administrative details
- ensuring fairness and proper procedures in the selection process
- obtaining needed professional advice and expertise for the choice of selection processes to be used
- convening the panel
- ensuring that all panel members have completed classroom-style merit selection training in the previous three years, or if it has been more than three years since this training, completed **refresher training** in the previous three years.
- ensuring that disagreements among panel members are effectively canvassed and if possible resolved
- ascertaining if an eligibility list is to be created
- arranging for shortlisting of the applicants
- arranging selection procedures
- chairing all meetings and interviews and documenting deliberations
- checking references
- obtaining, storing and distributing all reports, test results and findings
- providing post-selection feedback to unsuccessful candidates.

### 2-13.8.1 Ensuring fairness in the selection process

Conveners must ensure that shortlisting, testing, interviews and reference checking are conducted in such a way that there is no bias. This includes making sure that there is no irrelevant or unreasonable questioning or assessment of applicants and that tests applied are

professionally designed and administered to assess the competencies required for the position. Unless expressly relevant to the job, an applicant should not be asked about:

- their partner or marital status
- partner's employment or salary
- dependants, children or child care arrangements
- credit status
- age
- home ownership status
- sexuality or sexual preference
- pregnancy
- racial or ethnic origins
- religion
- political party affiliation
- physical or intellectual impairment
- other irrelevant matters.

The conveners must also ensure that the panel in arriving at a recommendation consider all the available evidence for each candidate, including their written application, test results, interview performance, reference feedback and any other relevant assessment.

Care should be taken to include applicants with overseas qualifications. These can be checked before final recommendation with the Migrant Skills and Qualifications Branch of the Department of Education and Training on 9266 8343. See "2-13.13 Qualifications".

## 2-13.9 Responsibilities of members

The responsibilities of selection panel members include all of the following: -

- examining the written application of each applicant in detail. The applications of applicants who are not short listed should be re-examined; taking notes carefully and conscientiously of salient contents and deficiencies in the application, reports of other selection processes, during each interview, of references and of referee feedback

- taking appropriate action if the process is unfair
- referring to notes to assist in accurately assessing of each applicant's relative merit on the basis of the requirements of the position and the agreed selection criteria
- making an alternative report if in disagreement with the selection panel report
- independent members must ensure that their views are based solely on the evidence and that they are in no way inappropriately influenced by the opinions of the other panel members
- keeping their notes for six months after the selection in case an unsuccessful candidate appeals against the decision and the panel is required to substantiate its recommendation.

## 2-13.10 Shortlisting

**The Smart Recruitment website resource introduces a new approach to shortlisting in the NSW public sector. See [Smart Recruitment](#) for more information.**

### 2-13.10.1 Principles of shortlisting

Each panel member must ensure that no candidate is unfairly excluded from the opportunity for further assessment, and that all recommendations are made on the basis of merit, according to the selection criteria. The purpose of shortlisting applications is to exclude those applicants who, on the basis of their written application:

- do not satisfy the requirements expressed in the advertisement
- show evidence that their capabilities (knowledge, skills, experience and abilities) are not competitive with other applicants
- are ineligible for appointment.

Care should be taken to include:

- suitable applicants with overseas qualifications (these can be checked for acceptability before making a recommendation – see "2-13.13 Qualifications")

- people with a variety of relevant experience other than paid employment, such as voluntary work or experience gained through involvement in trade union activities or community-based work (see “[2-10.7.4 Knowledge and experience](#)”)
- people with disabilities on the basis of their ability to perform the inherent requirements of the position and who may require work-related adjustments to do so.

### 2-13.10.2 Shortlisting procedures

If possible, shortlisting should be undertaken during the week following the closing date for applications.

Shortlisting is a most important step in ensuring all candidates have an equal and fair opportunity for selection. It is important therefore that all members of the selection panel participate in shortlisting. If, in exceptional circumstances, a panel member is unable to attend the shortlisting, all applications should be made available to that member to ensure that all members concur with the outcome of the shortlisting. Shortlisting can also be undertaken by telephone conference.

Only selection panel members may be involved in shortlisting the applications.

Applications should be eliminated from the shortlist in the following order:

- those who do not possess the essential qualifications or experience stated in the advertisement; then if further shortlisting is needed (owing to the volume of applications, for example)
- those whose qualifications and experience are substantially inferior to those of other applicants.

### 2-13.10.3 Procedures after shortlisting

The applications should be sorted into two groups:

- Those shortlisted for further assessment

- Those not shortlisted. The reasons for not shortlisting the applicant should be clearly recorded. This demonstrates that all applicants have been considered and, for applicants from within the Public Service, the reasons will be available if there is an appeal.

Departments may elect to use a shortlisting sheet to assist in the process.

The convener is responsible for:

- preparing a list of the applicants to be called for further assessment with any special instructions concerning each applicant, such as documents or qualifications to be brought so that these can be communicated to the applicant when they are telephoned about their appointment
- organising the schedule for further assessment
- printing the interview schedule for the selection panel
- making arrangements for applicant reception, waiting, testing and interviewing
- managing the opening, content and the close of each interview.

Both groups of applications should then be returned to the officer responsible for maintaining their confidentiality.

Realistic times must be allowed for each procedure proposed.

### 2-13.11 Travelling expenses for applicants interviewed

**In-service applicants** – applicants who are already employed in the NSW public service department, that is, in a Schedule 1 Department of the *PSEM Act 2002* and who are called for an interview by the same or another public service department are regarded as being on duty. If attendance before a selection panel involves travel to the Sydney Metropolitan Area or to a country location, assistance with travelling allowances is to be paid by the department conducting the interview.

**Applicants from outside the service** – If the department wishes to offer assistance with the cost of travel to and from the location where the interviews are to be held, it is recommended that the department specify this and the extent of assistance being offered in the advertisement for the position.

If, for some reason, mention of assistance is not made in the advertisement, the department may offer assistance either when enquiries about the position(s) are being made or when applicants are invited to attend the interview, provided the same type of assistance is offered to all eligible applicants. Under no circumstances is assistance to be offered to some but not all eligible applicants.

Only in exceptional circumstances would people be specifically recruited from overseas, for example, in highly specialised areas when local recruitment action has failed to attract a suitable candidate for a Chief or Senior Executive position. The logistics and costs of interviewing overseas applicants should be decided at the time of advertising. For further information refer to the [SES Guidelines](#).

### 2-13.12 Selection techniques

The *Regulation* encourages selection panels to use a range of processes for selecting the most meritorious candidate consistent with budget constraints. Combining processes can increase the validity of the selection. Over-reliance on the interview alone is discouraged. [The Smart Recruitment website](#) resource describes various selection methods, including their strengths and weaknesses and suitability for different types of recruitment.

### 2-13.13 Qualifications

#### 2-13.13.1 Certified translations of overseas qualifications

Applicants with overseas qualifications are responsible for obtaining certified translations and equivalency of qualifications using any of the services listed below or using private accredited translators:

### 2-13.13.2 Trade qualifications

State Training Services, NSW Department of Education and Communities, ph 13 28 11

### 2-13.13.3 Non trade qualifications

National Office of Overseas Skills Recognition, Commonwealth Department of Education, Employment & Workplace Relations, ph 1300 363 079

Australian Skills Recognition Information, Commonwealth Department of Immigration & Citizenship

Refer to C2007 – 22 Assessment of Overseas Qualifications.

### 2-13.13.4 Verification of qualifications

C2004 – 43 Verification of Professional and/or Academic Qualifications introduced the following steps to minimise the use of false academic qualifications:

- Academic and professional qualifications of successful applicants should in all cases where possible be verified with the issuing institution, either where they are required for a position or where they are a significant determinant in the decision to appoint an applicant. Prospective employers must obtain formal permission from recommended applicants to contact the relevant institutions.
- It is the responsibility of individual employers to maintain an auditable record of any verification of qualifications. Where verification has been conducted by recruitment consultants, the consultants should be obliged under the terms of their engagement to provide the client employer with written evidence that they have undertaken the required checks.
- Letters of appointment or other contractual documentation must contain a statement advising that individuals found to have falsified qualifications will face appropriate disciplinary action which could lead to dismissal.

Departments need to verify qualifications before, or at the time of entry on duty. A recommended applicant should not start work without producing evidence of the qualifications necessary for appointment.

Departments need to determine whether the qualifications held by an applicant for a position is equivalent to the required qualifications.

It may be impossible, in some instances, to obtain proof of qualifications gained in another country or state. Applicants should ideally provide a letter from the authorities in the country or state concerned stating that evidence is not available. However, a statutory declaration stating that qualifications have been gained in another country or state may be accepted when both documentary evidence and a letter to this effect are unavailable.

### 2-13.14 Reference Checks

After the interviews or other assessments, contact the referees of the most competitive applicant(s). A direct supervisor with experience of the employee's work is often the most useful. Such work need not be paid employment. Ideally a preferred applicant's current or recent supervisor would be contacted. Written references that do not specifically consider the selection criteria are not as useful.

You need the consent of the applicant to contact a referee. You can seek the applicant's approval to contact people who may not have been nominated in the first instance.

Prepare structured questions to ask the referees which relate to the selection criteria. As in the interview, behavioural questions are the most effective. Include questions to clarify any areas of concern or confirm information provided by the applicant. The convener (usually) should take accurate notes from the conversation and discuss these with the rest of the panel. In some cases, it may be appropriate that all panel members participate, such as through a conference call. Asking referees to provide written responses is also an option.

Reference checks are best done in writing and signed by the referee. Use of fax and e-mail can expedite this process.

Reference checks can also be used to confirm facts offered by the applicant in the application or interview.

If a member of the selection panel is also a referee provided by an applicant, in the interests of transparency and fairness the applicant should be asked to provide the name of an additional referee.

#### 2-13.14.1 Ensuring privacy and fairness

For privacy reasons, contact should not be made with a current employer or supervisor without the applicant's permission. When referees are contacted they should be asked to answer reasonable questions that are expressly deemed relevant to the job.

### 2-13.15 Selection panel reports

The selection panel report is an assessment of each applicant based on the need to recommend the applicant with greatest merit for appointment to the vacancy. A further report is written on each applicant who proceeds to interview or further assessment. This report provides the necessary comparative information to enable the department head or delegate to make an informed decision.

The selection committee report lists all applicants who were called for interview or further assessment but not recommended for appointment. The information to be recorded should include the applicant's name and comprehensive reasons for non-selection.

#### 2-13.15.1 Confidentiality

The information contained in the report is strictly confidential. The only circumstances under which any information about applicants may be divulged is when appellants in an appeal process need to ascertain the reasons for their non-selection and include these on the Notice of Appeal. Information about other candidates or other details are not to be divulged in this situation.

### 2-13.15.2 Approving the report's contents

Reports are usually written by the convener and must be read and signed by all other selection panel members before being submitted to the department head or delegate. No selection decisions can be made until the reports are signed and under no circumstances should members of the selection panel sign an incomplete or blank report form.

### 2-13.15.3 Report recommending an applicant

A selection panel report should be written on each recommended applicant if there is more than one.

The report must include the following:

- The legal name of the department
- The full title of the position including the title under an award or agreement (such as clerk, grade 3) and any local title (such as Office Manager, Properties Section)
- The salary range (minimum and maximum) at the date of recommendation
- The file reference containing the approval to fill the vacancy
- The position number or code reference when applicable
- The number of applications received
- The number interviewed
- The name of each recommended applicant in order of merit and their department (if relevant)
- The salary to be offered to each recommended appointee and the level on the increment scale when applicable
- Details of any documents sighted prior to or at the interview (such as birth certificate) plus indication of essential documents which have not been sighted (such as essential educational qualifications)
- Specific reasons for the recommendation
- Any special conditions for appointment, such as verification of claimed equivalent educational qualifications

- Statistical information required as part of the Equal Employment Opportunity Management Plan, including composition of the selection panel by sex, non-English speaking background, Aboriginality, disability; whether the vacant position is an identified position as defined by the *Anti-Discrimination Act 1977*.

### 2-13.15.4 Submitting an alternate report

If the selection panel are unable to make a unanimous recommendation, any member of the panel may submit a confidential alternative report (formerly known as a minority report), together with the convener's report, to the department head or delegate.

The alternative report should identify:

- the source of the disagreement with the convener (and, where relevant, other panel members)
- reasons why an alternative applicant exhibited an equal or stronger claim to the position than the applicant(s) recommended by the convener (and, where relevant, other members).

The convener should submit the alternate report with the convener's report. The selection of a candidate for appointment is then based on all the relevant information.

### 2-13.15.5 Responding to an alternative report

The department head or delegate has the following options when given an alternative report:

- accept one of the recommendations;
- direct that the panel reconvenes to discuss recommendations again with a view to reaching a unanimous agreement;
- direct that a completely new selection panel be set up to take all the necessary selection action and make recommendations;
- approve that the position be readvertised; or
- personally interview the applicants.

### 2-13.15.6 Recommending that no selection be made

If the selection panel has considered all candidates and is not prepared to make a recommendation, the convener should write a report indicating the reasons for this decision. The department head or delegate, after considering the report, should decide whether the position should be readvertised. In making this decision the reasons why the selection panel made no recommendation should be considered.

If the position is to be re advertised, the content of the advertisement should be reviewed with regard to the requirements of the position and modified if necessary. The advertisement should indicate whether previous applicants will be reconsidered on the basis of their original application or whether they should be encouraged to submit a further application. The advertisement may also state that previous applicants need not reapply.

### 2-13.15.7 Decision not to proceed with the filling of the vacant position

Following the selection panel process the department head may decide not to fill the vacancy at that time. The convener may then choose either of the following approaches in advising applicants of the outcome of the selection process:

- advise all applicants that the position is not to be filled at that time and give no indication of the success or otherwise of their application
- advise the recommended applicant that the vacant position is not to be filled at that time but that they are the preferred candidate for appointment if and when approval to fill the position is granted.

If an eligibility list has been created the applicants on the list should also be advised at this time that they may be recommended for appointment. As the recommended applicant may have taken up another appointment elsewhere by the time approval is given it is important to retain contact with those on the eligibility list. Continued

contact may avoid the need for further selection processes. Individual applicants should not be advised where they were ranked on the eligibility list.

All other applicants would be advised that their applications were unsuccessful.

### 2-13.16 Unsuccessful applicants

The convener should ensure that letters are promptly sent out to unsuccessful applicants after the successful applicant has been appointed to the vacancy.

It is most important that the convener should offer and be responsible for providing post-selection feedback to unsuccessful applicants.

#### 2-13.16.1 Post-selection feedback

Post-selection feedback must be offered to unsuccessful applicants in the selection process and should be provided to applicants who have not been selected for interview. It should also be encouraged by the convener of a selection committee when an appellant in a promotion appeal needs to ascertain the reasons for not being selected. See the [Merit Selection Guide](#) for NSW Public Sector Panels – [Picking the best person for the job](#) for guidance on providing feedback.

## 2-14 Employment screening for child related work

The Commission for Children and Young People conducts child-related employment screening.

In order to safeguard the welfare of children, paid employees in child-related employment must have a background check under the Working with Children Check before they start work. The requirement is defined in the Working with Children Check Guidelines as "staff in the listed work settings, who must have direct unsupervised contact with children in their jobs must have a background check. The Check is only available for paid child-related employees".

The address of the Commission is:

Commission for Children and Young People  
Level 2, 407 Elizabeth Street  
SURRY HILLS NSW 2010  
Telephone 9286 7220  
Facsimile 9286 7201  
Website: [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au)

## 2-15 Criminal records checks

### 2-15.1 Policy statement

- The Criminal Records Section of the Police Service maintains criminal records that relate to NSW offences. Departments may authorise criminal record checks on candidates when selecting for sensitive positions. Defining 'sensitive' is a matter for the department head but consideration might be given to matters such as the employee's potential access to people's homes or disabled people or employment screening under the [Commission for Children and Young People Act 1998](#).

### 2-15.2 Sources of authority

- [Criminal Records Act 1991](#)
- [Commission for Children and Young People Act 1998](#)

### 2-15.3 Applicability

No criminal record check is to be made on:

- any recommended applicant to whom it is not proposed to offer immediate employment
- those applicants who are immediate school leavers, unless they are working in child related employment, when checks must be carried out.

#### 2-15.3.1 Requesting a criminal records check

Details of the successful applicant(s) should be typed and sent to the Criminal Records Unit of the Police Service by facsimile to 9689 3724. As an option, an Application

for a Criminal Record Check form is available from the Criminal Records Section. Only the following information is necessary:

- surname or family name
- former names (that is, maiden name or names changed by deed poll)
- given name
- date of birth
- place of birth
- position to be filled.

If there is more than one successful applicant to be checked, details should be prepared in alphabetical order.

Each request for information should include the department name, contact name and phone number, and an identifying number or code.

The Criminal Records Section will return by facsimile the list of names with information specifying those on which there are *no recorded convictions*. Those which require further investigation will be identified by a thick black line drawn through the name in question.

When the lists are returned, those names which are cleared may be made an immediate offer of employment.

Information about names not cleared immediately will be retained by the Criminal Records Section and departments must contact the Section regarding arrangements for collection by hand only. This information will be marked confidential and should only be handled by designated senior contact officers.

In some cases, the Criminal Records Section will require clarification of information in order to undertake a check. This may generally be obtained by a telephone call to the successful applicant by the department.

Details of those successful applicants with criminal records should be reviewed by a designated senior officer of the department with a view to offering appointment if possible.

Contact between the department's designated senior officer and the applicant should be personal (visit by officer, telephone call). This is preferable, but if writing contact is necessary, the conviction should not be specifically mentioned because of the risk of disclosure to other parties. Instead it should only indicate that a query has arisen in regard to the application and an offer made to discuss this query.

The applicant's records should be discussed in a personal interview only unless the applicant specifically requests some other form of communication such as telephone discussion.

At the interview, the full details of the record should be read to the applicant and shown to the applicant if requested.

Applicants should be told if there are any similar positions for which their record might not be a barrier, and after what period of time (if any) a further application by the applicant might be reconsidered. When a charge is pending which, if it led to a conviction, would result in refusal of an application, then:

1. whenever possible, the offer should be deferred until the charge is heard; or
2. whenever possible the appointment should proceed (on probation, if possible) subject to appropriate supervision until the charge is heard; or
3. if neither is possible then the department should give preference to the acquitted applicant (over equally qualified applicants) when a subsequent similar vacancy occurs.

Recommendations should be prepared and submitted to the department head for final decision.

### **2-15.3.2 Spent convictions**

The *Criminal Records Act 1991* provides that after a period of time, during which no further convictions are recorded, convictions for most minor offences will be treated as spent. When a conviction becomes spent, the person concerned is not required to disclose any information

concerning the conviction. A question concerning the person's criminal history is taken to refer only to any convictions of the person which are not spent.

A conviction of a court becomes spent after **ten consecutive** crime free years. The crime free period in the case of an order of the Children's Court is **three consecutive years**.

A conviction also becomes spent if the offender discharges, or is released from, a good behaviour bond as determined by the court.

### **2-15.3.3 Convictions not capable of becoming spent**

The following convictions are not capable of becoming spent:

- convictions for which a prison sentence of more than six months has been imposed
- convictions for sexual offences
- convictions against companies and other corporate bodies
- convictions identified by regulations under the *Criminal Records Act 1991* (no offences have been prescribed to date).

### **2-15.3.4 Lawful use of information about spent convictions**

It is lawful to request and use information about convictions that have been spent when considering applications for employment to the following occupations:

- judge
- magistrate
- justice of the peace
- police officer
- prison officer
- teacher or teacher's aide
- provider of child care services
- officers of the Office of the Director of Public Prosecutions.

## **2-15.4 Factors to consider in determining cases**

The main factors to be taken into account in determining individual cases are:

### **2-15.4.1 Nature of offence(s)**

Any decision on employment should have regard to the relationship of the offence(s) to the particular position for which the applicant is being considered.

#### **2-15.4.1a Number of offences**

An accumulation of individual minor offences may be sufficient to warrant rejection. The question to be decided is whether or not the offences establish a pattern of behaviour which renders the applicant unsuitable for employment.

#### **2-15.4.1b Severity of punishments**

The severity of the punishment imposed may be taken into account.

#### **2-15.4.1c Age at which offences are committed**

The age at which offences are committed can be an important factor. Certain offences committed during youth may be viewed in an entirely different light to the same offences committed by a person of mature years.

#### **2-15.4.1d Good behaviour bonds**

If a person under a good behaviour bond or probation for offences of any seriousness applies for Public Service employment, contact may be made with the Department of Corrective Services to ascertain if information is available on their attitude and behaviour. However, this action must not be taken without prior knowledge and approval of the applicant.

#### **2-15.4.1e Mitigating or extenuating circumstances**

Consideration should be given to any mitigating or extenuating circumstances that might be revealed in relation to the offence(s) committed. These might include provocation, effect of alcohol, peer group pressure at the time of the offence and the circumstance in which the offence was committed.

### 2-15.4.1f General character since the offences

This aspect can also have an important bearing in some cases. The following factors may be relevant:

- whether the applicant was or is employed in the Public Service and, if so, reports on their service and departmental recommendation;
- steady employment record; and
- favourable reports by past employers, interviewing officers, or officers of the Department of Juvenile Justice or Department of Corrective Services.

### 2-15.4.2 Fair procedures for the use of criminal records

When charges are pending and a date has been fixed for hearing, or when convictions have appeals pending, it may be possible to employ the candidate on a temporary basis, subject to the nature of the position and the nature of the charge, or else defer the decision about employment until the matter(s) outstanding are resolved by the Court.

A final decision to reject an application (or to take any other adverse action against the person because of their record) should not be made until the person has been given adequate opportunity to discuss the record in order to:

- verify that it relates to them
- check it for accuracy
- provide any details of extenuating circumstances.

Under no circumstances should a candidate's convictions be disclosed to any other person other than a designated senior officer or the departmental head, whether or not the candidate has been approved for employment.

The Privacy Committee recommends the establishment of a review mechanism for the reconsideration of decisions to reject employment on the basis of criminal records. This might take the form of a review committee including the department head, personnel manager, EEO coordinator, union representative and other appropriate senior officers.

Applicants are to be informed of the reason for the decision, as well as the fact that they can request a review of the decision provided that any such request is made in writing within fourteen days of being informed of the decision.

## 2-15.5 Privacy considerations

Prior to the introduction of the *Criminal Records Act 1991* there were no limitations on the use of an individual's criminal record. In response to this, a set of guidelines to protect privacy and confidentiality was developed with the assistance of the Privacy Committee. These guidelines recognise the State's responsibility for the rehabilitation and reform of former offenders and, subject to the considerations that follow, the major factors to be considered are the suitability of the person for the particular job and the adequacy of their performance. They also recognise the individual's right to privacy in respect of convictions. The following are the privacy aspects that must be taken into account in examining all cases:

- Openness – no criminal record checking should be carried out without the subject's knowledge
- Discussion – no adverse decisions should be taken without giving the subject the opportunity for prior discussion
- Review – all adverse decisions should be subject to an appropriate review
- Destruction – departments that obtain details of a person's criminal record should destroy the information after it has been used.

See also. "[5-3.3 Personal information – access and privacy](#)".

### 2-15.5.1 Confidentiality

In order to maintain the strictest confidentiality in the keeping of criminal records the following procedures should be followed by departments:

- only designated senior officers of the department should have access to criminal records information. The fewer people with access to such records the more chance there is of keeping this information confidential
- details of criminal records should under no circumstance be kept on the applicant's personal file. Details of criminal records should be kept separately from normal filing systems under secure arrangements with only limited access from authorised officers
- records must be destroyed within six months after the last action has been taken on them
- under no circumstances should details of criminal records be given to a third party for transmission unless they are securely bound and sealed
- files must be kept secure at all times when not being actioned
- disciplinary action should be undertaken against any officer giving out unauthorised details of criminal records
- criminal record information must not be used for a purpose other than for determining eligibility for appointments to a position identified as sensitive
- every access to a file containing criminal record information should be logged.

## 2-16 Recommending an appointment

### 2-16.1 Sources of authority

- *Public Sector Employment and Management Act 2002*, [sections 16 to 23](#)
- Public Sector Employment and Management Regulation 2009, [clauses 4 and 6](#)
- *Commission for Children and Young People Act 1998*, [Part 7](#)
- *Industrial Relations Act 1996 No 17*, [section 93 \(1\)](#)
- [P1995-59](#), Reemployment of former executive officers who have received compensation for removal from office

- [Managing Excess Employees Policy](#)

## 2-16.2 Status of employees

Employees under the *Public Sector Employment and Management Act 2002* are:

1. officers, that is, those people **appointed** by the department head to fill vacant positions and who, subject to their conduct and service being satisfactory, can apply for promotion and have wider rights of appeal than departmental temporary employees; or
2. departmental temporary employees, that is, those people **employed** in terms of [section 27](#) of the Act by the department head to perform work in a department;
3. term officers, that is, chief executive and senior executive officers appointed or reappointed Subject to [Part 3.1](#) of the Act.

Most Public Service employees are within the first two of these categories.

### 2-16.2.1 Appointment of departmental temporary employees

A person who accepts departmental temporary employment under [section 27](#) of the *Public Sector Employment and Management Act 2002* can only be subsequently appointed to a position in the Public Service if they:

- successfully apply for a position which affords appointment
- meet the special requirements provided in [clause 6](#) of the *Public Sector Employment and Management Regulation 2009* by successfully applying for a suitable position for a designated group, or
- meet the special requirements set out in 2-8.2 Appointment of long term departmental temporary employees.

### 2-16.2.2 Schedule of recommendations

The department must prepare an Instrument of Appointment for approval by the Department Head.

If the appointee is already an officer, section 93 (1) of the *Industrial Relations Act 1996 No 17* requires the decision to be published on the Government's recruitment website, [jobs.nsw](#)

Publication needs to occur within 14 days of the recommended applicant's acceptance of the appointment.

The department provides the appointment details by submitting the appropriate template to [appointments@psc.nsw.gov.au](mailto:appointments@psc.nsw.gov.au)

Further information see the [jobs.nsw](#)

### Personnel administration

The department must ensure full documentation of all the selection panel's work and ensure that information on the recognition of previous service for leave purposes and the portability of leave is correct, including transfers between the Public Service and public authorities.

## 2-16.3 Responsibilities of the department head

The department head or a delegated officer recommends appointment of the person with the greatest merit to the vacant position.

The department head may decide to vary or not approve the recommendation of the selection panel. Such action should be clearly stated on the recruitment file and conveyed to the selection panel members. Feedback needs to be given to all applicants on the success or otherwise of their applications.

## 2-16.4 Service check

A service check is completed for all Public Service applicants who are recommended for appointment. It will usually follow a format listing the position recommended to, the applicant's current department and position, their employment status and a brief comment on their conduct and services.

In addition, people who will have unsupervised access to children will be required to undergo employment screening before appointment in accordance with [2-14 Employment screening for child related work](#).

## 2-16.5 Reemployment of former officers

### 2-16.5.1 Employees who have taken a redundancy package

If an employee who has taken voluntary redundancy is re-employed in a public sector service within the period covered by the separation payment, they are required to refund to the Crown that proportion of the severance payment applying to the period of reemployment.

### 2-16.5.2 Former executive officers who have received compensation from the Statutory and Other Offices Remuneration Tribunal (SOORT)

Section 78(8) *PSEM Act 2002* – The person may not be engaged in the public sector or employed in the service of a State Owned Corporation or a subsidiary of such a State owned corporation during the period (SOORT) so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

This provision applies to all agencies defined under public sector service – see section 3 of the *PSEM Act 2002*.

Re-employment after the specified period is to be in accordance with the guidelines in P95-59.

## 2-16.6 Letter of offer and acceptance

The offer to the approved applicant can be made initially by telephone. However, the offer must be confirmed in writing quoting the salary and any special conditions discussed during the telephone conversation, whether or not the applicant is a public servant or from outside the Service. Letters of offer should be clearly marked 'Personal and Confidential'. Offers to Public Service applicants are to state 'subject to appeals action', if appropriate.

Also include the following statement in all offer letters:



'In accepting this position you agree to support core NSW public sector values of cultural diversity, equity and ethical practice, and a healthy, safe and fair workplace.'

This provides new employees with a short value statement on what underpins their work in the NSW Government. Employees should be given more detailed information about cultural diversity, EEO, ethical practice and OH&S during their induction and at reasonable intervals during their employment.

All successful candidates must accept a written offer of appointment or employment at a specified salary. Such acceptance is to be in writing, prior to reporting for duty. As far as possible, letters of offer and acceptance should be sent electronically to avoid delays. A copy of the letter of offer and notes of any discussions regarding the offer are to be retained on the recruitment file.

#### **2-16.6.1 Non-acceptance**

If the approved applicant refuses to accept, or is unable to meet, all the conditions attached to an offer of appointment, the department head may elect to:

- offer the position to the next person on the eligibility list (if such a list was established)
- access another agency's eligibility list for a position that is substantially the same
- restart recruitment action
- vary the conditions of the offer from appointment to temporary employment for a specified period.

#### **2-16.6.2 Release dates**

Release dates should be agreed as amicably as possible between the recruiting department and the current employer, bearing in mind the importance of prompt filling of vacancies.

If the current employer is a department, the period of notice should not exceed 21 days, except in exceptional circumstances and with the agreement of the recruiting department head.

Periods of notice for employers outside the Public Service can vary considerably and may be regulated by industrial instruments or common practice. One to three months is not uncommon for senior positions and in some occupations.

### **2-16.7 Retaining documentation**

#### **2-16.7.1 Successful applicants**

The application forms for successful applicants should be retained as follows:

#### **2-16.7.2 Public Service applicants**

For successful applicants from within the department, the original application should be retained with the employee file. For successful applicants from other departments, the original applications should be placed on employee files obtained from the relevant departments and a copy retained on the recruitment file.

#### **2-16.7.3 External applicants**

A copy of the successful applicant's application form, or list of successful applicants if more than one was appointed, should be placed on the recruitment file. The original form is retained with the entry on duty advice on the new officer's employee file.

#### **2-16.7.3a Unsuccessful applicants**

The application forms of unsuccessful applicants are to be retained for 12 months until any appeal is finalised. They should be stored in a secure area to ensure their confidentiality during this period.

Upon request, the original application form may be returned to an unsuccessful applicant from outside the Service.

See also 5-3.3 Personal Information – access and privacy.

#### **2-16.7.4 Return of documentation**

If any applicant has provided the selection panel with documentary evidence of qualifications or experience, or any other material in applying for the position, these documents should be returned unless the applicant has indicated otherwise.

### **2-16.8 Commencing rates of pay**

The pay rate for a recommended candidate must be determined before making the offer for appointment. Principles of pay equity must be observed and the pay rate set according to the requirements of the position. There are several options available for consideration.

#### **2-16.8.1 Appointees joining the Public Service**

Pay rates for appointees joining the Public Service may vary in the following ways:

- at the minimum rate for the position
- above the minimum rate for the position if the higher rate is authorised by an agreement, determination or award
- at any existing salary point within the salary range for the position, having regard to:
  - the applicant's skills, experience and qualifications;
  - the rate required to attract the applicant; and
  - the remuneration of current employees performing similar work.

Bias on grounds of sex, race, ethnicity or disability in setting the rate must be avoided.

#### **2-16.8.2 Current Public Service appointees**

When an appointee who is already an officer of the Public Service has been transferred or promoted to a different salary scale, the pay rate may be determined according to the following conditions. If the officer's present rate coincides with a step on the new scale and:

- the officer has been on that rate for less than 12 months, the officer will transfer with commencing salary at that step on the new scale (no change) and retain the existing incremental date
- the officer has been on that rate for more than 12 months, the officer will transfer with commencing salary at the next step on the new scale with the incremental date changing to the date of appointment to the new position.

If the officer's present salary rate does not coincide with a step on the new scale, the officer's commencing salary on the new scale will be that step immediately above their present salary rate. The officer's incremental date will change to the date of appointment to the new position.

## 2-16.9 Conditions and procedures before entry on duty

These conditions should be met by people joining the Public Service, before starting duty.

### 2-16.9.1 Proof of name and age

The full name and age of all people should be established by the production of a birth certificate or certified copy or current Australian passport.

Alternative proof of name and age may be accepted, if the department head is satisfied that it is the best possible evidence obtainable in the circumstances, and if a statutory declaration is provided as to the claimed date of birth and reasons for non-availability of a birth certificate or current Australian passport.

In circumstances in which no other proof of name and age is available, a statutory declaration alone may be accepted.

The following documents may also be regarded as acceptable alternative proof:

- certificate of baptism or other evidence of similar religious ceremony
- certificate of an entry in religious records, such as family register, parish register

- naturalisation certificate – individual or parental
- foreign passport.

When an applicant submits documents requiring translation, departments should forward these to the Language Services Division of the Community Relations Commission, telephone 1300 651 500.

When an applicant's stated names differ from those appearing on the birth certificate, or other document produced, the department should obtain proof that the person to be appointed is identical with the person referred to on the document in question. This proof may be in the form of a marriage certificate, statutory declaration or deed poll.

### 2-16.9.2 Education, trade and professional qualifications

When post-secondary qualifications are necessary for appointment to a position, this requirement is to be clearly stated in the advertisement. Academic and professional qualifications of successful candidates should in all cases where possible be verified with the issuing institution, either where they are required for a position or where they are a significant determinant in the decision to appoint an applicant. Prospective employers must obtain formal permission from recommended applicants to contact the relevant institutions.

Under no circumstances should a person be permitted to enter on duty without having produced evidence of the qualifications necessary for appointment.

### 2-16.9.3 Citizenship status

A person is eligible to be appointed to a permanent position only if they are:

- an Australian citizen
- a permanent Australian resident.

People who are not Australian citizens or permanent residents are only eligible for appointment to temporary vacancies. The Public Service Commissioner may exempt a person from the requirement for citizenship or permanent residency where it is considered appropriate. No general

exemption from the requirement has been granted and generally any request for an exemption should be limited to areas where there are identified shortages. Exemptions are generally limited to senior executive service positions where employment is for a finite term – any exemption will not exceed the person's temporary employment visa. People who claim to possess Australian citizenship should produce their birth certificate, current Australian passport, certificate of naturalisation or other relevant documentation.

New Zealand citizens who enter Australia from New Zealand are required to have passports. On arrival in Australia, most New Zealand citizens are automatically granted a Special Category Visa (SCV) that allows them to remain and work in Australia indefinitely. New Zealand citizens who have been granted an SCV may be appointed to permanent positions in the NSW public sector. All other people entering from New Zealand require passports, visa and entry permits as do entering from all other countries.

Recruiting officers should require documentary proof of either Australian citizenship or permission to reside permanently in Australia **before an offer of employment is made**. Temporary residents of Australia may only be employed in certain circumstances and are ineligible for appointment as officers.

People who enter Australia, including those covered in the previous paragraph, must possess passport documents. At the point of entry, namely the airport or sea terminal, Immigration officials endorse the person's passport in one of the following ways:

1. "Permitted on ..... to enter Australia" OR "Permitted to enter and remain for residence"
2. "Permitted to enter Australia ..... to remain for ..... until ....."

The endorsement in (i) confers **permanent** resident status. One of these stamps is placed on the passports of people holding Migrant Visas, Return Endorsements, Return

Authorities, Migrant Re-entry Visas or Returning Migrant Visas. It permits the holder to enter for residence and remain as a permanent resident.

The endorsement in (ii) confers **temporary** entry status. One of these stamps is placed on the passports of people holding Visitors Visas and Temporary Residence Visas. It permits the holder to enter for a definite specified period.

Only people who are **permanent residents** satisfy the citizenship requirements for appointment. They may, of course, also be employed under section 27 of the *PSEM Act 2002*.

People with temporary entry permits not marked 'EMPLOYMENT PROHIBITED' may be employed in certain circumstances. People with authorisation to work from the Commonwealth Department of Immigration and Multicultural Affairs fit into this category. In all other cases, the Commonwealth Department of Immigration and Multicultural Affairs (Sponsored Entry Section) should be contacted to find out if employment is permitted.

If passport documents do not appear to be in order, care must be taken. Terminology such as "illegal immigrant" must not be used. The person is to be informed that the documents appear to require endorsement by the Commonwealth authorities.

If an officer who is not an Australian citizen ceases to satisfy the permanent residence requirement, the question of reemployment under section 27 of the *PSEM Act 2002* should be considered in each individual case, as loss of this status may mean that the person is not permitted to remain in Australia.

The person will be dismissed under section 54(2) of the *PSEM Act 2002*, if citizenship or residency requirements are not met.

#### **2-16.9.4 Fares and removal expenses for appointees**

Allowances prescribed by the Regulation and the Crown Employees (Transferred Employees Compensation) Award are not generally paid to new appointees to the Public Service. But if the department head approves, an

advertisement for a position may state that assistance with fares and removal expenses will be considered. Such assistance should not exceed allowances payable to public servants under headings in this subsection in the Regulation or the Award.

If notice that reimbursement of fares and removal expenses will be offered or considered is inadvertently omitted from the press advertisement, the department head may elect to offer these benefits to the prospective appointee.

When assistance with fares and removal expenses is offered, appointees may be granted the following concessions:

##### **2-16.9.4a Payment of fares**

Appointees and their dependants are to be paid economy class airfares.

##### **2-16.9.4b Removal expenses**

Payment is based on the least expensive of three competitive quotes for removal of furniture and effects, plus insurance up to maximum amount under the Crown Employees (Transferred Employees Compensation) Award 2009 (refer to [C2009-27](#)).

##### **2-16.9.4c Accommodation allowance**

Allowances as prescribed in [C2009-27](#) Crown Employees (Transferred Employees Compensation) Award 2009.

##### **2-16.9.5 Interstate appointees**

An appointee from interstate may be granted concessions if the advertisement for the position specifies that consideration will be given to assistance with fares and removal expenses, subject to the appointee entering into an agreement to serve for a period of twelve months.

These are:

##### **2-16.9.5a Payment of fares**

Appointees may be paid first class rail fares or economy class air fares for themselves and their dependants. When appointees travel by private motor vehicle a car allowance at the specified journey rate is paid plus reasonable

expenses for overnight accommodation (including bed and breakfast) obtained during the course of the journey, subject to the total allowance not exceeding the cost of economy class air fares for themselves and their dependants.

##### **2-16.9.5b Removal expenses**

Same provisions as apply to Public Service applicants.

##### **2-16.9.5c Payment of salary**

Interstate appointees are not paid salary until they enter on duty in the position.

##### **2-16.9.5d Accommodation expenses**

No provision is made for payment of an allowance towards initial accommodation expenses.

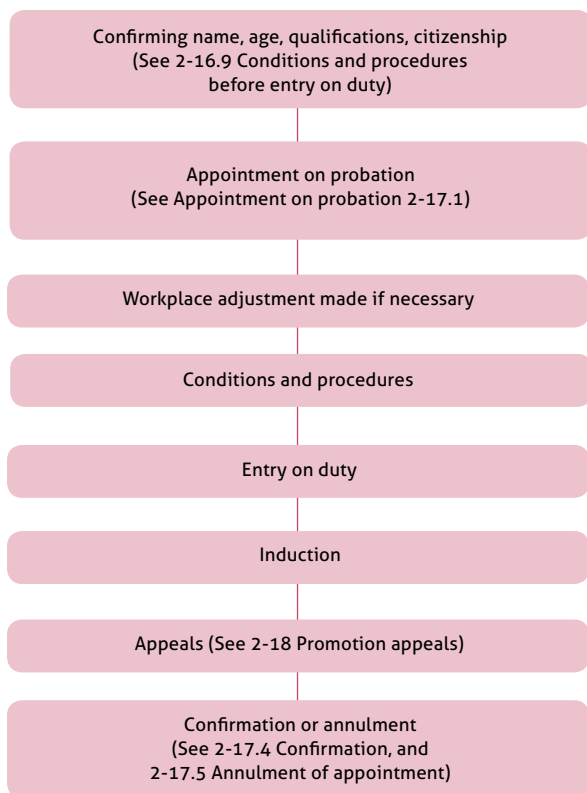
##### **2-16.9.6 Appointees from within the state**

An applicant from within the State (or the ACT) must bear all costs associated with taking up duty in a position. The only exceptions are when:

- it can be established that the proposed appointee falls within the classification of staff in extremely short supply
- the position is of a senior administrative nature with salary greater than maximum clerk, grade 12 and the selection panel considers that this is warranted
- the advertisement for the position specifies that fares for the appointee and approved dependants will be met. In these circumstances, a contribution towards removal expenses can also be made.

## **2-17 Appointment**

The Public Service aims for efficient and uniform appointment procedures. See the chart, Appointment, following, and the sample appointment documents contained in "Appendix 2A: Sample Forms - recruitment, selection and appointment" at the end of this Chapter.



## 2-17.1 Appointment on probation

### 2-17.1.1 Conditions and procedures

Once a person has accepted appointment to a position and a starting date agreed, action should be taken to have the Department Head appoint the person to the vacant position. An Instrument of Appointment should be prepared.

The following action should then be taken after approval:

- advise the officer concerned in writing that the Department Head has approved the appointment on probation (make clear the period of probation); and
- resubmit the file for appropriate action before confirmation of appointment is due.

### 2-17.1.2 Length of probation

An employee is initially appointed to the Public Service on probation for a period of 6 months or such longer period as the department head directs (section 23 of the PSEM Act 2002). An employee need not serve a probationary period if the department head thinks this is appropriate. The period for which an employee is appointed on probation is not to exceed 2 years except with the approval of the Public Service Commissioner. This function has been delegated to Department Heads – [See Manual of Delegations 2012](#). The person should be advised of the period of probation prior to entering on duty.

Decisions on the length of a period of probation should be based on the requirements of the position and should be reasonable.

### 2-17.1.3 Supervisor’s role

The conduct and services of people appointed on probation require review prior to the expiration of the probationary period. The review of services is the responsibility of the supervisor and is an ongoing process, which commences with the induction report. Supervisors should monitor all aspects of the performance of their

employees including standard of work, conduct and sick leave and, when the need arises, provide feedback aimed at improving their overall services.

While at some stage an employee’s conduct and services may not be completely satisfactory but may subsequently reach an acceptable standard, there should be evidence of the maintenance of that standard over a reasonable period before action is taken to recommend confirmation of appointment.

### 2-17.1.4 Obtaining a report on services of an officer on probation

Prior to the expiration of the period of probation – say two months before the confirmation is due – action should be taken to obtain from the supervisor a formal indication of the conduct and services of the officer. This activity may be facilitated by the use of schedules or a simple certification that “conduct and services are satisfactory and confirmation of appointment is recommended”. If confirmation of appointment is not proposed, a report should be submitted with supporting reasons. This report should be shown to the officer concerned, who should sign the report and be permitted to comment.

### 2-17.1.5 Sick leave

When considering the services of an officer on probation, the sick leave record should be reviewed and the following factors considered:

- the total number and duration of absences in the period of review
- number of absences unsupported by medical certificates
- any pattern of absence apparent, for example, prior to or following public holidays
- any other information concerning the officer’s medical condition.

If the sick leave record of an officer is regarded as unsatisfactory, the department head may direct the extension of the probationary period, subject to the provisions of section 23 of the *PSEM Act 2002*, for a further period.

### 2-17.1.6 Officers on unpaid leave during probationary period

When reviewing the conduct and services of an officer during the probationary period, department heads should ensure that there has been sufficient time to permit adequate assessment of the officer's performance in the entire range of duties and responsibilities. If it is considered that a period of unpaid leave prevents such an assessment, extension of the probationary period in terms of section 23 may be directed by the department head.

### 2-17.1.7 Unsatisfactory service of officers during probationary period

It is the responsibility of the supervisor to continuously review the services of an officer and provide feedback. If, after review and periodic guidance, the services of an officer on probation are found to be unsatisfactory, the officer is to be interviewed. During the interview the officer is to be informed of the deficiencies in performance and warned of the consequences should improvement in services not be forthcoming. The interviewer is to ensure that the officer is fully aware of the seriousness of the situation and the possibility of annulment of appointment. Written advice is also to be given to the officer outlining the unsatisfactory nature of service and warning of possible consequences.

### 2-17.1.8 Extension of periods of probation

If an officer's conduct and services remain unsatisfactory at the completion of the period of probation, the department head may approve the extension of that officer's period of probation.

Section 23 (1A) of the *Act* provides for the Department Head to extend a period of probation. Generally there should be only **one** extension of a period of probation and then a decision will be made on whether to continue to employ the person.

When the department head approves the extension of a period of probation, the officer affected should receive written advice of the decision, prior to the completion of the current period of probation. If this extension is the

result of unsatisfactory service, the advice should include a warning of the severity and possible consequences of this decision, that is, annulment of appointment.

If annulment of appointment is being considered, the matter must be treated with the utmost care and seriousness as the consequence of such a decision is the removal of the officer from Public Service employment with a possible right of appeal to the Industrial Relations Commission of NSW.

## 2-17.2 Superannuation

All employees including casuals and temporaries are entitled to compulsory employer superannuation contributions. They are also eligible to join First State Superannuation Scheme or to arrange private superannuation or both.

The First State Superannuation Scheme is administered by the Superannuation Administration Authority and details relating to the operation of the Scheme may be obtained from the advisory service on telephone 9238 5666 in Sydney and elsewhere toll free on 1800 451 112.

## 2-17.3 Employment health assessments

### 2-17.3.1 Legal requirements

Clause 4 of the Public Sector Employment and Management Regulation 2009 provides that:

1. A person may not be appointed to an officer's position before their fitness to carry out the duties of the position has been confirmed by a health assessment.
2. Fitness to carry out duties includes the ability to carry out those duties without endangering the health and safety of the public, or other people employed in the department and of the person concerned.
3. The health assessment is to be in the form considered necessary by the appropriate department head.
4. That form may include (but is not limited to) any one or more of the following:

- a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the duties of the position;
  - a medical examination by a medical practitioner approved by the department head;
  - an examination by a medical practitioner, an optometrist or other appropriately qualified health care professional, approved by the department head, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the duties of the position.
5. The appropriate department head is to give the health care professional providing a health assessment referred to in sub-clause (4) (c) any requested information about the duties of the position concerned that is reasonably required for the purpose of providing the assessment.
  6. This clause does not limit any requirements made by the appropriate department head with respect to health assessments of people employed as temporary employees.

### 2-17.3.2 Forms of employment health assessments

In summary, clause 4 of the *Regulation* provides that employment health assessments relevant to job demands may take various forms such as:

- acceptance of a Health Declaration provided by the recommended applicant, following the interview process, regarding their fitness to carry out the duties of the position in response to the genuine health requirements determined for the position; or
- medical examinations – only in cases of specific job related aspects of health.

### **2-17.3.3 Procedure**

#### **2-17.3.3a Health Declaration**

A Health Declaration is the minimum requirement from the recommended applicant. Should the inherent job requirements and job demands for the position require additional employment health assessment, such as vision screening or a medical examination, an assessment of the recommended applicant should be arranged using an approved health assessment provider.

#### **2-17.3.3b Additional assessment**

In cases for which some form of screening or a medical examination is required, the selected provider is required to forward a recommendation to the prospective employer in regard to a potential employee's health in terms of capacity to perform the duties of the position, rather than a medical diagnosis, within a specified period.

#### **2-17.3.3c Inherent requirements**

The health assessment of the applicant should be carried out with reference only to the person's capacity to carry out the inherent job requirements and job demands of the position.

The inherent job requirements and job demands of a position are fundamental, intrinsic or essential to the position. They must be determined objectively. They include essential job characteristics which have physical, sensory and psychosocial impacts.

#### **2-17.3.3d Adjustment**

If a health assessment determines that an applicant or employee is capable of performing the inherent job requirement and job demands of the position only if an adjustment is made to the way the duty is performed or by way of work related service or facility, the employer must be informed of what adjustments are necessary to allow the person to be able to perform that particular inherent requirement. The assessment should only conclude that the person is not fit for work if it is determined that one or more of the inherent job requirements and job demands cannot be performed and there are no services or facilities

which could be provided to enable the person to perform those requirements without imposing unjustifiable hardship on the employer.

#### **2-17.3.3e Unjustifiable hardship**

If it is possible that services or facilities could be provided which would enable a person to perform the inherent job requirements and job demands, these options should be discussed in the health report. The final decision on whether or not the provision of these services or facilities would cause the employer unjustifiable hardship should be made by the employer who should take into account the possibility legal challenge.

#### **2-17.3.3f Unfavourable assessments**

If the applicant does not meet the inherent job requirements and job demands of the position, even with a work-related adjustment, the provider has an ethical responsibility to inform the applicant of unfavourable aspects of the assessment, at the time of the assessment, and to advise measures for continued optimal health or which might alter the health status towards a future favourable outcome.

If a dissatisfied applicant provides a medical opinion contrary to the assessment of the provider who undertook the employment health assessment, within a specified period, HealthQuest may be asked for a definitive opinion. In cases in which HealthQuest has been the initial provider, the Medical Appeals Panel (Department of Health) will provide this service. This needs to be arranged so that recruitment action is not significantly delayed.

#### **2-17.3.3g Travel requirements for country applicants**

When people located in country centres are required to travel to other centres for screening or a medical examination in connection with a employment health assessment, they should be reimbursed the cost of a first class return rail fare, or if so desired, use their motor vehicle and be paid a vehicle allowance in accordance with the Regulation. If applicable, they may also be reimbursed meal and accommodation expenses incurred, subject

to production of receipts for accommodation costs, in accordance with the conditions and rates approved by the Public Service Commissioner.

#### **2-17.3.3h Confidentiality**

Results of employment health assessments are strictly confidential and should not be disclosed without the consent of the person concerned. The management information (assessment outcome) relating to a person's employment health assessment, in respect of the position applied for, must be given to the officer responsible for completion of recruitment action. Results of the assessment are to be included with appointment papers and should be retained on the employee's employee file.

All employees involved in sighting health assessment information must sign an understanding and agreement about maintaining the confidentiality of health records.

#### **2-17.3.3i Offers of appointment**

An applicant should not be offered a position formally until the results of all employment health assessments are available. It should also be noted that employment health assessments are advisory only. The final decision to appoint (or not appoint) rests with the department head, having considered all aspects of the selection process.

## **2-17.4 Confirmation of appointment**

### **2-17.4.1 Confirmation procedures**

Following the expiration of the period of probation and receipt of a formal indication of satisfactory services and subject to the people concerned meeting all other conditions for confirmation of appointment, departments should take confirmation of appointment action.

The following conditions must have been satisfied and recorded:

- employment health assessment
- satisfactory service including sick leave

- any special requirements, such as completion of training requirements, which must be fulfilled during the probationary period.

An Instrument of Confirmation of Appointment should be prepared for the Department Head. After approval by the Department Head the officer should be advised that his/her appointment has been confirmed.

If a person was appointed to a position on probation by the Governor under the *PSM Act 1988*, the 2002 savings and transitional amendments to the Public Sector Employment and Management Regulation 2009, allows the Department Head to confirm the appointment under the *PSEM Act 2002*.

### 2-17.5 Annulment of appointment

Even if the initial appointment on probation was under the *PSM Act 1988*, any annulments after 9 September 2002, must be done by the Department Head under the *PSEM Act 2002* – see Schedule 4, Clause 6(3).

If the department head decides to annul an officer's appointment under section 23 of the *PSEM Act 2002*, the following procedures should be followed.

#### 2-17.5.1 Inform officer in question

During the probation period, there should be a report into the officer's performance which, in usual circumstances, should proceed with a recommendation for appointment. If the report recommends an annulment, the officer on probation should be given an opportunity to respond. The department should ensure that the officer affected has been given ample opportunity to improve their performance.

The following documentation might assist when considering recommending an annulment of appointment:

- evidence that the officer has been informed of their shortcomings and been guided and given the opportunity to improve
- evidence that the consequences of failure to reach and sustain a satisfactory standard of work/behaviour have been fully explained to the officer

- adverse written reports which the officer has seen and been invited to comment on
- evidence of the content and outcomes of interviews and/or a final written warning.

An officer may have a right of appeal to the Industrial Relations Commission of NSW against the decision of a department head to annul their appointment.

#### 2-17.5.2 Recommendation of annulment

If it is decided that an officer's appointment is to be annulled, documentation should be prepared for approval by the Department Head including an Instrument of Annulment. The documentation should include details of the report on the officer and the matters detailed above.

In determining the last day of duty, an officer should receive a minimum of seven days' notice. The department head must make a decision whether to retain the employee in the workplace or advise him or her to take annual leave until the proposed date of annulment. If it is not possible to give this notice, provision exists for payment of seven days' pay in lieu of notice.

The officer is to be interviewed and informed of the decision. Written notification should also be provided.

The following action should then be taken:

- advise the Superannuation Administration Authority of New South Wales that employment has ceased.

#### 2-17.5.3 Procedures following an appeal being upheld

If the appeal is upheld the department should take immediate action to implement this decision. The officer should be advised quickly of the decision and arrangements made by the department. Departments are invited to consult with the Department of Premier and Cabinet in these cases.

The person would retain the status of an officer on probation, unless the decision clearly indicates to the contrary. The period of probation required following the

upholding of an appeal is generally determined in the decision. Near the end of this period departments should take the normal action in respect of review of service.

If the officer is returned to the Public Service it is the responsibility of the supervisor to ensure that the officer is not subjected to any harassment following the return to duty. The supervisor should offer advice and guidance when necessary.

### 2-17.6 Check list – appointment on probation

This is a general checklist which should be adapted to suit individual circumstances within departments.

#### 2-17.6.1 Before entry on duty

1. Offer of Appointment with probation period specified.
2. Appointment Acceptance.
3. Approval by the department head, or delegate, for the Instrument of appointment and the period of probation.
4. Sighting of certification of necessary documents including:
  - birth certificate
  - proof of change of name
  - evidence of Australian citizenship/permanent resident status
  - Verified educational qualifications. (C2004-43)
5. Confirm approval with start date.

#### 2-17.6.2 Entry on duty

1. Receive acceptance of offer of appointment.
2. Confirm date of actual entry on duty particularly in locations outside head office.
3. Create appointment and employee files.
4. Note register or diary of appointments.
5. Prepare all necessary records including service and leave cards.

6. Note establishment records.
7. Check eligibility for allowance.
8. Advise salaries branch of officer's location, salary and method of payment.
9. Notify the Superannuation Administration Corporation (trading as Pillar Administration) of the particulars of the new appointments.
10. Resubmit file for 2 months before confirmation is due.

### 2-17.6.3 Review of services

1. Request formal indication of conduct and services approximately two months prior to eligibility for confirmation.
2. Confirm that conduct and services and sick leave record are satisfactory.
3. Ensure satisfactory medical report has been received.

### 2-17.6.4 Confirmation of appointment

1. Prepare Instrument of Confirmation of Appointment and submit to department head for approval.
2. Advise officer that appointment has been confirmed.

## 2-18 Appeals

### 2-18.1 Policy statement

The system of appeals in the NSW Public Service aims to provide an independent mechanism of accountability for promotion decisions. The right of an independent, unbiased review of promotion decisions is a basic safeguard in the NSW Public Service against the potential injustices which may arise when essentially subjective evaluations of merit determine promotion.

### 2-18.2 Source of authority

- *Part 7 Chapter 2 Industrial Relations Act 1996*;
- *Part 2 Transport Appeal Boards Act 1980*;
- *Anti-Discrimination Act 1977*.

### 2-18.3 Sources of information

The Industrial Relations Commission of NSW is located at:

Level 1, 47 Bridge Street, Sydney NSW 2000.

Telephone: (02) 9258 0866

Facsimile: (02) 9258 0058

Website: [www.lawlink.nsw.gov.au/irc](http://www.lawlink.nsw.gov.au/irc)

Enquiries can be directed to the Registrar.

### 2-18.4 Management issues

An independent appeals system helps to protect the integrity of the merit system by ensuring that managers are accountable and responsible for selection decisions.

Appeals against promotion decisions are a last resort. If managers ensure that selection processes are fair and seen to be fair and if unsuccessful applicants are encouraged to seek post-selection assistance, the need for appeals should be minimised. Appeal procedures require an appellant to find out the reasons for non-selection. This provides an opportunity for a post-selection discussion. Ideally, post-selection discussion would take place before an appeal is lodged.

#### 2-18.4.1 Benefits of post-selection feedback

The primary purpose of post-selection feedback is to discuss with unsuccessful applicants their written application, interview and further assessment performance and referees' comments; to identify their strengths and weaknesses in relation to the selection criteria; and to provide the reasons for their non-selection. Effective feedback can reduce the number of unnecessary appeals by informing applicants of the reasons for the selection decision. In the past many appeals were lodged simply to discover the reasons for the selection decision. However,

if interviewed applicants are dissatisfied with the reasons discussed for non-selection and wish to exercise their right of appeal they are, of course, entitled to do so.

### 2-18.5 Appeals processes in the Industrial Relations Commission of NSW

#### 2-18.5.1 Public sector promotion and disciplinary appeals

The process for public sector promotional and disciplinary appeals was transferred from the Government & Related Employees Appeal Tribunal to the Industrial Relations Commission of NSW on 1 July 2010.

The President of the Industrial Relations Commission has created the Public Sector Appeal Panel to consider public sector appeals under Part 7 Chapter 2 of the *Industrial Relations Act 1996*.

#### 2-18.5.2 Transport Appeal Boards (TAB)

As of 1 July 2010, the President of the Industrial Relations Commission of NSW constitutes a Transport Appeal Board under Chapter 2 of the *Transport Appeal Boards Act 1980*.

The President of the Industrial Relations Commission has created the Transport Appeal Boards Panel to hear promotion, disciplinary and other appeals from employees of Government transport services.

#### 2-18.5.3 Other appeal mechanisms

In the teaching services there are certain rights of appeal to the Director-General of Education and Communities.

### 2-18.6 How the public sector promotion appeals process operates

The following describes the promotion appeals system operating under Part 7 Chapter 2 of the *Industrial Relations Act 1996* as most employees are covered by its jurisdiction.

#### 2-18.6.1 Coverage

Section 94 of the *Industrial Relations Act 1996* sets out who may appeal to the IRC on the promotions appeal ground.



Employees who meet the essential qualifications required and who have unsuccessfully applied for the vacant position may have a right of appeal to the Commission against the employer's decision to appoint another employee to it.

There are some circumstances in which the right of appeal is excluded. For example, there is no right of appeal if the position carries a maximum salary greater than the maximum salary applicable to a Clerk's position graded Grade 12 under the Crown Employees (Administrative and Clerical Officers – Salaries) Award (or equivalent) or if the person appointed is an outside applicant, i.e. not an 'employee' as defined.

### 2-18.6.2 Grounds of appeal

Appellants may appeal on the ground that they believe they are more entitled to the vacant position. The appeal is decided in relation to the selection criteria for the position. In the Public Service, appeals are decided in relation to section 19 (Merit Appointment) of the *PSEM Act 2002*.

### 2-18.6.3 Exclusions

Section 95 of the *Industrial Relations Act 1996* sets out the circumstances under which public sector employees are not entitled to appeal, including the following.

There is no right to appeal against the following appointments:

- appointments above grade 12 maximum
- appointments to statutory offices.

The following people may not appeal:

- external applicants (people who are not currently NSW public servants), including temporary employees
- non-applicants who do not have reasonable cause.

The following appointment decisions cannot be appealed against:

- external appointments

- appointments that do not involve a promotion or increase in salary for the appellant or the recommended appointee
- the position no longer exists
- the appointment subject to the appeal lapses for any reason.

## 2-18.7 The appeals process

This outline of the promotion appeals process relates to Part 7 Chapter 2 *Industrial Relations Act 1996*. Practice Note 23, Procedures - Public Sector Promotion and Disciplinary Appeals, sets out the appeals process.

### 2-18.7.1 Decision to appoint

A selection panel for the public sector employer (the employer) recommends a job applicant for a position. The employer decides to accept or reject the panel's decision.

If the employer makes a decision to appoint an employee the decision is published on the [jobs.nsw](http://jobs.nsw) website not later than 14 days after the acceptance by the person of the appointment.

### 2-18.7.2 Lodging an appeal

Once notice of an appointment has been published, intending appellants have 21 days to lodge an appeal with the Industrial Relations Commission of NSW, using Form 3 Notice of Appeal - Public Sector Promotion. During this time the appellant must contact the convener of the selection panel to ascertain the reasons for their non-selection and provide details on the Notice of Appeal. They must also supply the names of two referees familiar with their work. Notice of Appeal forms are usually available from the department's human resources branch, as well as the Industrial Relations Commission.

The Notice of Appeal must be lodged in the Industrial Relations Commission Registry at Level 1, 47 Bridge Street, Sydney. It may be lodged personally or by post or fax.

The Registry hours are 9.00am to 4.00pm, Monday to Friday, inclusive. Remember that the Registry closes for business at 4.00pm. If you post your notice, allow time for it to reach the Registry before the deadline. If you fax your notice it must be received before 12:00 midnight on the closing date.

The telephone number for the Registry is (02) 9258 0866 and the fax number is (02) 9258 0058.

### 2-18.7.3 Notice of appeals

After a Notice of Appeal is lodged, the Registrar will send a copy of the Notice to the employer.

A notice of the date and time of the hearing will be sent to the appellant and to the other parties to the appeal. The hearing is usually set for 4-6 weeks after expiry of the 21 day appeal lodgement period.

At the same time an Order is issued requiring the employer to prepare and lodge a written case outlining the selection process and the reasons for the selection decision.

Copies of the written case must be supplied to the Registrar and the employees who are the parties to the appeal by a specific date, usually at least 7 calendar days prior to the hearing.

### 2-18.7.4 Preparing the employer's case

The employer involved must provide a written outline of the selection process and the reasons for the decision.

Usually the human resources branch will coordinate the employer's participation in an appeal. Managers should contact human resources staff for advice on preparing a written submission to the Commission and any other matters on which they need advice regarding appeals.

Under the Order, the department should submit to the IRC:

- a written statement setting out the arguments for reaching the appointment decision
- a statement of duties of the position under appeal
- a copy of any advertisement or circular inviting applications for the position

- copies of the written applications for the position made by the employees who are parties to the appeal. (Other documents submitted by applicants in support of their application, such as theses, professional publications, and the like may, if considered to be impracticable due to their size, be retained. Any party may request to inspect the documents before or at the appeal hearing)
- a statement describing any documents retained by the employer with an undertaking to make these documents available to any party upon request
- copies of documents generated by the selection process leading to the appointment decision. These documents include the selection panel report and the approval of the appointment
- any other documents relied upon to support the appointment decision
- a statement that a copy of the employer's written case has already been given to both the appointee and the appellant and the dates that this was done.

Three copies of the employer's written case should be submitted to the Registrar on or before the required date specified by the Order. Copies of the written case must also be supplied to the employees who are parties to the appeal by this date.

### **2-18.7.5 Submissions by employees**

Employees who are party to the appeal may submit to the Commission at least 3 calendar days prior to the hearing any written material presented to and returned by the selection panel, any material which was not available at the time of application or material which is considered to have since become relevant.

Copies of this material should be given to the other parties to the appeal or be made available for the inspection.

### **2-18.7.6 Hearing the appeal**

All promotion appeals are heard at informal sittings of the Commission unless the Commission Member directs there be a formal sitting.

The appellant, the appointee and a person appointed by the employer (usually a person who took part in the selection process and/or who has responsibility for the work of the position the subject of the appeal) are the only persons entitled to be present at an informal hearing.

Formal hearings, which are rare, are open to the public and the parties may be represented. Such hearings are Court like with witnesses giving evidence on oath and being subject to cross-examination. The following description of a Commission hearing refers to an informal hearing.

### **2-18.7.7 At the hearing**

The procedure for the hearing of a promotional appeal is a matter for the Commission to determine as the presiding officer thinks fit, however, as a general rule the following procedure will be followed:

- The presiding member will briefly outline the procedure to be followed and will formally admit into evidence the Employer's Case and any other additional material filed by the appellant or appointee.
- The person representing the employer (generally, the Convener or a member of the Section Committee) is a resource to the Commission and is not an advocate for any party to the appeal. The Commission will look to that person to clarify any matter of fact that may be subject to dispute that arises during the hearing.
- The appellant will be called to address the Commission as to his/her grounds of appeal and substantiate their claim for having greater merit for appointment to the position. On completion the Commission may ask questions of the appellant.
- The appointee will then be given the opportunity to respond to the appellant's ground of appeal and present his/her case. On completion the Commission may ask questions of the appointee.
- The appellant will then be given the right of reply. On completion the Commission may ask further questions of the appellant.

- The presiding member may then ask questions of or seek clarification from the person representing the employer.
- Where, pursuant to clause 4.3(d) the Commission has nominated or directed that a person with specialised knowledge appear, the Commission may ask questions or seek clarification of that person.
- The appellant or the appointee may be given the opportunity to respond to any new matter raised by the appointee or appellant respectively and will be given an opportunity to respond to any matter put to the Commission by the person representing the employer or, where applicable, of a person with specialised knowledge who has been nominated or directed to appear by the Commission.

### **2-18.7.8 Withdrawal of appeals**

An appeal may be withdrawn in writing at any time prior to the conclusion of the hearing.

If, prior to the hearing, an appellant decides to withdraw, notice of withdrawal must be lodged in writing with the Registrar. This should be done immediately, by fax if possible, to avoid undue inconvenience to the employer, the appointee and the Commission.

If an appellant decides to withdraw the appeal after the hearing has commenced, the Commission Member should be informed and the proceedings will be concluded.

### **2-18.7.9 Lapsing of an appeal**

Practice Note 23 contains a provision that an appeal lapses if the position appealed against no longer exists or if the appointee can no longer take up the duties of the position.

If this occurs the Registry will forward a notice to the appellant along with a copy of the advice from the employer notifying that the appeal has lapsed under the Practice Note.

### **2-18.7.10 Decision of the Commission**

The Commission usually reaches its decision on the day of the hearing. The parties may contact the Registry by telephone later in the day to ascertain the result.

The Act requires the Panel to publish written reasons for its decisions. The published decision is usually sent to the parties by the Registrar within two weeks of the hearing.

Decisions are final except for a right of appeal to the Full Bench of the Industrial Court on a question of law (section 197B, *Industrial Relations Act 1996*).

### **2-18.8 Travelling expenses**

Employees who are required to appear before the Commission either as appellants, proposed appointees, or as witnesses are considered to be on duty.

Employees or Departments listed under Schedule 1 Part 1 of the PSEM Act are entitled to travelling expenses under clauses 26 – 33 of the Crown Employees (Public Service Conditions of Employment) Award 2009 which outline the Travelling Compensation provisions to attend hearings of the Commission if their expenses on the day exceed their usual travelling expenses to and from work.

## Appendix 2A: Sample Forms - recruitment, selection and appointment

(This section updated September 2008)

### 2A-1 Sample documents

Effective from 17 March 2006, the NSW Government Service was established. Departments are Divisions of the NSW Government Service as set out in Part 1 of Schedule 1 to *Public Sector Employment and Management Act 2002*. Departmental staff continue to be subject to Chapter 2 of that Act, as well as the new provisions contained in Chapter 1A. Department Heads are also now known as Division Heads and the terms can be used interchangeably.

#### OFFER OF APPOINTMENT - MAY INCLUDE PROBATION PERIOD

Name:

Address:

Dear

Position: Title, Classification and Grade

#### Department (branch or agency within Department if appropriate)

The ..... has decided to offer you appointment, on probation\*\* (specify period), to the abovementioned position, with commencing salary at the rate of \$ .....

This position is an officer in the Public Service of New South Wales. You will be appointed under s17 (1) of the *Public Sector Employment and Management Act 2002* and employed by the Government of NSW in the service of the Crown. The employment provisions in Chapters 1A and 2 of the *Public Sector Employment and Management Act 2002* will apply to you.

Your appointment to this position is conditional on your producing the following documents before your entry on duty:

- (i) Birth Certificate
- (ii) Proof of change of name\*
- (iii) Passport or Certificate of Naturalisation
- (iv) Educational qualifications

Individuals found to have submitted falsified qualifications will face appropriate disciplinary action which could lead to dismissal.

- (v) Health declaration

In addition you will be required to meet all other conditions for appointment including passing a medical examination.

In accepting this position you agree to support core NSW public sector values of cultural diversity, equity and ethical practice, and a healthy, safe and fair workplace.

If you wish to accept this position, please complete and return the attached letter to this office as soon as possible or by ..... In the interim, it would be appreciated if you would contact ..... , Recruitment Officer, on the above telephone number so that arrangements may be made at an early date for you to commence duty.

Yours faithfully

\* Departments should delete inappropriate documents.

\*\* Probation period only applies if the person is being appointed for the first time to the Public Service as an officer - that is, the person is an external appointee for the position. A person from the private sector, a public sector agency that is not a Department or an employee of a Department as a temporary employee or a casual are all classified as external appointees.

### APPOINTMENT ACCEPTANCE

Name: .....  
Address: .....  
Position: .....Title, Classification and Grade.....

#### Department (branch or agency within Department if appropriate)

I accept the offer of appointment on probation\*\* for a period of ..... to the above position with commencing salary at the rate of \$..... per annum.

I agree to support core NSW public sector values of cultural diversity, equity and ethical practice, and a healthy, safe and fair workplace.

I agree to produce the following documents prior to my entry on duty:

- (i) Birth certificate\*
- (ii) Proof of change of name
- (iii) Passport or Certificate of Naturalisation
- (iv) Educational qualifications ( which will be verified with the issuing institution).

Signed: .....

Name: .....

(BLOCK LETTERS)

Date .....

\* Departments should complete all items except signature and date prior to issue. Departments should also delete inappropriate documents or delete entire paragraph if documents have been previously sighted or verified.

\*\* Probation period only applies if the person is being appointed for the first time to the Public Service as an officer - that is, the person is an external appointee for the position. A person from the private sector, a public sector agency that is not a Department or an employee of a Department as a temporary employee or a casual are all classified as external appointees.

### INSTRUMENT OF APPOINTMENT - NAME OF DEPARTMENT- ON PROBATION

#### Instrument for Department Head or delegate

I, (*Department Head's name\**), the (*title*) of the (*Name of Department*), under sections 17(1) and 23(1) of the *Public Sector Employment and Management Act 2002* make the appointment on probation, set out below:

NAME	POSITION Title, Classification & Grade	PERIOD OF PROBATION**	DATE OF EFFECT

Dated this.....day of .....20

\* Department Head's Name

Department Head's Title

Name of Department

NOTE: An officer appointed under s17(1) of the *Public Sector Employment and Management Act 2002* is employed by the Government of NSW in the service of the Crown. The employment provisions in Chapters 1A and 2 of the *Public Sector Employment and Management Act 2002* apply.

\* Instrument to be amended where powers of Department Head have been delegated.

\*\* See 2-17.1 - Appointment on Probation

For ease of both placement on the Personnel File of the appointee and any copying if required, it is generally recommended that an Instrument be prepared and signed for each appointment.

**INSTRUMENT OF CONFIRMATION OF APPOINTMENT - NAME OF DEPARTMENT**

**Instrument for Department Head or delegate**

I, (*Department Head's name\**), the (*title*) of the (*Name of Department*), under section 23(4)(a) of the *Public Sector Employment and Management Act 2002* confirm the appointment, set out below:

NAME	POSITION Title, Classification & Grade	DATE OF EFFECT

Dated this.....day of .....20

\* Department Head's Name

Department Head's Title

Name of Department

\* Instrument to be amended where powers of Department Head have been delegated.

For ease of both placement on the Personnel File of the appointee and any copying if required, it is generally recommended that an Instrument be prepared and signed for each appointment.

**INSTRUMENT OF ANNULMENT OF APPOINTMENT ON PROBATION - NAME OF DEPARTMENT**

**Instrument for Department Head or delegate**

I, (*Department Head's name\**), the (*title*) of the (*Name of Department*), under section 23(4)(b) of the *Public Sector Employment and Management Act 2002* annul the appointment on probation, set out below:

NAME	POSITION Title, Classification & Grade	DATE OF EFFECT

Dated this.....day of .....20

\* Department Head's Name

Department Head's Title

Name of Department

\* Instrument to be amended where powers of Department Head have been delegated.

### SAMPLE LETTER TO UNSUCCESSFUL APPLICANTS PLACED ON ELIGIBILITY LIST

Dear [name]

Position No [reference number]

I refer to your application for the position of [title, classification, grade] with the [department]. The selection panel has given careful consideration to your application along with those of others. On this occasion you were not the successful candidate.

However, you have been placed on an eligibility list that is active for twelve months from the date the list was created. This means that if the position becomes available during this time, careful consideration will again be given to your application. It does not, however, guarantee appointment.

This eligibility list may also be used by other NSW departments to fill positions in metropolitan and regional locations that are the substantially the same as the above position. You must tell us if you wish or do not wish to be considered for similar positions within other NSW departments. Please complete the consent slip at the bottom of this letter. If you do not return the consent slip we will not be able to provide your contact information to another NSW department.

If you would like some feedback on the relative strengths and weaknesses of your application as assessed by the panel, post-selection feedback is available to all applicants, including those not called for interview. Please contact the convenor [name] on [number] if you would like feedback or have any further questions regarding this position.

Thank you for your interest in applying for this position.

Yours sincerely

[Name]

[Position]

[Date]

### CONSENT FOR ELIGIBILITY LIST ACROSS NSW DEPARTMENTS

I understand that I have been placed on the eligibility list for [name of position] with [name of agency], and that it may be used by other NSW departments to fill positions in metropolitan and regional locations that are similar to this position.

**Tick one option only**

- I wish other NSW departments to consider me for similar positions in **both metropolitan and regional locations**, and agree to my job application being provided to them if similar positions arise.
- I wish other NSW departments to consider me for similar positions in **metropolitan locations only**, and agree to my job application being provided to them if similar positions arise.
- I wish other NSW departments to consider me for similar positions in **regional locations only**, and agree to my job application being provided to them if similar positions arise.
- I do not wish** other NSW departments to consider me for similar positions. In selecting this option I understand I may be considered for similar positions within [name of agency] only.

Signed: ..... Name: ..... Date: .....

(signature)

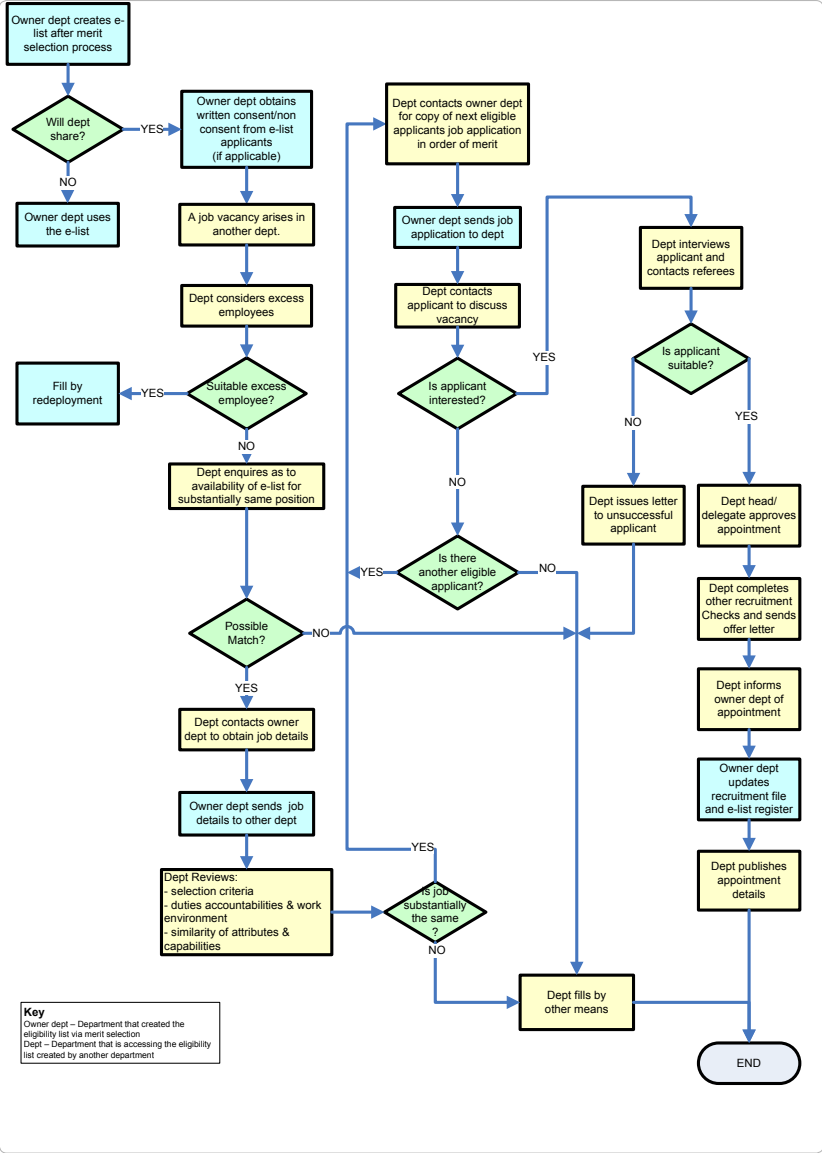
(print)

Return to: **[mail, fax, email address etc]**

# Appendix 2B: Sample Forms - Recruitment, selection and appointment

## 2B-1 Overview of cross-department eligibility lists

This section added September 2008





## Appendix 2C: Public sector employment options table

### **2C-1 Public Sector employment options table.**

See [NSW Public Sector - Employment Options table](#) for an overview of options for filling positions, including, situations when each option might be used effectively.

## Chapter 3 **Commentary and guidelines on staff mobility**

## Public Sector Employment and Management Act 2002

The temporary staff transfer (sections 86), temporary assignment (section 88) and cross agency employment (section 100) provisions of the *Public Sector Employment and Management Act 2002 (PSEM Act)* commenced on 15 December 2003.

The provisions apply to all public sector agencies (definition varies). State Owned Corporations (SOCs) are part of the definition for the purpose of permanent transfers s87 and staff assignments s88 but are not included for the purpose of temporary staff transfers s86.

The following sections outline arrangements for staff mobility and cross-agency employment for public sector staff.

**Appendix 3A** contains the Guidelines issued by the Director-General, Department of Premier and Cabinet pursuant to section 86(9) of the *Public Sector Employment and Management Act 2002* temporary staff transfers (secondments).

**Appendix 3B** contains the Guidelines issued by the Director-General, Department of Premier and Cabinet pursuant to section 88 of the *Public Sector Employment and Management Act 2002* temporary assignment of public sector staff to other agencies.

**Appendix 3C** contains the Guidelines issued by the Director-General, Department of Premier and Cabinet pursuant to section 100 of the *Public Sector Employment and Management Act 2002* Cross-agency employment.

### 3-1 Sources of Authority

- *Public Sector Employment and Management Act 2002* (the Act)
- Relevant provisions are contained in Chapter 3, Part 3-2, sections 85 to 99; Part 3-3 sections 100 to 101 and Schedule 3A of the Act

- Public Sector Employment and Management Regulation 2009 (the Regulation)
- Crown Employees (Major and Community Events Reassignment) Award
- Crown Employees (Public Service Conditions of Employment) Award 2009
- Crown Employees (Transferred Employees Compensation) Award 2009
- M2011-11 Changes to the Mgt of Excess Employees
- Managing Excess Employees Policy
- Manual of Delegations 2012 (D2012\_004)

### 3-2 Terminology

Public sector agencies are defined (s85 of the Act) to include:

- Departments and other agencies in the Public Service and other Divisions of the Government Service
- The whole or a part of a public sector service
- An employer constituting, or within, a public sector service
- A State Owned Corporation (SOC)

Note: The definition of public sector agencies in Part 3-2 Staff Mobility of the Act is narrower, for example, excluding SOC's from temporary staff transfer provisions s86 and s86A or broadened, for example, by including local councils or local authorities for the purpose of temporary assignment of staff to other agencies s88.

#### Department Head

The Act (s3(1)) defines this term to mean:

- When used in connection with a Division, the Head of the Division; or
- When used in connection with a member of staff of a Division, the Head of the Division to which the staff member belongs.

Section 6 provides that the Divisions of the Government Service specified in Part 1 of Schedule 1 of the Act comprise the Public Service. These Divisions may be referred to as a Department and the person exercising the function of Division Head may be referred to as a Department Head.

**Public sector service** means:

- The Government Service – consisting of Departments and other agencies of the Public Service listed in Part 1 of Schedule 1 of the Act and other Divisions listed in Parts 2 and 3 of schedule 1 of the Act
- The Teaching Service
- The NSW Police – this includes police, and administrative employees who retain their public service conditions
- The NSW Health Service – consisting of those employed under chapter 9 of the *Health Services Act 1997*. The NSW Department of Health is part of the Public Service
- The service of either House of Parliament, or the President, or Speaker or the President and Speaker jointly
- Any other service of the Crown
- The service of any other person or body constituted by or under an Act, or exercising public functions (such as a SOC), being a person or body that is **prescribed**, or is of a class prescribed, for the purpose of this definition s3(1).

Note: As at May 2005 **one SOC** (RailCorp) was prescribed, that is, listed in the Regulation, to be covered by the definition of public sector service for limited circumstances, however RailCorp is no longer a SOC. Therefore where the provisions refer to public sector service it will not include any SOC.

**Staff or member of staff** includes any person employed in a Public Service Department, whether as an officer, Departmental temporary employee or casual employee (s3(1)) and any person employed in a public sector service.

**Employee** means a person who is employed in any public sector service (s92).

**Home agency** means the public sector agency from which the transfer is made (s86).

**Host agency** means the public sector agency to which the transfer is made (s86).

**Secondment** means temporary staff transfers (s86 and s86A).

**Temporary assignment** means to temporarily carry out work for another public sector agency (s88).

## 3-3 Application of Provisions

### 3-3.1 Staff mobility – public sector agencies

Staff Mobility applies to staff employed in a public sector agency and deals with the:

- secondment of staff to other positions within their agency or other public sector agencies (other than SOCs) (s86);
- Internal secondment of staff to other positions within their own public sector agency (other than SOCs) (s86A),
- permanent transfer of staff to another position within their own agency or to any Department or public sector agency within the NSW public sector including SOCs (s87);
- temporary assignment of staff to carry out work in another public sector agency which may include a local council or local authority, or a SOC (s88). and
- temporary assignment of staff to carry out work in a private sector entity, a university, or another government agency or public authority (s88A).

The Act has particular provisions relating to Departmental temporary employees. This category of employment is discussed in the Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009\_001).

### 3-3.2 Cross Public Sector leave arrangements – public sector service

The Cross Public Sector leave arrangements do not affect the application of Schedule 3A of the Act – Recognition of prior government service for public sector employees extended leave entitlements. This means that service with either a NSW public sector agency (except most SOCs) or an agency of the Commonwealth or another state continues to be recognised for the purposes of calculating an employee's entitlement to extended leave. The conditions for recognising this service still apply. Detailed information regarding the application of the Schedule 3A is provided in 6-7 Extended leave.

Cross Public Sector leave arrangements deal with the treatment of an entitlement to various leave arrangements which apply when an employee ceases employment in one public sector service job by resignation, retirement or otherwise and immediately commences work in another public sector service (s92-s99).

These arrangements apply in the case of **permanent** transfers. The leave arrangements covered are:

- Extended (long service) Leave
- Annual (recreation) Leave
- Sick leave
- Maternity Leave etc
- Access to forfeited sick leave – transitional arrangements
- Funding of leave entitlements.

The term 'immediately' should be given the same meaning as that given to continuity of employment when applying the Schedule 3A of the Act. See 6-7.8 Continuity of Service.

These provisions of the Act have effect despite any provision of any state industrial instrument and are further examined at "3-17.2 Staff entitlements".

### 3-3.3 Cross-agency employment s100

Cross-agency employment applies to a person employed, in two or more Departments in the Public Service, or in the Public Service and in any other public sector service. (s100) Cross-agency employment will result in the creation of a single position/job, not two or more part time positions across two or more Departments in the Public Service or in the Public Service and in any other public sector service. This section applies also to casual staff and Departmental temporary employees.

A separate staff position is not required to be created in each of the Departments or each of the public sector services where the person is employed. That is only one position is created in one of the Departments or public sector services to facilitate cross-agency employment.

These provisions apply to Departments in the Public Service and any other public sector service, and may include State Owned Corporations (s100(1)).

## 3-4 Purpose and operation

### 3-4.1 Policy Statement

With a focus on providing quality services to the people of New South Wales, staff movements across the public sector are essential, as is the need for agencies to work together to deliver better services to their communities. These provisions will provide agencies with the ability to acquire suitably skilled staff, provide developmental opportunities for employees, and increase the range of services offered in New South Wales, particularly in rural areas.

The provisions are therefore designed to promote flexible employment opportunities for officers and other public sector staff, enabling secondments and permanent transfers between agencies, enabling staff assignments as required to deliver major events, or, in the case of cross-agency employment, concurrent employment by two or more agencies.

The arrangements apply across the public sector, and where identified may include SOCs. The broad operation of the arrangements serves to strengthen the public sector by enabling the widest use of the skills and expertise that reside across the sector.

The provisions in the *Act* will not affect the operation of provisions of any other *Act*, which specifically deal with transfer of members of staff from or within a public sector agency (s91(2)).

### 3-5 Delegation – Department Head/ Head of a Public Sector Agency

In applying the guidelines and advice, matters referable to the 'Department Head' or 'head' also apply to persons with relevant and documented delegated authority.

In relation to staff mobility, the provisions apply to the head of a public sector agency, which is defined to mean the person, who is the chief executive officer, or the person who exercises the functions of the chief executive officer, or a person prescribed by the regulations (s85).

Where any issues or obligations refer to the Director-General, they will also refer to Department Heads with appropriate delegated authority.

### 3-6 Secondary employment

In addition to statutory considerations, this requires an approach which has regard to effective discharge of duties, OH&S and conflict of interest. This is discussed further "5-9 Private employment" and "8-4.1 Conflicts of interest" and "8-9 Secondary employment".

Cross-agency employment decisions should have regard to this issue.

### 3-7 Probity and screening requirements

Where there are legal requirements to be satisfied before a transfer can be made to a particular position (such as a legislative requirement for probity and integrity screening), the approval of the head of a public sector agency is only effective after compliance with these requirements. This applies whether those requirements arise through legislation, regulation or conditions specified by the Public Service Commissioner where its approval is required (s91(4)).

External notification requirements are discussed in "Chapter 9 Management of Conduct and Performance"

### 3-8 Arranging for work to be done temporarily

Departments or public sector agencies may arrange for the placement of excess employees to work of a temporary nature or where a permanent position is temporarily vacant. This may assist the excess employee's chances of redeployment to a permanent position/job. This placement may occur within the excess employee's Department or agency or at another public sector agency. See Managing Excess Employees Policy and M2011-11.

Otherwise Departments or public sector agencies may arrange for work of a temporary nature or where a permanent position is temporarily vacant (including absence of the position holder) to be performed by:

- public sector staff by way of temporary staff transfers (secondments between agencies) (s86) or secondments within an agency (s86A)
- temporary assignment (s88)
- acting appointment of a member of staff of a Department (s24)
- relief in the position through a higher duties or acting allowance (clause 17 of the Regulation)
- a Departmental temporary employee (s27)

- if the particular situation falls under one or more of the four circumstances in section 38(3), then a person may be employed as a casual in a Department. See Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009-001).

The decision about how Departments and public sector agencies arrange for work to be done may be subject to an existing policy in a Department or agency on the filling of short term vacancies or other equivalent arrangements. If there is no existing policy Departments/agencies are encouraged to develop an appropriate policy for filling short term vacancies.

Where a Department/agency requires work to be done temporarily and wishes to advertise, any resulting secondment of a current officer or employee of a public sector agency would be classified as an employee-initiated secondment.

Where the Department/agency requires work to be done temporarily and directs a current officer or employee of a public sector agency to transfer temporarily any resulting secondment would be classified as an employer-initiated secondment.

Employee initiated secondments may also arise following the consent of the employee as discussed in "Appendix 3A: Procedure Obtaining employee's consent".

Higher duties and acting allowances are discussed at 7-10 Higher duties allowance.

The employment arrangements and requirements for Departmental temporary employees and casual employees are discussed in the Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009-001).

### 3-9 Principles of merit selection

The principles of merit selection are to be applied.

See the Merit Selection Guide for NSW Public Sector Panels - Picking the Best Person for the job (G2008-005) (Section 1.2 – Principles of merit selection).

### 3-10 Standards of selection on merit

The minimum standards of merit selection are to be followed.

See the Merit Selection Guide for NSW Public Sector Panels - Picking the Best Person for the Job (G2008-005) (Section 1.3 – Standards of merit selection).

### 3-11 Advertising and selection on merit

#### 3-11.1 Advertising

Advertising can improve the effectiveness and the merit of the selection process by broadening the potential of pool applicants.

If the temporary work/project falls under the existing Department/agency's filling of short term vacancy policy or other equivalent arrangements it may need to be advertised. Generally such policies require advertising:

- Internally – Department/ agency wide for a vacancy/ project of six months or more (through an Expression of Interest). To widen the field of applicants and provide cross-sector development opportunities, Expressions of Interest may also be sought across public sector agencies (for example, through a shared corporate services provider); and
- Externally – for a vacancy/project of twelve months or more (through jobs.nsw and the Press).

If there is no existing policy Departments/agencies are encouraged to develop an appropriate policy for filling short term vacancies. Any advertisement (whether internal or external) should indicate the appropriate section(s) of the Act. When advertising a secondment opportunity the information package for public sector employees should

**Table 3** Identifying possible pool of applicants

Possible potential pool identified as	Applicable sections of the Act	Means of advertising
Internal to Department/agency or internal to the public sector	<p><u>Section 86A</u> for current officers of the Department</p> <p><u>Section 86</u> current employees of the public sector agency*</p> <p><u>Section 27</u> for Departmental temporary employees and casual employees</p>	<p>Expression of Interest or other equivalent process department/agency wide</p> <p>or</p> <p>Expression of interest or other equivalent process across public sector agencies.</p>
External to Department/agency – field is to cover whole of the public sector	<p><u>Section 86</u> for officers of Departments and for employees in the public sector*</p> <p><u>Section 27</u> for Departmental temporary employees</p>	jobs.nsw and press
External to Department/agency – field includes the public sector and outside the public sector	<p><u>Section 86</u> for officers of Departments and for employees in the public sector*</p> <p><u>Section 27</u> for Departmental temporary employee and persons outside the public sector</p>	jobs.nsw and press

outline the backfilling implications (these implications will vary depending on the length of the secondment – see 3-13).

#### 3-11.2 Identifying possible pool of applicants

Table 2 illustrates The appropriate means of advertising to attract the identified possible of pool of applicants are:

\* Public sector agencies would use s86 or s86A where there was no other legislative or award arrangements within the agency to have work/project undertaken temporarily.

The employment arrangements and requirements for Departmental temporary employees are discussed in the policy document: Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009-001).

#### 3-11.3 Selection on merit

Where a Department/ agency requires work to be done temporarily for a period exceeding twelve months at any one time and there is no existing Departmental/ agency policy on the filling of short term vacancies or other equivalent arrangements there must be a selection on merit.

**Selection on merit** in these circumstances requires:

1. advertising at least by a Department/agency wide Expression of Interest. A Department may choose to advertise the temporary work/ project on jobs.nsw and the press
2. satisfying both the principles of merit selection at 3-9 above and the standards of selection on merit at 3-10 above.

It is Government policy that all employment decisions within the Public Service are based upon the principles of merit selection outlined in 3-9 above.

The process used should allow the Department Head or head of a public sector agency to select the person, who in his/her opinion, has the greatest merit among the candidates for the work.

A Department/ agency may create through this process of selection on merit, an eligibility list arranged in order of merit for temporary work/projects. This list may be applied to other temporary work/projects that are the same or substantially the same as the temporary work/project for which the list was created.

The eligibility list would remain current for a period of twelve months from the date it was created.

## 3-12 Acting appointment to positions (s24)

Section 86 or section 86A used in conjunction with section 27 of the *Act* (see Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009-001)) where applicable, is most effective in filling temporary work/projects for non senior executive service officer positions. There is a more detailed and appropriate mechanism in s86 and s86A between the employee, the host agency and the home agency.

Section 24 is most effective when used to temporarily fill senior executive service positions. It should not be used in preference to either section 86 or 86A when temporarily filling non senior executive service positions.

## 3-13 Temporary staff transfers (secondments) (s86)

### 3-13.1 General

Secondments may be made to the service of another public sector agency, other than a SOC, with the approval of the heads of the home and host agencies (s86) or to another position or other employment within the agency (S86A) with the approval of the head of the agency. The transfer may be initiated at the:

- request, or with the consent, of the member of staff concerned (an **employee-initiated transfer**); or
- direction of the head of the home agency (an **employer-initiated transfer**).

Generally an employee requested transfer would result from:

- an employee successfully applying for a secondment by way of application for a position advertised externally (*jobs.nsw* and the press) or internally (Departmental/ agency's policy on the filling of short term vacancies or other equivalent process, such as an Expression of Interest)
- via registration on an agency or cross agency transfer list
- at the request of the staff member seeking an opportunity for skills development, particularly in response to performance management
- at the request of the staff member on compassionate, or personal, grounds.

There are some circumstances where an employee may not have requested a secondment, but may consent to the proposed secondment. Generally these circumstances may arise where:

- a performance management process indicates a need to increase or develop skills in a particular area which cannot be found in the employee's original position and the employee wishes to develop these skills
- the work or project the employee has previously undertaken has been reduced or temporarily ceased

- the operational requirements of the home agency require a staff member to temporarily perform alternate duties.

Secondments may arise at the request of the staff member, by direct request or through application for an advertised vacancy. There may also be circumstances where the employer requires the services of a staff member elsewhere, or facilitates a career development opportunity.

Whilst the head of the home agency may direct a member of staff to take a secondment under certain conditions, it is always preferable that secondments occur by mutual consent between employer and employee.

A secondment between agencies or Departments in the Public Sector is provided by s86 of the *Act* (secondment) or, in the case of a secondment within a Department or agency s86A would be used.

Secondments under s86 and s86A will usually apply to officers in the Public Service and members of staff in public sector agencies.

### 3-13.2 Secondments

Where a secondment is **employee initiated** it will generally arise from a staff member having applied for an advertised vacancy, or project, either internally under an existing Departmental/agency policy for filling short term vacancies or other equivalent arrangements or externally on *jobs.nsw*, and the press. See "3-11 Advertising and selection on merit" on merit above.

If a Departmental temporary employee or casual employee was successful in applying for an advertised vacancy for temporary work/project in a Department (employee initiated secondment), the person would be employed under s27 of the *Act*. See Commentary and Guidelines on Temporary and Casual Employment (2009 update) (G2009-001).

Employer initiated secondments are appropriate for secondment on the person's existing level of remuneration.

If the proposed employer-initiated secondment would involve a variation in remuneration (that is a higher level of remuneration) and is over six months it is recommended the temporary work/project be advertised. This will ensure that a wider pool of skills and experience is canvassed (see 3-11 Advertising and Selection on merit above) and the principles of merit selection are addressed (see 3-9 Principles of merit selection above). Any resulting secondment would be then be classified as an employee initiated secondment.

An employer initiated secondment involving an increase in remuneration must satisfy the principles of merit selection (see 3-9 Principles of merit selection above).

In the unusual event that a **Departmental temporary employee** was directed to temporarily transfer by the Department Head to another vacancy within or across Departments the secondment would be employer initiated and the person would be temporarily transferred under s86 or s86A. An employer initiated secondment should not be used for the prime purpose of extending a Departmental temporary employee's length of employment.

### 3-13.3 Rate of remuneration

A person may be seconded at their current level of remuneration or at a different level of remuneration in the case of employee-initiated secondments. In the case of employer-initiated secondments, the level of remuneration cannot be less than the person's current rate s86(4) and s86A(3).

### 3-13.4 Nature of the transfer and effect on employment

A person who has been seconded to another public sector agency remains the employee of the home agency (s86(5)) subject to the following conditions:

The practice in the public sector where a person is seconded to another public sector agency is for the duration of the secondment, the person will be working under the relevant conditions of employment of the host agency.

In the case of an employee-initiated transfer, the person will cease to be an employee of the home agency and become an employee of the host agency when:

- the transfer has continued for at least two years;
- the head of the home agency notifies the person of the proposed cessation of employment; and
- the person decides to remain with the host agency with the consent of the head of that agency (s86(6)).

This process enables a decision to be made in relation to each secondment according to its own merits.

The outcome ensures both agencies are in concurrence with the action, able to fill positions and the employee either secures a position in the host agency or returns to their previous position in the home agency. The time period is considered appropriate to enable a proper assessment of the value and necessity of the work being performed, and provides a good opportunity for the employee to have developed skills and knowledge within the host agency.

The person who decides to remain with the host agency in accordance with the provisions of s86(6) will transfer to the host agency at their substantive grade and level of remuneration, unless the requirements in sections 86(6A-6E) are satisfied. See "2-8.3 Appointment of long term public sector secondees"

### 3-13.5 Backfilling positions

A permanent appointment may be made to the position vacated by a secondment under s86 or s86A (backfilling), provided certain conditions are met. The conditions vary depending on whether the secondment was employee or employer initiated.

Backfilling may only be made where the secondment is under s86 or s86A.

In the case of an **employee initiated** secondment a permanent appointment may be made to the vacancy if:

- the secondment has continued or is likely to continue for more than 12 months; and
- the person is advised of the proposal to backfill; and
- the person is given reasonable opportunity to terminate the secondment and return to their original position before any recruitment action is taken to backfill s86(7) or s86A(9).

The reasonable opportunity for a person to terminate the secondment allows the person time to consider whether to return to their original position. The person should be given a minimum of ten working days notice, or a longer period where the secondment has involved a change of location, to consider whether to terminate the secondment. The person is to signify their decision in writing.

Where possible, the total period of the secondment should be agreed to by the home and host agency and the employee concerned at the time of offering the employee the opportunity. This agreement should be signified in writing. A home agency cannot propose backfilling at the commencement of the employee initiated secondment.

After at least six months, a home agency may decide to propose to backfill where the employee-initiated secondment is for a period exceeding 12 months. When the home agency advises the employee of the proposal to backfill the employee may:

- Elect to end the secondment at this time and return to the home agency; or
- Arrange with the host agency to limit the secondment period to 12 months only (at which time the employee would return to the home agency and their original position); or
- Continue with the secondment for the total agreed period at the host agency and the home agency permanently backfills the original position.



Where an employee initiated secondment is for a period of 12 months **only** it is advisable to approach the employee at around 10 months into the secondment to ascertain if the secondment is likely to be extended beyond 12 months. If the secondment was to extend beyond 12 months, then backfilling would be an option available to the home agency.

In making a decision to propose to permanently fill a position vacated by an employee-initiated secondment, rather than temporarily filling the vacancy, agencies may wish to take into account the following factors:-

- Is the agency able to provide the employee with a suitable alternative position upon their return?
- Does the staff member have skills that are in short supply that may be difficult to replace?

If the original position is backfilled under s86A(9) or the person on secondment continues to be employed by the home agency – that is the person will return to the home agency at the conclusion of the secondment.

At the conclusion of their secondment the staff member would return to their home agency. Upon their return the home agency should take steps to manage their return. These steps include:-

- identification of an alternate vacancy at the employee's substantive grade
- identification of a suitable temporary vacancy
- applying the provisions of Managing Excess Employees Policy (M2011-11)
- or equivalent arrangements.

In the case of an employer initiated secondment, a permanent appointment cannot be made to the vacated position without the consent of the person. Appendix 3A contains procedures for obtaining the consent of an employee to make a permanent appointment to the employee's original position or to obtain consent to an employee initiated secondment. This appendix also outlines the circumstances in which an employer-initiated secondment may be made to a different work location in NSW.

## 3-14 Employer-sponsored permanent transfers (s87)

### 3-14.1 Application

Employer sponsored permanent transfers may be made to other agencies or to other positions or employment within the same agency, subject to certain conditions.

A transfer to the service of **another public sector agency** may be made:

- with the approval of the head of the other agency; and
- the approval of the Public Service Commissioner (the Commissioner); and
- following consultation with the member of staff.

The Commissioner may give unconditional or conditional approval (s91). For example, the Commissioner may impose a condition that provides for the retention of accrued or accruing rights or benefits when they are not otherwise preserved by a statutory or other provision. s91(3). The power to approve transfers between Departments and public sector agencies has been delegated to Department Heads. Refer to the Manual of Delegations 2012.

A transfer to another position or other employment **within the agency** may be made following consultation with the member of staff.

Employer sponsored transfers are made at the staff member's existing level of remuneration, unless the staff member consents to a transfer at a lower level of remuneration. Minor variations in salary do not impede transfers (s89). This is discussed at "3-17 Other issues and entitlements" below.

### 3-14.2 Nature of transfer

The following provisions apply to such transfers:

- the transfer is made at the person's existing level of remuneration, unless the employee consents to the transfer at a lower level of remuneration

- the person will be transferred to a position of the same status, that is, staff position to staff position or temporary position to temporary position
- the person must possess the qualifications required for the position they are transferred to, or have the capacity to perform the work after a reasonable period of time in the position or in that employment.

"Reasonable period" in determining capacity to perform the work will depend upon matters such as:

- the level of skills already possessed by the person
- the complexity or level of skill required in the new position
- the availability and accessibility of training courses
- any Departmental requirements.

In assessing whether a person possesses the qualifications required, consideration should be given to matters such as:

- the formal qualifications required under legislation or an industrial award
- relevant and experiential components
- equivalent overseas qualifications with Australian qualifications if relevant
- the capacity to achieve formal qualifications if required within a reasonable period of time.

It may also be necessary to ensure the person can satisfy relevant record checking requirements including criminal and any relevant pre-employment assessments. See Chapter 2, "2-14 Employment screening for child related work" and "2-15 Criminal records checks".

### 3-14.3 Employee refuses to transfer

Section 90 of the *Act* provides that an employee of a public sector agency who refuses a transfer may be dismissed from the service of the public sector agency or in the case of a member of staff of a Department or Division of the Government Service – dismissed from the Government Service.

The head of the public sector agency may dismiss the employee if satisfied the employee had no valid reason for refusing the transfer.

A member of staff of a Department may only be dismissed with the approval of the Public Service Commissioner.

Where a member of staff advances reasons for refusing the transfer, matters to be considered by the head of the public sector agency in deciding whether the member of staff has no valid reason for refusing the transfer include:

- The merits of each case. Whether a specific reason is valid will depend on the facts and circumstances of the individual case
- Consultation process taken with the member of staff including the period of notice
- Particular reasons given by the employee for refusing the transfer including personal, financial, workplace and or family circumstances
- Any grounds raised in accordance with the *Anti Discrimination Act 1977*
- The exigencies of the public sector agencies.

It should be noted that valid reasons for refusal might require the deferral of a transfer for a specified period, rather than the prevention of the transfer.

Section [90\(4\)](#) does not prevent the head of a public sector agency from taking any disciplinary action against a member of staff of the agency for refusing a transfer.

### 3-14.4 Dismissal of staff refusing transfer

Section [90](#) of the *Act* provides that an employee of a public sector agency who refuses a transfer may be dismissed from the service of the public sector agency or in the case of a member of staff of a Department, or Division of the Government Service – dismissed from the Government Service.

Where a member of staff advances reasons for refusing the transfer, matters to be considered are outlined in “3-14.3 Employee refuses to transfer” above.

If the DPE approved the dismissal of a Departmental employee, the agency’s usual processes would operate. The employee would have the usual rights of appeal against dismissal, that is to the Industrial Relations Commission.

## 3-15 Temporary assignment of public sector staff to other agencies ([s88](#)) (Appendix 3-B)

The provisions of the *Act* enable a person employed in or by a public sector agency to be temporarily assigned to another public sector agency, including for these purposes a local council or other local authority, to carry out work for that agency. This may also include a SOC as section 88 of the *Act* covers SOCs.

Temporary assignment is to be in accordance with the Guidelines at Appendix 3-B.

## 3-16 Cross-agency employment ([s100](#))

### 3-16.1 Application of provision

Cross agency employment applies to public sector services that may include SOCs ([s100](#)). No SOCs are currently prescribed to be included in the definition of public sector service for the purposes of cross agency employment ([s100](#)).

### 3-16.2 Nature of employment

A person may be employed as an officer or any other basis in two or more Departments or in the Public Service and in any other public sector service ([s100\(1\)](#)). The result of a cross agency employment arrangement is the person would be employed in a single position/job with a single designated employer. A cross agency employment arrangement would not result in two or more part time positions with a single employer. The heads of the relevant

organisations may determine which organisation the person will be regarded as employed by for the purposes of conditions of employment – designated employer – ([s100\(2\)-\(3\)](#)).

Any such determination as to where the person is regarded as being employed may:

- be limited to particular conditions of employment
- may make different provision for different conditions of employment
- is to be made in accordance with the guidelines issued by the Director General of Department of Premier and Cabinet (Appendix 3-C).

Conditions of employment include the provisions applying under the *Act* or any other *Act* under which a public sector service is established.

### 3-16.3 Reasons for employment

Cross agency employment provides the opportunity for a more consistent and resource effective use of available skills and knowledge and continued strengthening of a whole of government approach to quality service delivery.

Cross-agency employment may be used in situations such as:

- there is a community of interest between the Departments or between the Public Service and any other public sector service
- similar skills and qualifications are required
- geographic location means public sector agencies can cooperate to provide service delivery in that location
- the sharing of services will benefit the agencies concerned
- there is crossover of service delivery
- effective use of resources including the ‘pooling’ of resources between agencies
- agencies share common workplaces and resources
- cross agency funding requires a position to be created across several agencies

- a joint cross agency project or position exists
- share knowledge across the sector.

The result of a cross agency employment arrangement is a single position/ job with one employer would be created. The position/job would be created having regard to the nature of the work required. The nature of the work required would be the same or similar value positions/jobs.

The cross agency employment position/job would only be used where the nature of the work would have the same or similar salary and same hours of work. A salary variation shall not be more than 5%.

### 3-16.4 Designated employer

For the purposes of cross-agency employment arrangements members of staff will have a designated employer. The member of staff will be regarded as employed by the designated employer for the purposes of conditions of employment. The designated employer is decided by reference to Appendix 3-C.

The conditions of employment appropriate to a person to be employed as an officer, or on any other basis, in two or more Departments, or in the Public Service and in any other public sector service under s100 is to be in accordance with the Guidelines at Appendix 3-C.

### 3-16.5 Selection

Where a permanent position/job for cross-agency employment has been created across public sector agencies the position/job should be advertised and filled following the normal merit selection process.

In circumstances where the selection policies and processes differ between the agencies participating in the cross agency employment arrangements liaison should occur to establish the most effective, fair, equitable, ethical, transparent and appropriate recruitment and selection process.

In advertising for cross-agency employment arrangements the following additional information should be provided:

- the Departments and or public sector agencies for which the staff member will be working
- if appropriate the number of days/hours the staff member is to work for each public sector agency and each location
- the designated employer – that is the Department/ agency where the person is regarded as employed by for the purposes of conditions of employment.

## 3-17 Other issues and entitlements

### 3-17.1 Salary Differences

When a staff member is transferred at existing salary in accordance with the provisions of s87 of the Act, the salary matching principles in section 6.3.4 of the [Case Management and Redeployment Guidelines](#) are to be used to determine whether any slight variations in salary are acceptable.

If application of the preceding paragraph has resulted in the maximum salary for the vacant position being less than the salary paid to the employee appointed to it, then there can be no appeal against the appointment under section 95 *Industrial Relations Act 1996*.

An employee is not entitled to compensation for any reduction in pay brought about by the application of the guidelines.

### 3-17.2 Staff entitlements

The Cross Public Sector leave arrangements apply where an excess employee has been permanently transferred between public sector agencies in the NSW public sector (ss92-99).

The two employers involved in transferring an employee have a shared responsibility for ensuring that the employee is informed before the transfer of the Cross Public Sector leave arrangements.

Employees being transferred to or from an employer to which the Cross Public Sector leave arrangements or Chapter 3 Part 3.2 Division 2, sections 92 to 99 of the Act **do not apply** must be informed of the specific arrangements that will apply for recognising their accumulated leave entitlements, and the arrangements for future accrual of leave.

An example of such an employer would be State Owned Corporations who have not been prescribed (that is listed in the Regulation) for public sector service as defined in section 3(1) of the Act.

In situations referred to in the previous paragraph, the DPE, in approving the transfer, may specify retaining the employee's accrued or accruing rights and benefits.

### 3-17.3 Transfer of leave

#### 3-17.3.1 Responsibility to inform employees

The two employers involved in the transfer of an employee have a shared responsibility to ensure that the employee is informed of the Cross Public Sector leave arrangements prior to the transfer.

#### 3-17.3.2 Value of leave transferred

The value of the leave after transfer is based on the salary paid to the employee by the new employer. It is not the monetary value of the leave transferred by the first employer to the new employer.

#### 3-17.3.3 Election for payment for accrued leave

Employees who transfer between Departments and other agencies listed in Part 1 of Schedule 1 of the Act are not able to elect to receive payment instead of accrued recreation or extended leave.

However, employees who transfer between employers within the Public Sector other than Public Service Departments or between non-Departmental divisions of the Government service and/or other Public Sector employers may elect to be paid all or part of their accrued

recreation or extended leave on ceasing duty with the first employer. Alternatively they may elect to have their leave (and corresponding funds) transferred to the new employer.

This applies notwithstanding the provisions of the *Annual Holidays Act 1944* or the *Long Service Leave Act 1955*.

### 3-17.3.4 Recreation leave

The following principles apply to the transfer of recreation leave, unless a public sector agency has existing arrangements for the transfer of recreation leave, either when the employee is leaving the employer or is being recruited by the employer. See also [section 95](#) of the Act.

- If the employee elects to transfer to the new employer a recreation leave entitlement exceeding 40 days, the new employer may require the employee to take payment for the leave in excess of 40 days.
- If the new employer does not require that payment be taken then the excess leave is not to be forfeited, but both the employer and the employee are responsible for taking steps to reduce the leave to an appropriate level as soon as possible. Payment for all leave taken is at the salary rate payable with the new employer.

### 3-17.3.5 Annual leave loading

An employee may elect to transfer to a new employer their annual leave loading entitlement, which the new employer must pay at the employee's salary rate applicable at the time the leave is taken.

From the date of starting duty with the new employer, the conditions applying to annual leave loading entitlement are those of the new employer.

If annual leave loading does not exist in the new employing body, the transferred annual leave loading must be paid to the employee on the first occasion when at least two weeks leave for recreation purposes are taken, or on the ensuing 30 November, whichever occurs first. The annual leave loading is to be paid at the rate of pay applicable with the new employer.

### 3-17.3.6 Extended/long service leave

An employee who transfers between employers within the Public Sector other than those transferring between Departments or other agencies in the Public Service may elect to be paid all or part of their accrued extended leave on ceasing duty with the first employer. Alternatively they may elect to have their leave (and corresponding funds) transferred to the new employer.

If the leave is transferred, payment for the leave when taken or paid for is at the salary rate being received at the time leave is taken or paid for.

Nothing contained in the Cross Public Sector leave arrangements affects an employee's right to recognition of service under the [Schedule 3A](#) of the Act – **Recognition of prior service for public sector employees extended leave entitlements**. See 6-7 Extended leave. See also [\(s94\)](#) of the Act.

Budget dependent Departments whose liability for extended leave is assumed by the Crown and need to make payments for the transfer of extended leave entitlements can recoup these amounts from the Crown transactions entity. Similarly, Departments that belong to the NSW Non Budget Long Service Leave Pool can recoup any payments for the transfer of extended leave entitlements from the Pool. Departments in these categories that receive receipts for the transfer of extended leave entitlements should forward these amounts to the Crown Transactions Entity or the Long Service Leave Pool respectively [[Treasury Circular TC10-04](#) -issued 20 April 2010 (supersedes Treasury Circular 04-02 – issued 31 March 2004) and [Treasurer's Directions TD 612.01](#)].

### 3-17.3.7 Sick leave

On transfer to a new employer, any untaken sick leave transfers with the employee. Future sick leave accrual is at the rate and under the conditions for the new employer (see also [\(s94\)](#) of the Act).

No funds are transferred for accrued sick leave.

Government legislation does not provide for payment of sick leave entitlements except as in the following paragraph.

Employees who have an entitlement under section 27 of the *Industrial Relations Act 1996* to have sick leave paid out should be advised by their first employer, prior to the transfer date, of the balance owed to them as at 15 February 1993. The employee should be given the option to have that balance paid out or to add the balance to untaken sick leave since that date. Under the second option, the employee cannot elect later to take payment for the sick leave entitlements transferred to the new employer.

If the new employer operates under an unlimited sick leave system, the employee will not need to access the accrued and untaken sick leave transferred from the previous employer. The transferred sick leave will be preserved during such employment and, in the event of the employee obtaining employment elsewhere in the NSW public sector at a later date, will be transferred to the next employer, if the service remains continuous.

### 3-17.3.8 Other forms of leave

All continuous previous service at the date of transfer to the new employer is taken into account by the new employer when determining the employee's entitlement to other leave, such as maternity leave for which a condition of eligibility is a period of service. The entitlements are determined in accordance with the new employer's conditions. See also [\(s 97\)](#) of the Act.

There is no transfer of funds between the employers.

### 3-17.3.9 Recognition of forfeited sick leave

Any employee with continuous service in a NSW Department or public sector agency who, before the introduction of Schedule 5A of the *Public Sector Management Act 1988* (Provisions Relating to Mobility of Public Sector Employees) moved to a new employing

agency which did not recognise previously accrued sick leave credits may now access the forfeited credits. See also [\(s98\)](#) of the Act.

Access to this sick leave is at the discretion of the Department Head and is only available when current sick leave credits have been exhausted (including, when applicable - see "6-17.12.1 Special sick leave").

Once any period of an employee's forfeited sick leave has been granted as sick leave it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee (whether by the same or a different employer).

### 3-18 Eligibility

Employees' leave entitlements are portable when their NSW Government service is continuous: that is, an employee must cease duty with one employer and immediately start service with the next employer.

The term immediately should be given the same meaning as that given to 'immediately follows' in [Schedule 3A](#) of the Act – Recognition of prior government service for public sector employees extended leave entitlements. (See 6-7.8 Continuity of Service) that is:

- the employee entered on duty on the next working day; or
- within 2 months of the last day of service with the former public sector employer.

#### 3-18.1 Leave between duties

The employee may request the leave to be debited from available recreation leave or extended leave or may take leave without pay. Either the first or the next employer may grant leave, the decision being made consultatively among the three interested parties.

When leave is granted by the first employer, the last day of service is the last day of leave. The first employer remains responsible for any salary payments or further leave that may accrue during this period.

When leave is granted by the next employer, then the starting date for payment of salary, leave accrual and all other purposes is the first day of leave.

When leave is granted by the first employer, the last day of service is the last day of leave. The first employer remains responsible for any salary payments or further leave that may accrue during this period.

When leave is granted by the next employer, then the starting date for payment of salary, leave accrual and all other purposes is the first day of leave.

### 3-19 Transfer of funds

#### 3-19.1 Treasury guidelines

When a transfer of accrued leave involves a transfer of funds the Department is to comply with any directions or guidelines issued by NSW Treasury if appropriate. See for example 3-17.3.6.

#### 3-19.2 General principle

As a general principle the amount to be transferred is limited to the former employer's liability for payment to the employee for their total entitlement to recreation and extended leave and leave loading on ceasing duty with that employer.

## Appendix 3A: Procedure Obtaining employee's consent

### 3A-1 Procedure for obtaining an employee's consent

#### Circumstances in which an employer initiated temporary transfer to a different location in the state may be made

- Guidelines for obtaining consent; and
- Guidelines for temporary staff transfer to different location in the State.

### 3A-2 Purpose

These Guidelines are issued in accordance with [\(s86\(9\)\)](#) and [\(s86A\(11\)\)](#) of the Act to determine:

- 1a. the procedures for obtaining the consent of a person, who has not requested a temporary transfer, where the temporary transfer is an employee-initiated temporary transfer s86 (3(a)) and s86A(2)(a)
- 1b. the procedures for obtaining the consent of a person, in the case of an employer-initiated transfer, to the permanent appointment to the person's original position (s86 (8) and s86A(10))
- 2. the circumstances in which an employer initiated temporary transfer to a different workplace location in the State may be made.

### 3A-3 Application and Effect

The Guidelines apply to members of staff of public sector agencies, other than State Owned Corporations, who temporarily transfer to another public sector agency, or to another position or employment within their agency.

These guidelines apply to both employee and employer initiated transfers.

### 3A-4 Delegation

The Department Head or head of a public sector agency is responsible for the application of these guidelines pursuant to Section 86(9) and Section 86A(11) of the Act.

In applying these guidelines matters referable to the 'Department Head' also apply to officers with relevant and documented delegated authority in accordance with [section 4F](#) of the Act.

Matters referable to 'head of a public sector agency' also apply to employees of the public sector agency with relevant and documented authority in accordance with the applicable legislation.

### 3A-5 Assistance in Applying the Guidelines

"Chapter 3 Commentary and guidelines on staff mobility" and Appendices may be used in the form of guidance notes to assist managers in properly and reasonably applying these guidelines.

### 3A-6 Definitions

**Home Agency** – The public sector agency from which the transfer of a member of staff is made.

**Host Agency** – The public sector agency to which the transfer of a member of staff of another agency is made.

**Public Sector Agency** – in this section Public Sector Agency does not include a State Owned Corporation.

**Secondment** – Temporary staff transfer between agencies pursuant to s86 of the Act or within agencies also known as internal secondments pursuant to s86(A) of the Act.

### 3A-7 Consent

There are two circumstances in s86 and s86A of the Act where consent is necessary:

Where the employee has not requested but consents to an employee-initiated secondment s86(3)(a) or s86A(2)(a);

Where in the case of an employer-initiated secondment it is proposed to make a permanent appointment to the employee's original position s86 (8) or s86A(10).

### 3A-7.1 Employee-initiated secondment

#### 3A-7.1.1 General

Section 86(3) or section 86A(2) of the Act defines an employee-initiated secondment as occurring at either the staff member's request, or with their consent.

#### 3A-7.1.2 Process for obtaining consent

Whilst the Department or Agency Head has the ability to direct a staff member to a secondment, it is preferable that the consent of the staff member is obtained.

Where the head of the home agency has recognised the need for a secondment, whether on the basis of individual or organisational needs, the staff member must give consent to:-

- the secondment
- the length of the secondment
- the terms and conditions of the employment and remuneration that will apply during the secondment period, particularly where the remuneration or conditions are different to the staff member's original position
- the actions to be implemented at the end of the secondment.

Obtaining consent ensures that:

- the staff member is aware of what is being agreed to
- the process is transparent
- that all parties are aware of the conditions of the transfer and the actions to be taken at the conclusion of the transfer period.

#### 3A-7.1.3 Procedures to obtain consent where employee did not initially request a secondment [s86 \(3\) \(a\)](#) or [s86A\(2\)\(a\)](#).

Consent to employee initiated secondment, where the secondment was originally not at the request of the staff member, must be obtained in writing. The staff member

should be given at least ten working days notice from the date of the letter, or may need longer where there is a change of location involved, to give consent to the secondment. This time will allow the staff member to seek any advice on the impact of consenting to the secondment.

The written secondment consent document must include:

- the conditions, remuneration level, and period of time applying to the secondment
- the reason for the secondment (for example, for developmental purposes, resulting from performance management, undertaking a specific project, or work temporarily unavailable in the staff member's usual position)
- confirm that the staff member agrees to the secondment, its terms and conditions
- confirm that the staff member has a right to return to the home agency following the completion of the temporary transfer if the secondment involves a change of agency (s86(5))
- that the effect and operation of sections 86(6) and 86(7) have been advised and explained to the staff member, in particular the consequences for a secondment extending beyond 12 months (s86 (7) or s86A(9)) and for a secondment extending for more than two years (s86 (6)).

The staff member must confirm acceptance to the secondment arrangements by signing their agreement to the consent document. If the staff member does not sign the document it means they have not consented.

The staff member must have a clear understanding of the impact of an employee-initiated secondment on their employment with the home agency before consenting to the document.

#### **3A-7.1.4 Where the staff member on secondment becomes an employee of the host agency**

Section 86(6) provides that the person will cease to be an employee of the home agency and become an employee of the host agency when the:

- transfer has continued for at least two years;

- head of the home agency notifies the person of the proposed cessation of employment; and
- person decides to remain with the host agency with the consent of the head of that agency.

At the conclusion of their secondment the employee will remain with the host agency and that agency will be responsible for identifying an appropriate position for the employee. This position may be at a different grade to the employee's substantive position in the home agency, provided that the requirements under sections 86(6A-6E) are satisfied. See "2-8.3 Appointment of long term public sector secondees".

#### **3A-7.1.5 5. Where the staff member on secondment remains an employee of the home agency**

Section 86(7) allows a home agency to make a permanent appointment to a vacancy that has arisen in the case of an employee-initiated secondment where the:

- secondment has continued or is likely to continue for more than 12 months; and
- person is advised of the proposed appointment; and
- person is given reasonable opportunity to terminate the secondment and return to their original position.

The employee does not cease to be employed by the home agency. At the conclusion of their secondment the employee would return to their home agency.

The employee should be informed of how the home agency is to manage their return. These steps may include:

- identification of an alternate vacancy at the employee's substantive grade, where possible;
- identification of a suitable temporary vacancy; and
- applying the provisions of Managing Excess Employees Policy (M2011-11) or equivalent arrangements.

#### **3A-7.2 Consent to permanent appointment to original position – employer initiated transfer s86 (8) or s86A(9)**

In the case of an employer initiated secondment a permanent appointment can only be made to their original position with the staff member's consent.

In implementing this provision the following steps shall be taken.

#### **3A-7.2.1 Notice of proposal to permanently fill the original position**

- The staff member on a period of secondment, shall be notified in writing by the Department Head/CEO that the home agency is seeking to permanently fill their original position, and
- The written advice shall indicate to the staff member that if they do not consent to the permanent filling of the position, the secondment would cease and the staff member would return to the home agency and their original position.

The staff member shall be given at least ten working days notice, a longer period may be appropriate where the secondment has involved a change of location, to decide whether they wish to:

- continue with the secondment and consent to the permanently filling their original position; or
- return to their original position.

The staff member must signify their consent or otherwise in writing.

#### **3A-7.2.2 Employee consents to permanent filling of original position**

- The staff member should receive written advice confirming that the staff member agrees to the permanent filling of their original position, and the effect this will have on their ongoing employment with the agency
- The written advice shall detail the proposed arrangements on the cessation of the staff member's secondment as the staff member remains an employee of the home agency.

The arrangements at the cessation of the secondment may include:

- where possible, the identification of an alternate permanent position, which the staff member will be appointed to on their return from the secondment

- if a permanent position cannot be identified at the time of notification, advice as to what steps the agency will take to identify a suitable vacancy upon the staff member's return
- advise the staff member that the provisions of Managing Excess Employees Policy ([M2011-11](#)) or equivalent arrangements will apply on return from the secondment if a suitable permanent vacancy cannot be found.

Obtaining consent ensures that:

- the staff member is aware of what is being agreed to
- the process is transparent
- that all parties are aware of the conditions of the secondment, the permanent filling of the position and the actions to be taken at the conclusion of the secondment period.

### 3A-8 Employer-initiated secondment to a different workplace location

#### 3A-8.1 General

An employer initiated secondment only applies at the direction of the Department Head or head of a public sector agency.

A secondment may be employer-initiated, that is not at the request, or with the consent of employee. The circumstances where this may occur include, but are not limited to:

- there is temporarily no or limited work available in the staff member's original position or workplace location
- due to agency or sector wide requirements work is required to be temporarily relocated to a different workplace location
- due to agency or sector wide requirements the staff member's skills can be more effectively utilised at another workplace location

- specific skills development that can only occur at a different workplace location, whether the skills development is a result of individual performance management, or an agency wide retraining requirement
- there is a need to address performance management that cannot be managed in the staff member's original position or workplace location
- a staff rotational system within the agency.

An employer-initiated secondment either within an agency or between agencies may result in a staff member having to move to a different workplace location within the State for the period of the secondment.

Without consent employer-initiated secondments requiring a staff member to temporarily change residence would only occur for a period over one month where an exceptional, emergency or unusual work situation has arisen requiring the skills of the staff member in the other location.

A secondment where a temporary change of residence is required is to be for a maximum period of 12 months.

Generally the staff member will not require a temporary change of residence where a secondment from one workplace location in rural/regional NSW to another workplace location in rural/regional NSW which is less than 50 kilometres away one way.

Where a secondment from one workplace location in rural/regional NSW to another workplace location in rural/regional NSW which is more than 50 kilometres away one way, a temporary change of residence may be required.

For any secondments within the Sydney metropolitan area the need for a temporary change of residence would be assessed on the particular circumstances of each individual case.

A staff member is to be given an opportunity to raise any concerns with the proposed secondment. The period of time for the staff member to raise concerns should be 10 working days or more from the initial notification of the proposed secondment. The matters an agency are to consider where a staff member raises concerns are outlined in "[3A-8.3 Notice of Secondment](#)" on page 70.

If the Department Head or head of a public sector agency is satisfied the concerns raised by the staff member constitute a valid reason for the proposed secondment not to proceed it is either not to proceed, or if circumstances allow, to occur at a later date.

A staff member may, with the support of the relevant union, notify a dispute to the Industrial Relations Commission, if the Department Head or head of a public sector agency has decided to proceed with the secondment and the staff member believes there is a valid reason for the secondment not to proceed.

#### 3A-8.2 Benefits

The provisions of the [Crown Employees \(Public Service Conditions of Employment\) Award 2009](#) providing travelling allowances for a staff member required to work from a temporary work location (cl 26 to 35) will apply to a employer initiated secondment to a different workplace location in the State as outlined above where a temporary change of residence is required.

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 providing excess travelling time for a staff member required to work from a temporary work location (cl 27) will apply to a employer initiated secondment to a different workplace location in the State where no temporary change of residence is required.

The benefits will not apply where an employee has applied for a secondment but do apply where the employee has consented to a secondment at the request of the employer.

#### 3A-8.3 Notice of Secondment

The Department Head or head of a public sector agency shall give, in writing, as long a period of notice of secondment as is practicable, provided that, except in special or urgent circumstances, a staff member shall not be seconded to a different workplace location unless at least ten working days notice has been provided.



In all circumstances the agency should give the employee an opportunity to raise possible concerns or hardships which would affect the ability to temporarily move to a different workplace location in the State.

The agency should consider the following where an employee has raised concerns which affect the ability to move to a different workplace location:

1. The merits of each case. Whether a specific reason is valid will depend on the facts and circumstances of the individual case;
2. Consultation process taken with the member of staff including the period of notice;
3. Particular reasons given by the employee for refusing the transfer including personal, financial, workplace and or family circumstances;
4. Any grounds raised in accordance with the *Anti-Discrimination Act 1977*; and
5. The exigencies of the public sector agencies.

The agency should consider where appropriate how these concerns may be accommodated. This may include a deferral of the secondment for a specified time period, which may address the employee's concerns.

### **3A-8.4 Written Advice**

The written advice to an employee of an employer initiated secondment shall include the following:

- the different workplace location in the state and the date the employee is to report to that location;
- the period of notice given for the employee to report to the different workplace location;
- the reason for the proposed secondment;
- the conditions, remuneration level, and period of time applying to the secondment;
- confirmation that the staff member remains an employee of the home agency for the duration of the temporary secondment if a change in agency is to occur – s 86(5).  
The practice in the public sector where a person is seconded to another public sector agency is, for the

duration of the secondment, the person will be working under the relevant conditions of employment of the host agency;

- arrangements on the cessation of the staff member's secondment, including whether the staff member will resume employment in their original position;
- advice as to the benefits and allowances under the Crown Employees (Public Service Conditions of Employment) Award 2009 staff member is entitled to; and
- any other financial assistance, where relevant, that the agency may provide to the staff member to assist them in transferring temporarily to the new location.

## Appendix 3B: Guidelines Temporary assignments

### 3B-1 Temporary Assignment

#### Guidelines for temporary assignment of public sector staff to other agencies

##### 3B-1.1 Purpose

These Guidelines are issued in accordance with (s88) of the Act to determine the arrangements made for a person employed by a public sector agency to be temporarily assigned to carry out work in another public sector agency, including a local council or local authority.

##### 3B-1.2 Application and Effect

The Guidelines apply to members of staff of public sector agencies, including State Owned Corporations, temporarily assigned to another public sector agency, including a local council or local authority.

##### 3B-1.3 Delegation

The Department Head or head of a public sector agency is responsible for the application of these guidelines pursuant to (s88) of the Act.

In applying these guidelines matters referable to the 'Department Head' also apply to officers with relevant and documented delegated authority in accordance with [section 4F of the Act](#).

Matters referable to 'head of a public authority' also apply to employees of the public sector agency with relevant and documented authority in accordance with applicable legislation.

##### 3B-1.4 Definitions

**Home Agency** – The public sector agency where the member of staff is employed.

**Host Agency** – The public sector agency where the member of staff has been temporarily assigned.

**Public Sector Agency** – for the purposes of s88 includes a local council or other local authority.

### 3B-1.5 Temporary assignment of public sector staff to other agencies

#### 3B-1.5.1 General

Section 88 of the Act provides that a member of staff may be temporarily assigned to carry out work for another public sector agency, including a local council or local authority.

The temporary assignment may be on a full time or part time basis.

A temporary assignment shall not be open ended, but is to have a clear time limit.

Officers, departmental temporary employees and casual employees may be temporarily assigned, although this would be highly unlikely in respect of departmental temporary employees or casual employees, given the nature of their employment arrangements. See Commentary and Guidelines on Temporary and casual employment (2009 update)([G2009-001](#))

Without limiting the intention of the Act, these assignment provisions may be used in connection with a special project or event, such as where:

- delivery of a project or event requires a cooperative approach across the whole of government or across a number of areas of government
- special skills are required to enable the successful delivery of a project or event
- additional staff assistance is required for a defined period to plan and/or deliver and /or advise and /or wind-up a project or special event
- the necessary skills and people are available in the public sector.

Assignment provisions may also be used in connection with the enhancement or development of employee skills in areas where local and state authorities have complementing projects, partnerships or where skills transfer will benefit both employees and agencies.

### 3B-1.5.2 The differences between temporary assignment and temporary staff transfers

Temporary assignment ([s88](#)) is different to a temporary staff transfer (secondment) under (s86 or s86A) of the Act.

A temporary assignment may be either full or part time. A secondment would usually be full time.

A member of staff remains the employee of the home agency even when the member of staff has been temporarily assigned to the host agency (s88). The member of staff will continue to receive the normal rate of pay for the period of the temporary assignment.

A member of staff who is seconded pursuant to s86 will, for the period of the secondment, be under the control, direction, pay and conditions of the host agency. The member of staff will receive the appropriate remuneration for the position paid by the host agency.

Temporary assignment may be used in preference to secondment in the following circumstances:

- The project/work involves day to day operations between a public service agency and a local council and a skills transfer between the agencies is desired
- The project is across a number of different agencies who will each contribute assistance to the project
- The project/work is part-time and a secondment would not be administratively possible
- Short term assistance is needed in another public agency
- The special event requires additional assistance for a specified period.

#### 3B-1.5.3 Selection

Temporary assignments may be at the request of the member of staff, and approval of the Department Heads and/or CEO, but may also occur at the direction of the Department Head(s) and/or head of a public sector agency following consultation with the member of staff.

A temporary assignment may be at the direction of the Department Head or head of a public sector agency where the member of staff:

- possesses particular skills necessary for the successful completion of the project/ work; or
- will benefit from the skill transfer flowing from the project/ work.

The temporary assignment may be advertised through at least an Expression of Interest:

- either within each agency if the project or event is specific to that agency, such as a partnership between a particular agency and a local council or
- across the sector.

In advertising the temporary assignment at least through an Expression of Interest, the selection process must satisfy both “3B-1.5.4 Principles of merit selection” below and “3B-1.5.5 Standards of selection on merit” below.

All decisions in filling a temporary assignment, whether or not the temporary assignment has been advertised must satisfy the principles of merit selection at 3B-1.5.4

It is Government policy that all employment decisions within the Public Service are based upon the principles of merit selection outlined at 3B-1.5.4

The selection process used should allow the Department Head or head of a public sector agency to select the person, who in his/ her opinion has the greatest merit among the candidates for the work.

#### **3B-1.5.4 Principles of merit selection**

The principles of merit selection are to be applied. See the Merit Selection Guide for NSW Public Sector Panels - Picking the Best Person for the Job ([G2008-005](#))

#### **3B-1.5.5 Standards of selection on merit**

The minimum standards of merit selection are to be followed. See the Merit Selection Guide for NSW Public Sector Panels - Picking the Best Person for the Job ([G2008-005](#)) (Section 1.3 – Standards of merit selection).

#### **3B-1.5.6 Home Agency Approval**

The approval of the home agency to a member of staff requesting a temporary assignment is subject to the service delivery needs of the home agency at the time of temporary assignment.

#### **3B-1.5.7 Conditions of temporary assignment**

- The member of staff remains employed by their home agency, but is under the control and direction of the public sector agency hosting the project/special event or where the temporary assignment is situated
- Home agencies continue to pay the member of staff’s normal rate of pay, and the member of staff’s normal industrial entitlements continue to apply irrespective of the equivalent grading given to the position or project work
- Recoupment of any salary and on-costs may be arranged between the home and host agency
- Copies of flex sheets, requests for leave, and all other administrative matters should be supplied to the home agency for appropriate action
- The home agency may temporarily arrange for work of the member of staff to be done during the period of the temporary assignment.

A temporary assignment may result in a staff member having to move to a different workplace location within the State for the period of the temporary assignment.

Where a temporary assignment is at the direction of the Department Head or head of the public sector agency the following is to apply:

A temporary assignment where a temporary change of residence is required is to be for a maximum period of 12 months.

Generally the staff member will not require a temporary change of residence where a **different workplace location in the State** is a temporary assignment from one workplace location in rural/ regional NSW to another workplace location in rural/regional NSW which is less than 50 kilometres away one way.

Where a temporary assignment from one workplace location in rural/regional NSW to another workplace location in rural/regional NSW is more than 50 kilometres away one way a temporary change of residence may be required.

For any temporary assignments within the Sydney metropolitan area the need for a temporary change of residence would be assessed on the particular circumstances of each individual case.

A staff member is to be given an opportunity to raise any concerns with the proposed temporary assignment. The period of time for the staff member to raise concerns should be 10 working days or more from the initial notification of the proposed temporary assignment. The matters an agency is to consider where a staff member raises concerns are outlined in “3B-1.5.10 Application of Awards”. If the Department Head or head of a public sector agency is satisfied the concerns raised by the staff member constitute a valid reason for the proposed temporary assignment not to proceed it is either not to proceed, or if circumstances allow, to occur at a later date.

A staff member may, with the support of the relevant union, notify a dispute to the Industrial Relations Commission, if the Department Head or head of a public sector agency has decided to proceed with the temporary assignment and the staff member believes there is a valid reason for the temporary assignment not to proceed.

#### **3B-1.5.7a Benefits**

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 providing travelling allowances for a staff member required to work from a temporary work location (cl 26 to 35) will apply to a temporary assignment at the direction of the Department Head or head of a public sector agency to a different workplace location in the State where a temporary change of residence is required.

The provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 providing excess travelling time for a staff member required to work from a

temporary work location (cl 27) will apply to a temporary assignment at the direction of the Department Head or head of a public sector agency to a different workplace location in the State where no temporary change of residence is required.

### **3B-1.5.8 Notice of temporary assignment at the direction of Department Head/head of public sector agency**

The Department Head or head of a public sector agency shall give, in writing, as long a period of notice of temporary assignment as is practicable, provided that, except in special or urgent circumstances, a staff member shall not be temporarily assigned to a different workplace location unless at least ten working days notice has been provided.

In all circumstances the agency should give the employee an opportunity to raise possible concerns or hardships which would affect the ability to temporarily move to a different workplace location in the State.

The agency should consider the following where an employee has raised concerns which affect the ability to move to a different workplace location:

6. The merits of each case. Whether a specific reason is valid will depend on the facts and circumstances of the individual case
7. Consultation process taken with the member of staff including the period of notice
8. Particular reasons given by the employee for refusing the transfer including personal, financial, workplace and or family circumstances
9. Any grounds raised in accordance with the *Anti Discrimination Act 1977*
10. The exigencies of the public sector agencies.

The agency should consider where appropriate how these concerns may be accommodated. This may include a deferral of the temporary assignment for a specified time period, which may address the employee's concerns.

### **3B-1.5.9 Conclusion of Temporary assignment**

A member of staff who has been temporarily assigned to another public sector agency is entitled at the end of the temporary assignment to return to the position and salary level in the home agency occupied substantively by the member of staff.

The temporary assignment does not affect a member of staff's continuity of service or other employment rights in their home agency (s88 (4)).

### **3B-1.5.10 Application of Awards**

When a person is temporarily assigned to a major or community event supported by the NSW Government the above provisions do not apply. The Crown Employees (Major and Community Events Reassignment) Award will apply.

Where an industrial instrument has been negotiated to cover arrangements and conditions for a temporary assignment to a particular project the above provisions will not apply and the appropriate industrial instrument will apply.

## Appendix 3C: Guidelines Cross-agency employment

### 3C-1 Conditions of employment for cross-agency employment

#### Guidelines for conditions of employment for cross agency employment

##### 3C-1.1 Purpose

These Guidelines are issued in accordance with [\(s100\)](#) of the Act to determine the conditions of employment appropriate to a person to be employed as an officer, or on any other basis, in two or more Departments, or in the Public Service and in any other public sector service.

##### 3C-1.2 Application and Effect

The Guidelines apply to members of staff of public sector agencies (may include prescribed State Owned Corporations), employed in two or more Departments, or in the Public Service and any other public sector service.

Currently no State Owned Corporations have been prescribed (that is listed in the Regulation) to be covered by the definition of public sector service for the purpose of s100.

##### 3C-1.3 Delegation

The Department Head or head of the public sector agency is responsible for the application of these guidelines pursuant to Section 100 of the Act.

In applying these guidelines, matters referable to the 'Department Head' also apply to officers with relevant and documented delegated authority in accordance with [section 4F](#) of the Act.

Matters referable to 'head of a public sector agency' also apply to employees of the public sector agency with relevant and documented authority in accordance with the applicable legislation.

##### 3C-1.4 Assistance in Applying the Guidelines

"Chapter 3 Commentary and guidelines on staff mobility" of the Personnel Handbook may be used in the form of guidance notes to assist managers in properly and reasonably applying these guidelines. Cross agency employment is discussed at "3-16 Cross-agency employment (s100)" of Chapter 3.

##### 3C-1.5 Cross-Agency Employment

###### 3C-1.5.1 General

[Section 100](#) of the Act provides that a staff member may be employed, as an officer, or on any other basis, in 2 or more Departments or in the Public Service and in any other public sector service.

The result of two or more Departments or public sector agencies entering into a cross agency employment arrangement is a single position/job would be created with one of the employers. The position/ job created would have regard to the nature of the work required. The nature of the work required would be the same or similar value positions/jobs.

The cross-agency employment position/job would only be used where the nature of the work would have the same or similar salary and same hours of work. A salary variation shall not be more than 5%.

###### 3C-1.5.2 Determining the 'designated employer' of the position

If it is proposed to employ a person under a cross agency employment arrangement (s100) it is recommended contact is made with the Public Sector Workforce, Department of Premier and Cabinet for advice.

The designated employer for the purposes of conditions of employment will be the agency where the employee works the greater percentage of time.

In the circumstance that a staff member works an equal amount of time between two or more agencies the designated employer may be:

- the agency with the better conditions; or
- where the employee is working with a number of people from one agency with one set of conditions, and it would be disadvantageous for this employee to have a different set of albeit better conditions than other staff members with whom they are working, the agency where the other staff members work.

In some circumstances an industrial instrument may be negotiated which provides specific conditions of employment for cross-agency employment arrangements. In these circumstances the instrument may indicate the appropriate designated employer for the purposes of conditions of employment.

###### 3C-1.5.3 Conditions of Employment

The appropriate conditions of employment for an employee under cross-agency employment arrangements will be those of the designated employer and, if relevant those established under a relevant industrial instrument specific to cross agency employment arrangements.

Prior to filling the vacancy the Department Heads, or the Department Head and the CEO of the other service shall determine who the designated employer is in accordance with these Guidelines for the purposes of the conditions of employment to be applicable to the position.

The employee working under a cross-agency employment arrangement is to be advised in writing of the designated employer for purposes of conditions of employment and other industrial purposes. The letter should indicate any relevant industrial instruments and appropriate local arrangements.

Where a single Department or public sector service is the designated employer in relation to Flexible Working Hours arrangements:

- The designated employer's Flexible Working Hours arrangements apply to all hours worked by the employee irrespective of whether the hours are worked for the designated employer or the other agency(s) involved in a cross agency employment arrangement; and
- Where the cross agency employment arrangement involves distinct days worked by the employee for the designated employer and other agency(s) involved, time off may be taken by the employee under the designated employer's Flexible Working Hours arrangements on any days ordinarily worked whether for the designated employer or the other agency(s).

## Chapter 4 **Leaving Public Service employment**

## 4-1 Source of authority

### 4-1.1 Public Sector Employment and Management Act 2002 (PSEM Act 2002)

The following sections of the *PSEM Act 2002* specify the means by which Public Service employment may cease:

- Annulment of appointments on probation after report – [s. 23](#);
- Forced retirement of an officer incapable of performing duties – [s. 25](#);
- Resignation in writing – [s. 26 \(1\) \(c\)](#);
- Dispensing with the services of a departmental temporary employee – [s.30](#);
- Dispensing with the services of a casual employee – [s.39](#);
- Dismissal for misconduct reasons – [s.42 \(1\) \(a\)](#);
- Directed or allowed to resign – [s.42 \(1\) \(b\)](#);
- Annulment of appointment on probation for misconduct reasons – [s.42 \(1\) \(c\)](#);
- Dismissal after failure to meet residency requirement – [s.54 \(2\)](#);
- Services of excess employees dispensed with – [s. 56](#);
- Dismissal of an officer refusing a transfer with no valid reason – [s. 90](#); and
- Services dispensed with by right of the Crown – [s. 60](#).

Guidelines relating to the annulment of appointment on probation (s. 23) may be found at 2-17.5 Annulment of appointment. The procedural guidelines governing allegations of misconduct and the guidelines on unsatisfactory performance should be followed when annulment of appointment or dismissal is for disciplinary reasons (s.42 (1) (a) and (c) of the *PSEM Act 2002*). See Chapter 9 "[Management of Conduct and Performance](#)".

This chapter deals with the provisions of the *PSEM Act 2002* and the *PSM Act 1988* that relate to resignation, retirement, medical retirement, dispensing with the services of

departmental temporary employees, dismissal owing to residency requirements, dismissing excess employees, and death.

## 4-2 General

### 4-2.1 Administrative procedures

#### 4-2.1.1 Certificates of service

A letter stating the dates of employment and other details is to be issued to all employees who leave the service. If appropriate, the letter may state that the services of the employee were satisfactory.

#### 4-2.1.2 Notifying superannuation funds

The department must notify the relevant superannuation fund or scheme without delay when a member dies or leaves the department.

## 4-3 Payment for leave entitlements

### 4-3.1 Recreation leave entitlements

All leave credits are calculated as at the last day of service in accordance with the provisions outlined in this subsection.

#### 4-3.1.1 Entitlements to be calculated to the next highest quarter day

Recreation leave for which an employee is eligible on cessation of employment is calculated to the nearest quarter day, with periods less than a quarter day rounded up.

#### 4-3.1.2 Payment for accrued leave – options

On ceasing employment, an employee is entitled to be paid the monetary value of accrued recreation leave which remains untaken. The employee may elect to take accrued recreation leave as leave, as a lump sum payment; or as a combination of leave and a lump sum payment.

If an employee elects to take some or all accrued recreation leave as leave, further recreation leave will continue to accrue during the nominated period of leave. Recreation leave accrued in respect of the nominated period of leave must be paid for in a lump sum on the last day of service or shortly thereafter.

#### 4-3.1.3 Effect of salary adjustment – last day of service

If the last day of service falls on or after the date of effect of a salary adjustment under an industrial instrument, the monetary value of leave is based on the new salary rate.

#### 4-3.1.4 Retirement on medical grounds

For the purposes of initially determining the last day of service of an employee declared to be medically unfit to continue in the Government Service as defined in Part 1 of Schedule 1 of the PSEMA, it is assumed that the value of accrued recreation leave will be taken as a lump sum. Departments must therefore inform the employee of the last day of service, as initially determined. The employee may then elect to exercise one of the options in [4-3.1.2 Payment for accrued leave – options](#). When practicable, this election should be in writing.

See also 5.8 Fitness to Continue Procedures.

#### 4-3.1.5 Death of an employee

See [4-3.3 Payment for leave on the death of an employee](#).

### 4-3.2 Extended leave entitlements

On termination of services, an employee who has acquired a right to extended leave is to be paid in lieu of such leave the monetary value of accrued and untaken extended



leave. Payment is to be made at the rate of salary received as at the last day of service and fractions of less than a quarter day are to be taken to the next higher quarter day.

#### **4-3.2.1 Payment of extended leave on resignation to join a union**

An employee who resigns from the Public Service and obtains employment with a union is paid the monetary value of accrued extended leave. It is not paid to the union.

#### **4-3.2.2 Payment of proportionate extended leave**

The question of payment of proportionate extended leave arises when an employee has completed service of at least 5 years but less than 10 years (or less than 7 years from 1 January 2005 for some employees) and the employment is being terminated:

- either by the employer for any reason other than the employee's serious and intentional misconduct; or
- by the employee on account of illness, incapacity or other domestic or pressing necessity.

Instances in which payment of proportionate extended leave must be made on completion of at least 5 years service are:

- medical retirement;
- voluntary redundancy;
- retrenchment;
- voluntary retirement at 55 years of age or older;
- termination by the employer for any reason other than serious and intentional misconduct of the employee;
- termination by the employee, if evidence proves that the termination was brought about by illness or incapacity of the employee or of a member of the employee's family, or by other reasons that constitute domestic or pressing necessity; and
- on resignation following election of the employee as a member of State or Federal Parliament; and
- on the death of the employee.

### **4-3.3 Payment for leave on the death of an employee**

#### **4-3.3.1 Sources of authority**

- *Public Sector Employment and Management Act 2002 (PSEM Act 2002)*, Schedule 3 clause 3;
- Crown Employees (Public Service Conditions of Employment) Award 2009, clause 77.5 and 77.6.

#### **4-3.3.2 Payment of entitlement**

If an employee dies, the recreation leave entitlement is to be calculated up to and including the date of death.

The monetary value of all recreation leave and extended leave accrued, but not taken or forfeited at the date of death (including the balance of leave which has been partly taken), is to be paid to the employee's nominated beneficiary. If no beneficiary has been nominated, the monetary value of the leave is to be paid to the following in order:

- the spouse of the employee; or if none
- the children of the employee (including adult sons and daughters, not necessarily dependent) or, if there is a guardian of the children then to the guardian for the children's maintenance, education and welfare; or if there is none
- other dependent relative(s), or if none
- to the employee's estate.

#### **4-3.3.3 Evidence of dependency of children**

When determining the degree of dependency of children, department heads should check the relationship of the claimant to the deceased, the nature of dependency, and ensure that the claimant(s) comprise all the relatives of the employee at the date of the employee's death. Departments should also obtain the following information:

- the marital status of the deceased;
- the full names of the closest relatives, such as, brothers, sisters, and so on;

- statutory declarations by the claimant(s) setting out the facts which the claimant(s) considers support the claim to be a dependent relative of the deceased, indicating the degree of relationship to the deceased and the extent of dependency: that is, whether wholly or partially dependent and giving details; and
- any other information that may help the department head to reach a decision.

The first three points above should be supported as far as possible by a search at the Registry of Births, Deaths and Marriages.

#### **4-3.3.4 Deceased estates**

Payment of any unpaid salaries, wages, allowances, overtime or expenses due to the deceased are to be paid to the estate. Such payments are not to be made until probate of the will or letters of administration have been produced.

If there are no assets or insufficient assets to warrant the expense of applying for the formal grant of administration or probate, the cost of the funeral expenses may be paid from any unpaid monies due to the deceased, to the person who paid the funeral expenses. This is subject to Ministerial approval and the production of: a receipt for the funeral expenses, and a statutory declaration to this effect.

If the unpaid monies exceed the funeral expenses, any existing will should be sighted. The statutory declaration should clearly establish that excess monies are being paid to all the beneficiaries. If in doubt, seek advice from the Public Trustee.

## **4-4 Medical retirement**

### **4-4.1 Source of Authority**

*Public Sector Employment and Management Act 2002* Section 25 Incapable officer may be retired.

Clause 13 Health & Safety of the Public Sector Employment and Management Regulation 2009.

The Nominated Medical Assessor advises the department about the employee's fitness to continue working in their substantive position. The department is able to use this advice to determine whether or not the person should be medically retired, as medical retirement is the responsibility of the department. If the department decides that an employee is to be retired they should be informed and, if necessary, directed verbally and in writing to cease duty immediately. Action should then be taken, on the form for medical retirement/termination as set out in Appendix 4A of this Chapter.

Minister's Memorandum [M2010-18](#) Procedures for Managing Non-Work Related Injuries or Health Conditions to be read in conjunction with [C2011-23](#) Medical Assessment Services for the NSW Public Sector.

#### 4-4.2 Allocation of sick leave pending medical examination result

If an employee appeals a decision to be medically retired the employee may be granted available sick leave, including special sick leave according to the provisions set out in ["6-17.12.1 Special sick leave"](#), followed by recreation and/or extended leave at the employee's election.

#### 4-4.3 Last day of service

The last day of service for an employee who does not appeal is to be:

- the date the employee notifies the agency in writing (within the 21 day period) that an appeal will not be lodged; or
- the end of the 21 day appeal period if an employee does not indicate an intention to appeal.

The last day of service for an employee who has lodged an appeal and the appeal is disallowed will be the date the decision is made by the Review Panel.

Sick leave may be granted up to the last day of service. If recreation leave is to be taken and not paid as a gratuity, the last day of service will be on the expiration of such leave, and it is from this date that extended leave entitlements are to be calculated.

#### 4-4.4 Superannuation

Superannuation schemes have different rules governing benefits. Some superannuation schemes may require additional medical assessment to determine a member's degree of incapacity and entitlement to superannuation. In all cases, departments and employees should seek guidance from Pillar Administration (the administrator of the various state superannuation schemes) or the employee's own superannuation fund.

Members of the following schemes may obtain information from Pillar's Call Centre between 8.30 am and 5.30 pm Monday to Friday.

First State Super (FSS) on 1300 650 873.

State Authorities Superannuation Scheme (SASS) on 1300 130 095.

State Superannuation Scheme (SSS) on 1300 130 096.

### 4-5 Medical appeals/reviews

Employees who have been referred to the Nominated Medical Assessor for examination and who consider themselves adversely affected by the assessment have the right of appeal to the independent Review Panel. Any such appeal must be lodged by the employee within 21 days of the date on which the employee was notified of the assessment.

The procedures for requesting a review of a medical assessment are detailed in the [C2011-23](#) Medical Assessment Services for the NSW Public Sector.

## 4-6 Resignation

### 4-6.1 Section 26(1) (c) of the *Public Sector Employment and Management Act 2002*

Resignation is to be in writing, signed by the resigning employee, delivered to and accepted by the department head or nominated officer.

#### 4-6.1.1 Giving notice

The timeframe required for notifying resignation is set out in the relevant industrial instrument. Otherwise reasonable notice should be given as decided by each department head.

#### 4-6.1.2 Bonded or indentured persons

Resignations received from bonded or indentured people must not be accepted until the liabilities relating to the bond are determined.

## 4-7 Exit interviews

An exit interview is a structured, friendly and helpful discussion that a departing employee is invited to have with a senior person before, or shortly after ceasing duty. A follow-up interview is strongly recommended.

### 4-7.1 General

Employees leave positions for a variety of reasons: to meet their career or life needs; to take a promotion in another department; to satisfy a desire for a career change or a new opportunity; to gain experience in the private sector, or to accommodate personal objectives unrelated to work such as moving home, more family time, pursuing studies, and so on.

## 4-7.2 Objectives of exit interviews

A well conducted exit interview can provide valuable information to the department head and managers on how the department is perceived by employees. If properly analysed and considered, this feedback can inform the department's management improvement programs. It can help the department to make its employees more employable and competitive in the labour market, and help the department to be, and to be seen to be, a good employer.

Strategically applied, exit interview feedback can:

- help reduce turnover of top performing employees;
- improve employee morale and job satisfaction;
- increase the efficiency of practices and procedures;
- contribute to better job design;
- guide the department in improving recruitment policies and procedures;
- identify supervisors who may benefit from guidance or training in managing people.

### 4-7.2.1 Discrimination and harassment

An exit interview can also show whether the employee is leaving because of discrimination or harassment, or alternatively offer reassurance that these were not factors in the employee's decision to leave.

An employee can lodge a discrimination or harassment complaint with the Anti-Discrimination Board 02 9268 5544 even after they have left the workplace voluntarily. If someone has justification for a complaint it would be preferable to try to resolve the complaint internally. This might prevent the employee from going ahead with their external complaint. At the very least, it allows the employer to do whatever might be necessary to try to ensure that a similar problem will not arise with another employee in the future.

Guidance on dealing with discrimination, harassment and unfair treatment are contained in publications on *Harassment Free Workplace – and How to Implement EEO Guidelines* that can be ordered through the Anti-Discrimination Board on 1800 670 812.

Additional information on EEO and Harassment is available on-line from the EEO site: [www.eeo.nsw.gov.au](http://www.eeo.nsw.gov.au).

## 4-7.3 Managing interviews

Exit interviews should be managed by the department's human resources director or another executive of comparable seniority selected by the department head.

The analysis and report of the interview should be presented in confidence to the department head or the human resources director who must determine how much, if any, of it should be communicated to other managers with a genuine need of the information.

### 4-7.3.1 Interviewers

An exit interview should be conducted by a senior and experienced person with appropriate interpersonal communication capability.

A primary task for the interviewer is to reassure the employee that all exchanges during the interview are strictly confidential and privileged.

The interviewer must always be someone acceptable to the employee.

A trained consultant may be engaged for the interview if objectivity, or a perception of objectivity is an important issue for the department. This may be especially helpful if interpersonal behaviour is suspected of being both a problem for the department and a factor in the employee's resignation.

### 4-7.3.2 Participation

The departing employee must clearly understand that participation in an exit interview is entirely voluntary, that everything said or even suggested will be as confidential

as the employee wishes it to be, and that no information obtained during the interview can ever be used against the employee.

As long as these issues are clear, every effort should be made to encourage the employee to participate.

### 4-7.3.3 Timing

It may be convenient for both parties if the exit interview is held before the employee's last day of service. Otherwise, it should be shortly afterwards so that the needed information is still part of recent memory.

### 4-7.3.4 Questionnaires

Departments may if they choose seek information from departing employees by way of a survey questionnaire handed or sent to the employee. This is unlikely to be of much value and cannot be considered an acceptable substitute for a properly conducted interview.

A questionnaire cannot be flexible. Each employee is a unique individual and may resent being put into a series of boxes.

The importance of a skilled interviewer is that people are often not aware of their own motives and their true feelings. Even if they are strongly aware, they will not always be prepared to reveal them, much less to put them down on paper with no way of knowing what the document's destiny may be.

## 4-7.4 Interview content

An exit interview should be structured, but loosely enough to allow the skilled interviewer to follow where they believe they need to go. The loose structure or framework will vary from department to department or even branch to branch, depending on circumstances and current priorities and preoccupations. The course that the interview takes will in practice be different for every interview.

The starting point for drafting a framework will be all the issues covered in this subsection, together with others that the department believes warrant pursuit.

The following check-list should be considered only a starting point for developing a departmental framework. Some of the issues listed can be deleted. Others will suggest additional issues. The department is the best judge.

- What has been the major factor in your decision to leave?
- What other factors in this workplace have you seen as negatives?
- What are the positive aspects of this department that you think you will miss most?
- What are your plans for the future and your future career objectives?
- Can this department be of any assistance?
- If you have found another position, what are the major factor and the ancillary factors that were critical in your decision?
- What more could the department have done to advance your career objectives?
- What more could the department have done to educate, train and develop you?
- How else could the department have helped to make you more attractive to potential employers?
- What was your perception of your recruitment into the department?
- What changes need to be made in our recruitment policies and practices?
- What have you most enjoyed about your work, as distinct from the workplace?
- What have been the worst frustrations or difficulties with the work?
- What would you have done if you had been your manager?
- What would have to happen for you to consider coming back to us at some time in the future?

## 4-8 Retirement

### 4-8.1 Abolition of compulsory retirement

Compulsory retirement based on age is unlawful in New South Wales.

Under Part 4E of the Anti-Discrimination Act 1977 it is unlawful to:

- retire an employee from employment; or
- require an employee to retire from employment; or
- threaten to retire an employee from employment; or
- engage in conduct with a view to causing an employee to retire from employment
- on the grounds of age.

Firefighters, coalminers, police and judicial officers are excluded from the general prohibition on compulsory retirement.

#### 4-8.1.1 Voluntary retirement

It is up to individual employees to decide when they retire.

Those who decide to retire should give notice of their intention in the same manner as they would notify their intention to resign.

Employees considering options for retirement should consult their own superannuation fund or scheme for advice on the superannuation aspects of retirement in their particular situation. Departments must always notify the relevant superannuation fund when a member retires.

## 4-9 Dismissal

### 4-9.1 Departmental temporary employees

#### 4-9.1.1 Employment not renewed - Sections 27 and 28 of the Public Sector Employment and Management Act 2002 (PSEM Act 2002)

Unless they are reappointed, the employment of a departmental temporary employee ceases at the end of the employment or contract period.

#### 4-9.1.2 Dispensing with services - Section 30 of the PSEM Act 2002

Department Heads may dispense with the services of a departmental temporary employee at any time. The departmental temporary employee should be advised of the reasons for their services being dispensed with and given an opportunity to discuss the matter.

Generally if an allegation of misconduct is received for a departmental temporary employee the allegation should be put to the employee and their response sought, and then if the Department head considers dispensing with the employee's services the employee should be given an opportunity to be heard on this matter.

#### 4-9.1.3 Misconduct

The standard of behaviour and conduct required of a departmental temporary employee is not less than for officers. The services of a departmental temporary employee who has behaved improperly may be dispensed with.

#### 4-9.1.4 Conditions attached to dismissal

The conditions attached to dismissing a departmental temporary employee's services should not be more advantageous than those applying to an officer.

#### **4-9.1.5 Dismissing departmental temporary employees on medical grounds**

A departmental temporary employee who submits a medical certificate covering a period in which their paid sick leave entitlement will cease and recovery does not appear likely; or who submits a medical certificate indicating an absence of at least 6 months, should be required to undergo a medical examination by the Nominated Medical Assessor to determine the employee's fitness to continue in employment.

#### **4-9.1.6 Action following medical examination**

Upon advice from the Nominated Medical Assessor that a departmental temporary employee is not fit to continue in employment, the employee must be directed to cease duty immediately if not already on leave, and advised of their appeal rights.

No termination action is to be undertaken until the 21 day appeal period has expired, or written advice is received from the employee advising that there will be no appeal. Action should then be taken on the prescribed form for medical retirement and termination as set out in Appendix 4A of this Chapter for approval by the department head.

#### **4-9.1.7 Allocation of sick leave pending medical examination result**

Sick leave, if available, should be granted up to the day that the employee was declared unfit. There is no entitlement to sick leave beyond the last day of service.

If an appeal is pending, the employee may use available sick, recreation or extended leave. For further information see ["6-17.6 Managing absences due to illness"](#).

#### **4-9.1.8 Last day of service**

The last day of service is the date the Nominated Medical Assessor signs the medical report or, if there is an appeal, the date the Medical Appeals Panel makes its decision.

Departmental temporary employees do not have the option of taking leave. Recreation and extended leave should be calculated as at the last day of service and paid as a gratuity.

If the employee contributes to a superannuation scheme, the department must notify the scheme of the termination and last day of service without delay.

### **4-9.2 Dismissal relating to residency requirements**

#### **4-9.2.1 Section 54(2) of the *Public Sector Employment and Management Act 2002***

Dismissals under section 54 (2) are by the Department Head.

#### **4-9.2.2 Last day of service**

Last day of service is the date of approval by the Department Head.

#### **4-9.2.3 Payment of final entitlements**

Payment for accrued recreation and extended leave and superannuation entitlements are made in the same manner as applies to resignations from Government Service as defined in Part 1 of Schedule 1 of the PSEMA employment.

### **4-9.3 Excess staff**

#### **4-9.3.1 General**

Under [section 56](#) of the *PSEM Act 2002*, an employee may be declared excess if the Department Head is satisfied that the number of employees in the department exceeds the number needed for its effective functioning. The department head must take such steps as are practicable to secure the transfer of the excess employee to a vacant position in another department at their existing salary. Further information may be found at ["2-6 Excess employees"](#)

#### **4-9.3.2 Voluntary redundancy**

Every excess employee must be provided with an offer of voluntary redundancy when they are declared excess. Upon being declared excess, employees have two weeks from the date of written advice to decide whether to accept a voluntary redundancy. If the excess employee

accepts the voluntary redundancy, they must leave the service within two weeks or at a time nominated by the agency. Refer to the [Managing Excess Employees Policy](#) for more information. See also section ["2-6.5.2 Voluntary redundancy"](#).

#### **4-9.3.3 Forced redundancy**

Excess employees who remain without a substantive position at the conclusion of the retention period are to be made forcibly redundant by their department head. Where an excess employee has secured a temporary secondment, and the retention period has ended, the excess employee is to be made forcibly redundant at the conclusion of the secondment. Refer to the [Managing Excess Employees Policy](#) for more information.

### **4-9.4 Employee refusing a transfer**

#### **4-9.4.1 Section 90 of the *Public Sector Employment and Management Act 2002***

[Section 90](#) of the *PSEM Act 2002* provides that an employee of a public sector agency who refuses a transfer may be dismissed from the service of the public sector agency or in the case of a member of staff of a Department – dismissed from the Public Service.

The head of the public sector agency may dismiss the employee if satisfied the employee had no valid reason for refusing the transfer. For matters to be considered by the head of the agency in deciding whether the employee has no valid reason – see [3.14.3 Employee refuses transfer](#)

A member of staff of a Department may only be dismissed with the approval of the Public Service Commissioner. This has been delegated to the Department Heads. See [PSC2012-009](#).

See also ["3-14.4 Dismissal of staff refusing transfer"](#) Section 90 does not prevent the head of a public sector agency from taking any disciplinary action against a member of staff of the agency for refusing a transfer.

## 4-9.5 Absent from duty without notice

### 4-9.5.1 Unauthorised absence

An employee who appears to have abandoned employment, that is, one who is absent without authorisation, is to be mailed or couriered a certified letter to their last known address:

- requesting the reason for the absence;
- directing the employee to resume duty within a specified time; and
- advising of the prospect of termination of employment if the direction is not followed.

### 4-9.5.2 Failure to comply with direction to resume duty

If the employee referred to in the previous paragraph does not resume duty within the specified period, or fails to reply, or fails to provide a satisfactory reason for their unauthorised absence, the following action should then be taken:

- officers whose whereabouts are known should be dealt with in accordance with the Procedural Guidelines governing misconduct (see "Management of Conduct and Performance")
- officers whose whereabouts are not known should be dealt with under section 60 of the *PSEM Act 2002*; and
- the services of departmental temporary employees should be dispensed with in accordance with section 30 of the PSEM Act 2002 (see 4-9.1.2 Dispensing with services –section 30 of the PSEM Act).

### 4-9.5.3 Section 60 of the *Public Sector Employment and Management Act 2002*

Under section 60 of the *PSEM Act 2002* the Crown has the right to dismiss any person employed in the Public Service.

### 4-9.5.4 Payment of leave

An employee whose services are terminated following action taken under section 60 of the *PSEM Act 2002* is entitled to be paid accrued leave in accordance with the provisions outlined in 4-3 Payment for leave entitlements.

## 4-9.6 Resignation or dismissal for conduct, unsatisfactory performance or convicted of serious criminal offence reasons

### 4-9.6.1 Section 42 (1) (a) or (b) of the *Public Sector Employment and Management Act 2002*

For information on resignation or dismissal for conduct, unsatisfactory performance or convicted of serious criminal offence, refer to Chapter 9 Conduct.

### 4-9.6.2 Appeal rights

Officers who are directed to resign under section 42 (1) (b) of the *PSEM Act 2002* have a right of appeal to the Industrial Relations Commission of NSW. Refer to Chapter 9 Conduct.

## 4-10 Death

### 4-10.1 General

#### 4-10.1.1 Last day of service

In such instances the last day of service is the date of death. All final entitlements should therefore be calculated as at that date.

#### 4-10.1.2 Recreation and extended leave entitlements

Refer to 4-3.3 Payment for leave on the death of an employee.

## Appendix 4A: Sample medical retirement or departmental temporary employee

Prescribed form for medical retirement or dispensing with services of a Departmental temporary employee

<b>Proposed retirement in terms of section 25 of the <i>Public Sector Employment and Management Act 2002</i> or dispensing with services in terms of section 30 of the <i>Public Sector Employment and Management Act 2002</i></b>	
Department:	
Branch:	
Name: serial no:	
Classification: grade:	
Permanent or temporary:	
If temporary, date to which services have been retained:	
Length of service under the <i>Public Services Acts 1902 and 1979</i> , the <i>Public Sector Management Act 1988</i> and the <i>Public Sector Employment and Management Act 2002</i> :	
Nature of illness:	
Length of current absence:	
Nature of leave granted during current absence:	
Total sick leave granted during service:	
Annual sick leave due: days as at:	
Cumulative sick leave due: days as at:	
Special sick leave due: days as at:	
Recreation leave due: days as at:	
Extended leave due: days as at: <i>(including pro rata when at least 5 years service as an adult completed)</i>	
Appeal to Medical Appeals Panel (Please tick one)	
Right of Appeal Waived:	
<b>No Appeal Lodged and Appeal Period has Expired:</b>	
Appeal Lodged but Disallowed:	
<b>Recreation leave election</b>	
Election made in accordance with Public Employment Office (Leave) Determination, in respect of retirements under section 25 of the <i>Public Sector Employment and Management Act 2002</i> . (Please tick one)	
Part or all of Recreation Leave to credit to be taken as leave:	
Recreation Leave credit to be paid as gratuity:	

<b>Recommendation as to leave and retirement or termination</b>	
Type of Leave to be Granted:	
Number of Days:	
Retirement in terms of section 25 of the <i>Public Sector Employment and Management Act 2002</i> : (Please tick if appropriate)	
Dispensing with Services in terms of section 30 of the <i>Public Sector Employment and Management Act 2002</i> : (Please tick if appropriate)	
Last Day of Service:	
Approval of Department Head	
Signed:	Date:

## Chapter 5 **Managing the workplace**



## 5-1 Industrial matters

### 5-1.1 Sources of authority

- Public Sector Employment & Management Act 2002 (PSEM Act 2002)
- Public Sector Employment and Management Regulation 2009 (PSEM Regulation 2009)
- Industrial Relations Act 1996 (IR Act 1996)
- Work Health and Safety Act 2011 (WH&S Act 2011)
- Work Health and Safety Regulation 2011
- C2012-13 Consultative Arrangements: Policy and Guidelines (2012)
- Crown Employees (Public Service Conditions of Employment) Award 2009 (The Award)
- M2010-07 Working Together: Public Sector Workplace Health and Safety and Injury Management Strategy 2010 – 2012
- Fair Work Act 2009 (Cwlth)

#### 5-1.1.1 Public Sector Employment & Management Act 2002

Under section 129 of the PSEM Act 2002, the Secretary of The Treasury is, for the purposes of any proceedings relating to officers, temporary employees or casual employees held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of the staff of the Public Service.

The Secretary of The Treasury has the authority to:

- make determinations fixing the salaries, wages and other remuneration for officers, temporary employees or casual employees (section 130);
- enter into agreements with associations or organisations representing members of staff with respect to industrial matters (section 131); and
- determine certain conditions and benefits of employment for staff members (including remuneration packaging, redundancy and severance payments) (section 130).

The Secretary of The Treasury also has the following functions under section 125:

- advising the Government on appropriate strategies and policies regarding employment conditions (including wages) and industrial relations in the public sector; and
- monitoring the implementation of Government strategies and policies on employment conditions and industrial relations in the public sector and assisting with their implementation (including the issuing of implementation guidelines).

All administration of industrial matters is undertaken by Public Sector Industrial Relations, NSW Industrial Relations, exercising the authority of the Secretary of The Treasury.

Client contact officers located in Public Sector Industrial Relations will advise and assist individual employing agencies with industrial and employee relations issues. Agencies can identify their own client contact officer by calling 9020 4644.

#### 5-1.1.2 Industrial Relations Act 1996

The *IR Act 1996* provides the framework for industrial relations in NSW. The IR Act 1996 establishes the Industrial Relations Commission and contains provisions including:

- resolution of industrial disputes by conciliation or arbitration;
- facilitating cooperative workplace relations;
- making awards and enterprise agreements;
- minimum conditions of employment;
- unfair dismissal claims; and
- registration of industrial organisations (unions and associations).

#### 5-1.2 Industrial instruments

Industrial instrument is a generic term for various types of documents that set out and regulate rates of pay and conditions of employment. The main types of instruments are awards and enterprise agreements made under the

*IR Act 1996*, Treasury determinations made under section 130 of the PSEM Act 2002, and former Public Service agreements.

Further information about these industrial instruments is provided at “5-2.1.1 Determination of salaries and wages”.

#### 5-1.2.1 Industrial disputes

Disputes should be resolved at the level closest to the dispute as possible within a department and in the least possible time (sections 14 and 39 of the IR Act 1996 and the Fair Work Act 2009). If a resolution cannot be reached through discussions with the relevant union(s), then the matter should be referred to the appropriate industrial tribunal.

Public Sector Industrial Relations, NSW Industrial Relations, allows departments to appear in proceedings before tribunals having jurisdiction to deal with such industrial matters as negotiations, conferences and inspections, subject to the following:

- the industrial matter does not involve significant costs as a component of the department’s funds;
- no new industrial standards will result from the industrial process, including no impact on existing awards, agreements or determinations;
- there will be no potential for flow on to other areas of the Department or the Public Service; and
- the matter is already identifiable as a local industrial matter.

If there are sector wide implications the dispute should be brought to the attention of Public Sector Industrial Relations.

The assistance of the industrial tribunal may involve the seeking of a recommendation or direction on any industrial action in conciliation proceedings under section 134 of the *IR Act 1996*.

Departments should not seek a dispute order from an industrial tribunal unless they have consulted and reached agreement with Public Sector Industrial Relations on this

course of action (sections 137-139 of the *IR Act 1996* or under the *Fair Work Act 2009*). Consideration of the need for a dispute order will have regard to:

- evidence that all other opportunities to settle the matter have been exhausted;
- how a dispute order will assist with the resolution of the dispute; and
- the consequences of the union's non-compliance with the dispute order

### 5-1.2.2 Dispute procedures

In all cases, except those in which relevant functions have been delegated under the *PSEM Act 2002*, departments are required to adopt the following procedures in the event or likelihood of an industrial dispute:

- immediately advise Public Sector Industrial Relations, NSW Industrial Relations, by telephoning 9020 4644; and
- provide written advice to Public Sector Industrial Relations, NSW Industrial Relations, outlining: the full text of any demands;
- details of the circumstances;
- information on estimated cost; and
- name of the claimant department.

### 5-1.2.3 Right of entry by union officials

Appropriate union officials have rights of entry prescribed under the *WH&S Act 2011*, the *IR Act 1996* and the *Fair Work Act 2009*. Union officials' rights to enter the workplace are also confirmed at [clause 62 of the Crown Employees \(Public Service Conditions of Employment\) Award 2009](#).

### 5-1.2.4 Consultation and technological change

There must be effective means of consultation, as set out in [C2012-13 Consultative Arrangements: Policy and Guidelines \(2012\)](#) on matters of mutual interest and concern, both formal and informal, between management and trade unions represented in the department.

Departmental management must consult the relevant trade union prior to the introduction of any technological change. This is also confirmed at [clause 65](#) of the Crown Employees (Public Service Conditions of Employment) Award 2009.

## 5-1.3 Departments acting on behalf of the Secretary of The Treasury

### 5-1.3.1 Delegations under the *PSEM Act 2002*

The power to appear on behalf of the Secretary of The Treasury in certain industrial proceedings has been delegated to Department Heads – See [PSCC2012-09, Manual of Delegations 2012](#).

### 5-1.3.2 Conditions for granting authorisation

Department Heads may authorise nominated officers ("authorised officers") to act on behalf of the Secretary of The Treasury. Public Sector Industrial Relations – 9020 4644 – must be advised of industrial matters handled by authorised officers including progress reports on significant developments and outcomes.

### 5-1.3.3 Officers to advise tribunal

When authorised officers of *PSEM Act 2002* Schedule 1, Part 1 Public Service Departments appear before Industrial Tribunals they should inform the Tribunal of their name and department and that they are appearing on behalf of the Secretary of The Treasury. There should not be a second appearance entered on the record for their own department.

That is, the authorised staff member should say the following:

(Authorised staff member's name) and I appear for the Secretary of The Treasury

Similarly, where filing a Notice of Appearance in local industrial proceedings, the Notice should state the appearance is for the Secretary of The Treasury, even where the contact is from another public service department. If no Notice of Appearance is filed, the authorised staff

member should also advise the Industrial Registrar that they appear for the Secretary of The Treasury and request that any further court listings in the matter be notified to the authorised officer.

Appearances for Divisions listed in Parts 2 and 3 of the *PSEM Act 2002* are not delegated and remain with the position title of the Division Head.

### 5-1.3.4 Obtaining transcripts

Authorised officers should order transcripts of proceedings in the name of the Secretary of the The Treasury and arrange for these to be provided to, and paid for by their own department.

## 5-2 Salary administration

### 5-2.1 Sources of authority

- [Industrial Relations Act 1996](#);
- [Public Finance and Audit Act 1983](#);
- [Limitation Act 1969](#)
- [Treasurer's Directions](#).

#### 5-2.1.1 Determination of salaries and wages

The Public Service salaries, wages or other remuneration may be determined by:

- an award or enterprise agreement, made by the Industrial Relations Commission of NSW;
- an agreement, made between the Secretary of The Treasury and employee associations in accordance with section 131 of the *PSEM Act 2002*;
- a determination, made by the Secretary of The Treasury in accordance with section 130 of the *PSEM Act 2002*;
- the Statutory and Other Offices Remuneration Tribunal; or
- in relatively few cases, a federal award or agreement.

## 5-2.2 Awards, enterprise agreements and determinations

An industrial instrument binds everyone in the class or group it covers, whether or not they are members of the union or association that is a party to the industrial instrument.

Questions relating to industrial instruments may be referred to the Human Resources of the relevant agency in the first instance, or Public Sector Industrial Relations, NSW Industrial Relations, [psir@services.nsw.gov.au](mailto:psir@services.nsw.gov.au) or 9020 4644

### 5-2.2.1 Retrospective pay adjustments

Unless otherwise stated in the industrial instrument, all employees are eligible for retrospective adjustments of salaries and wages to the effective date of the industrial instrument, provided that they were employed during the period to which the adjustment applies. This entitlement applies also to people regularly employed for short periods of relief or in a casual capacity regardless of whether they were employed at the date of making the industrial instrument.

Retrospective payment may also be made to the following categories of employees:

- officers who have retired under the provisions of section 25 of the *PSEM Act 2002*;
- departmental temporary employees whose services were satisfactory; and
- deceased people whose services were satisfactory.

### 5-2.2.2 Secretary of The Treasury approval of retrospective adjustments.

Retrospective adjustments require the prior approval of the Secretary of The Treasury in the following circumstances:

### 5-2.2.3 Secretary of The Treasury approval of retrospective adjustments

Retrospective adjustments require the prior approval of the Secretary of The Treasury in the following circumstances:

- when an employee resigns and their last day of service is before the date of signing of the agreement or the date of publication of the determination;
- when an officer's services have been terminated for disciplinary reasons; or
- when a departmental temporary employee has been dismissed owing to unsatisfactory service.

### 5-2.2.4 Arrears of salary or wages

When salary is in arrears as a result of underpayment of an award, enterprise agreement or determination, an adjustment is limited to money that became due within the period of 6 years immediately before the matter was first raised as contained under *Division 2 Limitation Act 1969*.

## 5-2.3 Paying salaries and wages

Salary or wages are to be paid to the employee or to their representative on production of a written authority.

No payments are to be made to anyone by virtue of any order or other document whereby an officer may attempt to assign salary to creditors or money lenders. There is more information in 5-2.6 Judgement debtors and 5-2.7 Bankruptcy.

### 5-2.3.1 Calculating salaries, wages and allowances

Treasurer's Direction 500.01 deals specifically with calculating salaries and wages. In conjunction with that Direction, the following procedures are to be adopted when rounding the rates.

- For employees paid an annual salary, any additional payments (such as allowances) or deductions are to be rounded to the nearest dollar, that is, amounts less than 50 cents rounded down, amounts of 50 cents or more are rounded up.

- For employees paid by way of a weekly salary or wage, any additional payments or deductions are to be rounded to the nearest ten cents. Amounts less than 5 cents are rounded down, 5 cents or more are rounded up.

### 5-2.3.2 Weekly to annual, and annual to weekly conversions

Weekly allowances can be converted to an annual rate by multiplying by 52.17857 (365¼ days divided by 7) and rounding to the nearest dollar.

Annual allowances can be converted to a weekly rate by dividing by 52.17857 and rounding to the nearest cent.

### 5-2.3.3 Overpayments

The *Industrial Relations Act 1996* under Part 10, requires an employer to pay in full to an employee wages owing for time worked. If an overpayment occurs the money cannot be automatically recouped from **wages** by the employer. In cases of overpayment an agency should take the following factors into consideration when determining the period over which the repayment is to be made:

- the employee's financial circumstances and commitments;
- the circumstances involved in the overpayment; and
- the amount of the overpayment.

Obvious overpayments (such as a double payment on the same day or continuation of higher duties allowance after the period of relief has expired) should be recouped as soon as practicable as it could be reasonably expected that the employee so overpaid would have been aware of the overpayment.

### 5-2.3.4 Officers suspended after being charged under section 49 of the PSEM Act 2002

In accordance with [M94-35](#) Suspension of Public Employees from Duty any salary payable to an officer suspended from duty under section 49 of the *PSEM Act 2002* can be withheld if the department head so directs.

For further information regarding disciplinary matters refer to “Chapter 9 Management of Conduct and Performance” on page 187

## 5-2.4 Deductions

### 5-2.4.1 Union deductions

In accordance with clause 66 Deduction of Trade Union Membership Fees, of the *Award*, the department head is to provide, at the employee’s election, for the employee’s union membership fees to be deducted from the employee’s pay and to ensure that such fees are transmitted to the employee’s trade union at regular intervals.

Alternative arrangements for the deduction of trade union membership fees may be negotiated between the department head and the relevant trade union in accordance with clause 10, Local Arrangements of the *Award*.

### 5-2.5 Salary and allowance checks

Department heads should adopt appropriate procedures to ensure the accuracy of the rates of salary and allowances being paid to employees. These checks should be made regularly (for example, each month or quarter), and if the records disagree the department head should determine or have determined the correct rates. This action should then be recorded in a registered departmental file.

### 5-2.6 Judgment debtors

Enforcement of judgments may be made against income – that is salary or wages of an officer or a temporary employee. Part 8 of the *Civil Procedure Act 2005* deals with the enforcement of judgments and garnishee orders.

### 5-2.7 Bankruptcy

Section 58 of the *PSEM Act 2002* requires an officer who becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the officer’s creditors, to:

- immediately give the department head notice of the bankruptcy, composition arrangement or assignment; and
- within such period as the department head specifies, provide the department head with such further information as the department head requires.

If the officer concerned is the department head, the above applies as if references to the department head were references to the Minister.

### 5-2.8 Fines under the PSEM Act

Section 52(2) of the *PSEM Act 2002* states that if a fine is imposed on an officer under that section, the person responsible for paying the officer’s salary must, on receiving notice of the fine, deduct the amount of the fine from the officer’s salary in such a manner as the department head directs.

### 5-2.9 Enforcement of maintenance payments

The *Family Law Act 1975* provides for the enforcement of maintenance payments by a process of continuing garnishee called a Garnishment Order Attaching Monies Due Periodically. The Court fixes a minimum amount below which the employee’s earnings cannot be reduced by compliance with the Order (called the protected earnings rate) and at the same time fixes an amount to be deducted from the employee’s earnings in satisfaction of the Order, (called the normal deduction rate). The Order also specifies an amount the Garnishee may deduct from the normal deduction rate for administrative expenses.

#### 5-2.9.1 Application of earnings – order of priority

On receipt of a garnishment order, the department head is required to apply the employee’s earnings each pay day, in the following order of priority:

- to income tax and superannuation contributions;
- to the officer or employee for the amount of the protected earnings;

- to the Garnishee for payment of the normal deduction rate;
- the amount the Garnishee may deduct for administrative expenses; and
- any balance to the officer or employee.

The Garnishment Order should specify a date from which payments commence. When the employee ceases to be employed, the department head must give notice to the Court within 10 days and tell the Court – if known – the name and address of the new employer and the earnings from the new employer.

### 5-2.10 Increments

A number of wage and salary rates prescribed in industrial instruments provide for incremental advancement. This advancement or progression occurs generally after 12 months service on a particular rate of pay. Payment of increments can be based on the employee’s age in the case of junior rates of pay or can be recognition of the conduct and service at the grade or level of the position occupied.

Increments are subject to compliance with the progression requirements specified in the relevant industrial instrument.

Previous higher duties undertaken at that grade or higher should be considered in determining appointment salary and/or incremental progression.

#### 5-2.10.1 Approval of increments

The payment to any employee of an increment in accordance with any State industrial agreement or Public Service determination is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the appropriate department head.

Approval of an increment is subject to:

- receipt of a satisfactory report of the employee’s conduct and work performance, and having regard to the satisfactory nature of the employee’s sick leave record: and

- not more than 5 days leave-without-pay having been taken within the incremental period. If any leave-without-pay is in excess of 5 days, the increment date is deferred by the full amount, except for those periods referred to in "[5-2.11 Leave to count for incremental purposes](#)".

#### 5-2.10.2 Payment of increments

Once approved, increments should be paid as soon as practicable after the due date.

#### 5-2.10.3 Age increments

In all cases in which a salary scale prescribes increments according to age the increment is to be paid on the due date.

#### 5-2.10.4 Accelerated progression

Various industrial instruments provide for accelerated incremental progression or progression through grades when the employee possesses or obtains appropriate tertiary qualifications or satisfies specific work experience criteria. Details of the nature and conditions of the progression available should be obtained from the relevant award or agreement.

#### 5-2.10.5 Deferral of increments

[Clause 12 of the Regulation 2009](#) includes the following:

- An employee must be promptly notified in writing by the appropriate department head of any decision to defer payment of an increment; and
- The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.

#### 5-2.10.6 Decision to defer

A decision to defer an increment should ordinarily be made as soon as possible after the date from which it would otherwise have been payable. In exceptional circumstances the decision may be made shortly before that date if it is

clear that the employee's conduct and work performance immediately prior to the due date could not affect the decision to defer.

#### 5-2.10.7 Review of deferral

All such deferrals are to be reviewed at regular intervals (such as monthly or quarterly) and the employee advised in writing of the outcome of the review. Provided the department head is satisfied that the employee's services have become satisfactory, the increment may then be paid.

#### 5-2.10.8 Retention or variation of the increment date after deferral

The payment of a previously deferred increment is to be made with effect from the date of the approval. If the unsatisfactory service occurred:

- within the first 3 years of employment, the original increment date is to be retained for future increments.
- after 3 years employment, all future incremental dates are to be varied by the period of the deferment.

#### 5-2.10.9 Appeal rights

When an increment has been deferred for more than 6 months there is a right of appeal under Section 97 of the *Industrial Relations Act 1996*. When there is a right of appeal, departments should ensure that the decision is communicated by way of the Notice of decision or determination.

#### 5-2.10.10 Resignations

If an employee whose increment has been deferred because of unsatisfactory services resigns, the increment remains unpaid.

#### 5-2.11 Leave to count for incremental purposes

The following types of paid leave are regarded as service for incremental purposes:

- Extended leave, full-pay and half-pay;
- Family and Community Service leave;

- Leave without pay totalling five days or less in the incremental period; and
- Parental leave, full-pay and half-pay;
- Military leave;
- Recreation leave;
- Sick leave (if paid leave, or if unpaid 5 days or fewer in a 12 month period);
- Special leave;
- Any period of Leave Without Pay when used for the following purposes:
  - part time service with the Defence Forces,
  - to represent Australia or NSW in amateur sport, or
  - transport strikes when paid leave has been exhausted;
- Workers compensation. (See "[5-6.6.2 Leave to Count as Service for Incremental Purposes](#)").

#### 5-2.12 Leave administration

See also "[6-3 Leave administration](#)".

##### 5-2.12.1 Study leave

For incremental purposes, study leave with financial assistance at the level of full pay counts as full service; study leave with financial assistance at the level of half pay counts as half service; and study leave with financial assistance at some other level counts as service **pro rata**.

#### 5-2.13 Payment of fees for solicitors' practising certificates

Fees for Solicitors' Practising Certificates should be paid by the department when:

- the employee is a qualified solicitor and is required in the normal course of their duties to perform legal work of a nature ordinarily carried out by a solicitor or member of the legal profession; and
- the appropriate branch or section head certifies that the work performed satisfies the above conditions.

In all other instances, employees will be required to pay their own fees. In cases of doubt whether the officer meets the above conditions, advice should be sought from the Crown Solicitor.

It should be noted that payment for Practising Certificates is separate to payment for membership of the NSW Law Society. As a general rule departments and agencies are not required to meet the costs of membership of the Law Society.

There may be instances, however, where membership of the Law Society will also benefit the department or agency concerned or membership is necessary for an individual officer to perform his or her duties. Department heads should consider such requests on their merits and in accordance with [C2004-10](#).

## 5-3 Administering employee records

### 5-3.1 Sources of authority

*Privacy and Personal Information Protection Act 1998;*

*State Records Act 1998.*

State Records NSW – [Government Recordkeeping](#), covering such topics as records management, file management, disposal, and electronic recordkeeping.

### 5-3.2 Maintaining employee records

#### 5-3.2.1 Employee records

Departments should maintain the following employee records:

- employee files for each employee containing all official papers relevant to the employee's Government employment;
- details of all leave taken;
- information on each employee's substantive and acting work and salary history; and

- details of qualifications submitted by the employee, together with a record of all internal and external training courses undertaken.

One consolidated record is to be kept of each employee's service rather than separate files in each of the departments in which the employee has worked.

Departmental employee records may be kept manually or electronically.

#### 5-3.2.2 Service and leave records

Separate leave and service records should be maintained for individual employees. Service records should be used to record all details relating to an employee's employment, while leave records should be used to record all leave matters other than flex leave.

#### 5-3.2.3 Permanent and temporary transfer to another department

Departments must ensure that when an employee permanently transfers to another department, all employee service and leave records are forwarded to the new department. In turn, it is the new department's responsibility to ensure that all records relating to that employee's service for all previous departments are received and consolidated.

These procedures also apply in instances of temporary appointment. The host department is responsible for maintaining records until the employee's return to their home department.

#### 5-3.2.4 Culling employee records

Employee records should be regularly culled in accordance with guidelines available from State Records, telephone 9673 1788, fax 9833 4518, go to [www.records.nsw.gov.au](http://www.records.nsw.gov.au) or mail to: [govrec@records.nsw.gov.au](mailto:govrec@records.nsw.gov.au)

#### 5-3.2.5 Maintaining recruitment records

Chapter 2 provides information relating to the collection and maintenance of recruitment records, including application forms, committee reports and criminal records

(See 2-16.7 Retaining Documentation and 2-15.4.1 Factors to consider in determining cases for use of criminal records).

#### 5-3.2.6 Maintaining establishment records

Departments should also maintain the following position and establishment records:

- current and superseded statements of duties or position descriptions for all positions, other than those specifically excluded from this requirement; and
- organisation charts for all areas of the department.

#### 5-3.2.7 Position descriptions and statements of duties

Position descriptions have replaced traditional statements of duties as the primary source of information about positions in departments that have implemented job evaluation (see "[Appendix 1A: NSW Public Sector Job Evaluation Guidelines March 2011](#)").

Departmental management is responsible for the preparation, content, accuracy, and appropriate review of all statements of duties or position descriptions.

#### Information to be contained in position descriptions

The position description provides a clear and accurate picture of the job – why it exists and what it is supposed to achieve. Position descriptions are not only for job evaluation. They also provide the job holder with a comprehensive description of the job and form the foundation for determining competencies both for recruitment and for training and development.

Position descriptions are generally between 3 and 5 pages long and describe the skills, knowledge and experience required to the job as well as describing in detail the functions of the job.

#### Information to be contained in statements of duties

Each statement of duties should be a concise description of the duties regularly performed in the position and not an exhaustive list of all activities undertaken. Information such as the knowledge, personal qualities or qualifications required for appointment to the position should not be contained in the statement of duties.

### 5-3.2.8 Employees to be aware of contents

Departmental management should ensure that each employee should be given a copy of the position description or statement of duties for their position and should be fully aware of the contents.

### 5-3.2.9 Accurate description of duties

An employee who considers that their statement of duties or position description does not accurately describe the duties as they are performed should bring the matter to the attention of their immediate supervisor.

### 5-3.2.10 Register of position descriptions (and statements of duties)

Each department is to maintain a register of copies of position descriptions (or statements of duties), including superseded statements or position descriptions, for all positions other than those listed in Table 4.

Department of Trade and Investment, Regional Infrastructure and Services	Farm staff below the position of Foreman
Department of Attorney General and Justice	Prison staff (general division)
Department of Education and Communities	Trades staff below the position of assistant foreman  Institutional staff (general division)
Department of Health	Psychiatric hospital staff (general division), maternal and child health nurses
Department of Finance and Services	Trades staff below the position of Foreman, motor lorry staff, cleaning and clothing staff below the position of foreman

## 5-3.3 Personal information – access and privacy

### 5-3.3.1 Sources of authority

- *Freedom of Information Act 1982 (Clth)*;
- *Government Information (Public Access) Act 2009*;
- *Privacy and Personal Information Protection Act 1998*;
- NSW, Freedom of Information Procedures Manual;
- Public Service Commission, *Privacy Code of Practice for the NSW Public Sector Workforce Profile* .
- *M2009-18 Agency responsibility for FOI determinations*;
- *M2010-05 Government Information (Public Access) Act 2009 - 1 July 2010 Commencement*.

### 5-3.3.2 Freedom of information

*The Freedom of Information Act 1982 (Clth)* and the *Government Information (Public Access) Act 2009* confers on each member of the public a legally enforceable right to be given access to documents held by Government. The right is limited only by public interest considerations. The Act also enables each member of the public to apply for the amendment of Government records concerning his or her personal affairs which may be incomplete, incorrect, out of date or misleading.

The use of the *Government Information (Public Access) Act 2009* should be viewed as a last resort in making information available. The Information Protection Principles set out in Part 2 of the *Privacy and Personal Information Protection Act 1998* establish the procedures for handling day to day requests for access to personal information.

Documents relating to personal information can be quite different from those relating to personal affairs, the former having narrower scope.

The Department of Premier and Cabinet's Freedom of Information Procedure Manual provides a detailed discussion on departmental obligations in relation to work

performance reports, job applications, selection committee reports and documents concerning disciplinary matters in respect of requests for access under the Act.

Applications for access to Government information must be determined on their merits, based solely on the criteria in the *Government Information (Public Access) Act 2009* and independent of political influences or considerations. In addition all of the requirements of M2009-18 will continue to apply with respect to access applications under the new Act.

### 5-3.4 Application of data protection principles to employee records

The Information Protection Principles set out in Part 2 of the *Privacy and Personal Information Protection Act 1998* apply to the handling of employee records. In practical terms, application of the principles to employee records requires departments to have regard to the following matters:

#### 5-3.4.1 Collection of information

Only information which is strictly related to employment should be collected. If possible, the information should be obtained directly from the employee. If information is to be collected from other sources the department should seek the informed consent of the employee.

#### 5-3.4.2 Data security

Departments should ensure that employee records are reasonably secure against loss, unauthorised access, modification, or other misuse.

Attention should be paid to:

#### Physical security

Filing cabinets should be locked. Computer records should be password protected, and passwords changed regularly. Disks should be copied and the copies securely stored in a separate location – preferably a different building. Information on employee records should not be faxed. Records should be sealed before transportation.

## Departmental safeguards

Each department should identify the purposes for which access to employee records may be granted, and the positions within the department that are authorised to access employee records. Access to records should be graded so that authorised employees are not given access to the full contents of an employee record unless full access is strictly necessary. If the purpose for which access is sought – such as the compilation of statistics – does not call for the disclosure of identifiable information then only anonymous information should be disclosed.

## Disposal of records

Employee records should be disposed of in accordance with the *State Records Act 1998* and the policy, general retention and disposal authorities, and guidelines available from the State Records' [Government Recordkeeping Manual](#).

Further information is available from State Records on 9673 1788, facsimile 9833 4518, go to [www.records.nsw.gov.au](http://www.records.nsw.gov.au) or mail to: [govrec@records.nsw.gov.au](mailto:govrec@records.nsw.gov.au)

## 5-3.4.3 Openness

Departments should ensure that employees are made aware of the kind of information contained in employee records, who has access to those records and for what purposes.

## 5-3.4.4 Access by employees

Employees are entitled to have access to their records and may make notes and photocopy information from the record. Photocopies should be permitted on request without cost to the individual. Employees should provide appropriate proof of identity before access is granted.

Employees may nominate a representative to access their record on their behalf. In such cases access should only be granted with the written consent of the employee.

Access should be given at a mutually convenient time and be supervised to ensure that information is not removed from the file.

## 5-3.4.5 Access by former employees

Former employees should be permitted to see their employee records. Photocopies of information on the records should be permitted on request, and the department may charge a fee for providing them.

## 5-3.4.6 Correction of records

Departments should make all reasonable corrections, deletions and additions to ensure the information in employee records is relevant, accurate, up-to-date and complete. If a department declines to amend a record at the employee's request, the employee should be entitled to attach any statement to the record about the amendment sought.

If an employee record has been amended, the employee is entitled to have recipients of the record notified of the alterations by the record keeper.

## 5-3.4.7 Adverse notations

Any adverse notations or disciplinary action recorded on a personnel file must be shown to the employee, who must be permitted to add written comments. The employee should be invited to sign the notation but should they decline, no further action is to be taken other than to record the invitation and the refusal. Departments should establish independent review committees to review disputed adverse notations and amendments to files.

## 5-3.4.8 Unproved allegations of misconduct

If an officer is found not to have engaged in any misconduct, the allegation must not be recorded on any records or files held in relation to the officer by or for the Department.

## 5-3.4.9 Use and disclosure of employee records

Access to employee records is restricted for the reason that they contain personal information. Under the *Privacy and Personal Information Protection Act 1998*.

**Personal information** means information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Note that 'information or opinion about an individual's suitability for appointment or employment as a public sector official' – such as the report of an employment test or an employment reference – is not 'personal information' within the meaning of this Act.

There is no restriction on the use by authorised employees for legitimate purposes of data from employee records without the inclusion of names. But reference, for example, to a female employee in a particular occupation in a named department would be unlawful if there were only one or two such people in the department. (See also the following paragraph).

In order to protect personal information, employee records may generally only be used within a department for purposes specified at the time the information was collected, and by officers with the authority to access these records. There can be no other access to or use of an employee record without the consent of the employee to whom the record relates.

Personal information from employee records should only be disclosed outside the department:

- with the consent of the employee;
- to prevent or lessen a threat to the life or health of a person; or
- by requirement or authority of law.

Every employee file should have an associated document listing every access to the file, the identity of the person who obtained access and the reason why access was granted. This document should be made available to the employee on request.



See also [C2007-27 Privacy Guidelines on Disclosure of Information During Industrial Relations Consultations](#).

#### **5-3.4.10 The NSW Public Sector Workforce Profile**

The principles set out in "[5-3.4.9 Use and disclosure of employee records](#)" do not prevent departments forwarding any data from their employee records that may be requested by the Public Service Commission for the purposes of developing the Government's Workforce Profile.

See the [Privacy Code of Practice for the NSW Public Sector Workforce Profile](#). This Code of Practice is intended to meet the requirements of Part 3 Division 1 of the [Privacy and Personal Information Protection Act 1998](#) to the extent that the collection, storage and use of personal data for the purposes of the Workforce Profile involve departures from the Information Protection Principles in part 2 of this Act.

Data that departments and public authorities forward to the Public Service Commission for the purposes of the Workforce Profile are subject to the provisions and standards of this Privacy Code of Practice, which has been published in the Government Gazette and has legal force.

#### **5-3.4.11 Employee records and workers compensation insurers**

Disclosure of information from employee records to workers compensation insurers is required by law.

Section 69 of the [Workplace Injury Management and Workers Compensation Act 1998](#) requires an employer who receives a request from the insurer for information in respect of a claim to furnish the insurer, within 7 days, with such specified information as is in the employer's possession or reasonably obtainable by the employer.

Departments are encouraged to inform employees when access to their file is sought by an insurer and advise them of what information is to be disclosed.

#### **5-3.4.12 Sensitive information**

Information about an employee's criminal history is one example of sensitive information which may be collected during the course of employment. Every department must ensure that criminal record data is handled in accordance with the requirements of 2-15 Criminal Records Check.

Another example of sensitive information is data collected by "[5-3.4.10 The NSW Public Sector Workforce Profile](#)" This data must be processed in accordance with the Information Protection Principles of the [Privacy and Personal Information Protection Act 1998](#) and the [Privacy Code of Practice for the NSW Public Sector Workforce Profile](#).

### **5-3.5 The Privacy Commissioner**

All departments are encouraged to seek the advice of the Privacy Commissioner on issues which relate to privacy and data protection and to refer to the publications available from the Commissioner on these issues.

Employees who feel their privacy has been infringed may complain to the Privacy Commissioner. Public Service departments are not exempted from investigation by the Privacy Commissioner.

For information about the Privacy Commissioner, privacy issues and publications or complaints procedures telephone 8019 1600, facsimile 8114 3755 or visit [Office of the Privacy Commissioner](#).

### **5-3.6 When personal information is subpoenaed**

#### **5-3.6.1 General**

In addition to ensuring that the routine procedures for handling personal information are appropriate from a privacy point of view, special procedures are required in the event of subpoenas regarding personal information. The following guidelines are recommended by the Privacy Commissioner.

#### **5-3.6.2 Procedures**

Judges will take privacy factors into account if these are drawn to their attention. Whenever a subpoena which raises a privacy issue is received, the department should:

- forward the record to the court in a sealed envelope marked 'Judge Only';
- send a covering letter to the judge setting out the concern for the employee and the reasons for such concern if the particular records are produced in open court; and
- advise the employee of the subpoena so that they may either be represented by a solicitor, or appear in person at the court, to request the judge to hear reasons for the file not being tendered in open court.

These procedures will enable the judge to:

- discuss the relevance of the records to the case and the privacy issues involved with the individual or legal representatives before opening the envelope, to ensure that access to the record is necessary; and
- if access is insisted upon, inspect the record personally to ensure that only relevant information is produced in court.

#### **5-3.6.3 Privileged documents or information**

When a subpoena is served on a department for documents or information considered to be privileged, the Crown Solicitor's Office should immediately be notified that a privileged document has been summonsed. A representative of the Crown Solicitor's Office will then attend the Court and formally make the claim on behalf of the department.

Privileged documents may include those that relate to confidences between a lawyer and client, or those which would be contrary to the interests of the State or the national interest.

## 5-3.7 Performance management system documents

### 5-3.7.1 General

In developing performance management systems departments will need to determine and make explicit in policy documents:

- who will have access to the information generated by the performance management system and why;
- how the information will be stored, whether on existing personal files or separate files; and
- how long the information will be kept.

A clear distinction should be drawn between records and documents arising out of the performance management system and reports submitted on a specific matter resulting in disciplinary action.

### 5-3.7.2 Performance management documents and records

The following are subject to decisions reached at the departmental level.

#### Access by employees to performance management documents

Performance management documents should be provided and discussed with the employee, who should be given the opportunity to make any written comment and be provided with a copy of the final record.

#### Copying performance management documents

Copies of performance management documents should be provided on request, without cost to the individual.

#### Storing performance management documents

Performance management records should be securely stored, either on the employee's personal file or on the performance management file. Employees are responsible for the security of copies of performance management documents supplied to them.

#### Access to performance management records

Performance management records should be accessible only to those employees and for those purposes identified at the departmental level and made explicit in policy documents. For example, information relating to employee development only may be made available to employees responsible for the employee development function.

#### Culling performance management records

Decisions or actions arising from the performance management process should be based on current job performance. Within the framework of an annual performance management system, and subject to the requirements of State Records – Recordkeeping in the NSW Public Sector and requirements of the Auditor-General, performance management records should be kept only as long as the information is relevant to an employee's current job performance. Documentation might normally be retained for a maximum of 3 years and then be disposed of as indicated in State Records guidelines.

Also refer to C1998-103 Department of Premier and Cabinet Performance Management Policy and Guidelines – Sections 3.10 Data Collection, recording and aggregation and Section 3.11 Documentation and confidentiality of performance information.

## 5-3.8 Protection against defamation

### 5-3.8.1 Defence of qualified privilege

Employees who are required to prepare reports, submissions, performance management documents or other documents during the normal course of their duties are generally protected against an action for defamation by the defence of qualified privilege.

### 5-3.8.2 Loss of defence of qualified privilege

The defence will be lost if:

- the performance management document, report, or similar item is prepared without authority, or outside the course of official duties; or

- the item is given to a person who does not have an appropriate duty to receive it; or
- it can be shown that the author took improper advantage by making statements either not believed to be true, or for indirect or improper motives.

### 5-3.8.3 Criteria for providing legal assistance

Legal assistance may be available for an employee sued for defamation as a result of the employee's official duties. The Attorney-General has determined the following criteria for granting Crown representation in such a case:

Guidelines on the granting of ex-gratia legal assistance are attached to M99-11.

## 5-3.9 Other issues

### 5-3.9.1 Disciplinary matters

Any record of a disciplinary nature concerning an employee is subject to the special procedures on adverse notations, detailed at "5-3.4.7 Adverse notations". See also "Chapter 9 Management of Conduct and Performance".

### 5-3.9.2 Privacy and medical matters

Special procedures designed to protect the privacy of employees who are applying for sick leave are detailed at "6-17.8 Confidentiality".

### 5-3.9.3 Interviews regarding personal matters

When an interview is required or requested regarding a personal matter, an employee may request that it be conducted by a person of the same sex. Departments should make every attempt to accommodate such a request.

### 5-3.9.4 Personal correspondence issued by departments

To avoid letters of a sensitive nature being opened by people other than the employee to whom the letter is addressed, the envelopes should be clearly marked 'Private and Confidential'. An example of such a letter would be notification of an unsuccessful promotion application.

## 5-4 Occupational health and safety

### 5-4.1 Sources of authority

- [Work Health and Safety Act 2011](#)
- [Workplace Injury Management and Workers Compensation Act 1998](#)
- [Workers Compensation Act 1987](#)
- [Work Health and Safety Regulation 2011](#)
- [Workers Compensation Regulation 2010](#)

#### 5-4.1.1 Introduction

The Work Health and Safety Act 2011, effective from 1 January 2011, sets out the legal obligations that must be complied with to provide for the health and safety of employees.

The legislation outlines the employer's duty of care to provide and supervise a safe system of work. Employers are required to provide appropriate training, information and instruction on health and safety at work to the extent required to protect employees and other people. Employers are required to ensure that work premises, systems of work, the working environment, substances and plant used at work, are safe and without risks to health. Departments must take all reasonably practical steps to identify and eliminate risks to health and safety.

Employers are also obliged to provide adequate facilities for the welfare of employees while they are at work.

Department heads have ultimate responsibility for those in their department and are required to exercise due diligence in relation to health and safety matters including the implementation, monitoring and review of all policies and procedures. Ignorance of a hazard or risk to health or safety at a workplace is not considered a defence under the legislation, unless the person in question can demonstrate that the risk arose due to factors over which they had no control or could not reasonably foresee.

It is an offence under the legislation if the employer fails to consult with employees on health and safety issues, irrespective of whether an employee has been injured. The obligations for consultation are prescribed in sections 46-49 9 of the *Work Health and Safety Act 2011*.

Well developed and managed occupational health and safety policies are a cost effective investment for any department. Reduced workers' compensation premiums and injury management costs can only result from major improvements to existing occupational health, safety, welfare and rehabilitation performance. Departments should therefore incorporate occupational health and safety management into all aspects of their current and future corporate planning and operational strategies.

### 5-4.2 Responsibilities

#### 5-4.2.1 General

It is an offence for any employer, employee or other person to:

- interfere with or misuse things provided for the health, safety or welfare of people at work
- obstruct attempts to give aid or attempts to prevent a serious risk to the health and safety of people at work or
- refuse a reasonable request to assist in giving aid or preventing a risk to health and safety.

It is an offence for any employer to:

- dismiss an employee, injure an employee, or alter the employee's position to his or her detriment because they make a complaint about what they consider to be a workplace health or safety hazard.

#### 5-4.2.2 Responsibilities of the department

Departments must ensure the health and safety of people visiting their place of work who are not their employees. Departments must also ensure the health, safety and welfare of their employees by:

- ensuring the working environment, any plant, substance, and systems of work that are safe and without risks to health;
- making arrangements for ensuring the safe use, handling, storage and transport of equipment and substances;
- providing the information, instruction, training and supervision necessary to ensure the health and safety of employees at work;
- providing adequate facilities for the welfare of employees at work;
- maintaining places of work under their control in a safe condition and providing and maintaining safe entrances and exits; and
- making available adequate information about research and relevant tests of substances used at the place of work.

Persons concerned with the management of a department have a responsibility for occupational health and safety where they have influence.

Departments must not require their employees to pay for anything done or provided to meet the specific requirements of the *Work Health and Safety Act 2011* or associated legislation.

#### 5-4.2.3 Employee responsibilities

Employees must take reasonable care of the health and safety of themselves and others. Employees must cooperate with employers in their efforts to comply with occupational health and safety requirements.

### 5-4.3 Consultation

Consultation provides an opportunity to share relevant information and participate in meaningful discussion on work health and safety matters.

Consultation is mandatory under the *Work Health and Safety Act 2011* for persons conducting a business or undertaking (PCBUs - the new term that includes employers).

Meaningful consultation can lead to fewer workplace injuries and give everyone the opportunity to:

- discuss and share their health and safety concerns
- identify safety hazards and risks
- find and implement practical solutions
- contribute to the decision making process
- communicate outcomes in a timely manner.

Consultation must take place on all work health and safety matters including:

- undertaking risk management activities
- proposing changes that may affect workers
- making decisions about any work health and safety procedures
- the adequacy of facilities for the welfare of workers.

#### **5-4.3.1 Requirements to consult with other persons conducting a business or undertaking (PCBU)**

Where a PCBU (includes employers) has concurrent duties under the *Work Health and Safety Act 2011* with another PCBU, they must consult, cooperate and coordinate with each other and their workers, so far as is reasonably practicable.

The *Work Health and Safety Act 2011* allows some flexibility in establishing consultation arrangements to best suit the consultation needs of the workers at the workplace.

Health and safety representatives (HSRs) can be elected to represent various work groups and investigate health and safety issues.

A health and safety committee (HSC) can be established:

- if requested by the HSR, or
- if requested by five or more workers, or
- on the initiative of the PCBU (includes employers).

The role of the HSC is to facilitate cooperation between the PCBU (includes employers) and workers on health and safety matters as well as to develop work health and safety standards, rules and procedures.

The legislation also allows other agreed arrangements to be set up provided the arrangement is agreed to by the workers and is likely to result in better consultation and improved decision making.

Once established, consultation must be in accordance with the procedures agreed to between the PCBU (includes employers) and the workers.

Regardless of the arrangement, the obligation of the PCBU (includes employers) to consult with all workers remains.

### **5-4.4 Keeping of records**

Departments should maintain the following occupational health and safety records:

- training related to occupational health and safety;
- risk assessments of hazardous work;
- health surveillance, including preemployment baseline measurements (if undertaken);
- a register of hazardous substances used in the workplace;
- risk management strategies, including safe work method statements and safe operating procedures (no legislative requirement but WorkCover recommends that these records be kept);
- details of the department's consultation arrangement, and how the arrangement was formed and operates (a requirement of the WHS Regulation 2001);
- a register of injuries;
- a first aid register (see 5-4.5.2); and
- records of all accident /incidents required to be reported to WorkCover (see 5-4.5.3).

### **5-4.5 First aid**

#### **5-4.5.1 Responsibility of the department**

Clause 42 of the Work Health and Safety Regulation 2011 sets out the minimum first aid requirements.

Departments must provide first aid that includes the following:

- the provision of first aid equipment
- that each employee must have access to the equipment
- an adequate number of workers are trained to administer first aid or workers have access to an adequate number of people who have been trained to administer first aid
- workers have access to facilities for the administration of first aid.

First aid requirements will vary from one workplace to the next. In order to assess how to best provide for first aid in a workplace, the Department must consider all relevant factors including the:

- nature of the work being carried out at the workplace
- nature of the hazards at the workplace
- size and location of the workplace
- number and composition of workers and others at the workplace.

The code of practice First Aid in the Workplace provides practical guidance for the provision of appropriate first aid in the workplace including first aid training, first aid kits, procedures and facilities.

Further information about first aid requirements may be obtained from WorkCover, ph 13 10 50.

An employee appointed to render first aid may be paid the allowance specified in "7-7 First aid allowance" or by such appropriate award.

#### **5-4.5.2 Register of injuries**

Section 63 of the *Workplace Injury Management and Workers Compensation Act 1998* require the employer to record all injuries in a register of injuries. The register should be kept in an accessible location such as a first aid room. The register need not be duplicated, but the Occupational Health and Safety officer or Human Resources section may also need to keep a register for matters reported by telephone. If a department has more than

one office, a register will need to be kept in each location. Register books may be obtained from the WorkCover on 13 10 50.

#### 5-4.5.3 Notification of injuries

Part 3 of the *Work Health and Safety Act 2011* requires employers to report notifiable incidents to WorkCover. A notifiable incident means:

- the death of a person, or
- a serious injury or illness of a person, or
- a dangerous incident.

These are defined in Part 3 of the Act.

#### 5-4.6 Occupational health and safety programs

Each department is required to develop an occupational health and safety program. This program should outline safety management systems and workplace injury management plans. The following should be considered during the development of management programs and strategies:

- consultation with employees and their representatives on occupational health and safety issues affecting the department, including policy development, and the development, implementation, and auditing of safety management systems;
- education and training for all employees, including induction training for new employees, in occupational health and safety issues;
- provision of specific training for identified employees;
- review of job and workplace design to ensure consistency with occupational health and safety standards;
- consideration of occupational health and safety issues when introducing changes to work methods and practices, including those associated with technological change;
- a clear allocation of occupational health and safety responsibilities;

- testing of emergency procedures and conduct of regular drills;
- provision of necessary resources to support the operation of workplace occupational health and safety committees;
- provision of necessary occupational health and safety equipment, apparel when appropriate, and adequate first aid facilities and equipment;
- provision of maintenance and storage facilities for necessary occupational health and safety equipment and apparel;
- ensuring that there are reporting, recording and action procedures in place to deal with:
  - hazards;
  - incidents that cause or could potentially cause workplace injury or illness;
- incidents involving potential workplace hazards for employees or the public;
- collection of accurate and appropriate information on occupational health and safety matters and its provision to employees;
- implementation of workplace hazard elimination and control programs;
- regular checks for compliance with occupational health and safety legislation; and
- employers to review a risk assessment, and any measures adopted to control the risk, whenever:
  - there is evidence that the risk assessment is no longer valid; or
  - injury or illness results from exposure to a hazard to which the risk assessment relates; or
  - a significant change is proposed in the place of work or in work practices or procedures to which the risk assessment relates.

#### 5-4.6.1 Further information

Further information may be obtained by reference to WorkCover's publication *Health and Safety in the Office* and the Department of Premier and Cabinet's [Taking Safety Seriously: A Systematic Approach to Managing Workplace Risks in NSW Public Sector Policy and Guidelines 2nd edition](#).

### 5-5 Employees' retreat space

#### 5-5.1 Observance of religious duties

Observance of religious duties in the context of the workplace relations may be interpreted as engaging in any practice on a regular or irregular basis or attending any event or particular place perceived by the observer to be consistent with and/or expected of an observer of that faith.

#### 5-5.2 A retreat space

A retreat space is a room in a departmental workplace which employees may use for prayer or contemplative purposes. It can be used for spiritual or non-spiritual purposes and is intended to make it easier for employees to meet their religious obligations. A retreat space is not a chapel or consecrated place of worship, nor should it be reserved exclusively for employees of any one denomination or faith.

##### 5-5.2.1 Assessing the need for a retreat space

Departments, in consultation with their employees, should assess the need for a retreat space in their workplaces and, if a need exists, make every effort to provide such a facility. Consultations should be comprehensive, transparent, free from bias, and conveying confidence of departmental commitment so as to encourage employees to declare their need (or absence of need) for such a facility. The consultation should be conducted regularly, for example every two years.

Departments should also consider the need or otherwise for a retreat space when planning new or refurbished accommodation, mindful that some faiths call for access to an ablution facility within, or in proximity to the retreat space.

### 5-5.2.2 Retreat space specifications

A retreat space should be clean, quiet, comfortable, well lit, and private. Furniture and decorations should be discreet and kept to a minimum. Floor coverings are recommended, as well as the inclusion of a small lounge. The space should be designed so that a generous amount of free floor space is available, or can be quickly established, with a minimum of effort and inconvenience. As a guide, the size of the space should be a minimum of three by four metres, or approximately twelve square metres. If it is likely that more than one employee is likely to need to use the space at the same time (for example to pray together), then the room size will have to be larger according to need.

It may be appropriate to provide some means of locating the main compass points in the retreat space, and the location of the entrance door may be an important consideration.

It may also be desirable to include one or two free-standing screens or partitions to provide additional privacy during prayers. A notice placed inside the room requesting users to respect the facility and leave it as it was found is also a good idea.

### 5-5.3 Uses of a retreat space

Departments must make efficient use of available space. Departments may therefore wish to design retreat spaces as multi-purpose spaces.

#### 5-5.3.1 Principles for room use

The principles for decision-making in regard to use of the room are that:

- priority of room use is given to the observance religious duties; and

- the room is an important facility for employees' use, and therefore should be available and accessible during working hours.

Some activities are compatible with the spiritual and contemplative nature of a retreat space, and some are clearly not. This is a matter of judgment for managers, but the following guidelines may assist.

#### 5-5.3.2 Activities compatible with a retreat space

- The practice of stress management techniques.
- Quiet meetings, interviews, collaborative work.
- Individual work.

#### 5-5.3.3 Activities not compatible with a retreat space

- Socialising and communal eating.
- Childcare.
- Storage of office supplies and equipment.
- Use of office machinery (photocopiers, facsimile machines, and the like).

#### 5-5.3.4 Booking system

The retreat space should be accessed and used according to a booking system. If it is known that particular employees have a regular spiritual obligation, block bookings can be made by the employee in advance.

#### 5-5.3.5 Retreat space as an occupational health and safety initiative

Provision of a retreat space is a reasonable strategy towards creating healthy workplaces. Increasingly, employees practice a variety of stress management techniques (such as meditation or yoga) that require access to a quiet, relaxing space for short periods during the day. The notion of employees practising such stress management techniques in a retreat space in the workplace is not inconsistent with the Government policy of continuous improvement in performance.

#### 5-5.3.6 Leave for religious observance

See also ["6-12 Observance of essential religious duties and cultural obligations"](#).

## 5-6 Workers compensation

### 5-6.1 Sources of authority

- *Workers Compensation Act 1987*
- *Workplace Injury Management and Workers Compensation Act 1998*
- *Work Health and Safety Act 2011*
- [Workers Compensation Amendment \(Miscellaneous Provisions\) Regulation 2006](#)
- [Workers Compensation Amendment \(Latest Index Number\) Regulation 2010](#)
- Workcover Guidelines on [Claiming Compensation Benefits 2006](#)
- Workcover Guidelines on [Independent Medical Examinations and Reports](#)
- Department of Premier and Cabinet, Review and Reform Division, [Taking Safety Seriously 2002: A Systematic Approach to Managing Workplace Risks in NSW Public Sector Policy and Guidelines 2nd edition.](#)

### 5-6.2 Purpose of Workers' Compensation

Under New South Wales workers' compensation legislation, all workers are covered by the "no-fault" scheme. This means that injured workers have access to financial and injury management support for the time they are away from their normal duties regardless of who caused the injury. The only exceptions are outlined in 5-6.3.3.

### 5-6.3 Eligibility and Entitlement

#### 5-6.3.1 Meaning of injury

Injury is a broadly defined concept. It includes:

- personal injuries arising out of or in the course of employment;
- a disease, if the employee contracts the disease in the course of employment and employment was a contributing factor to the disease; and
- aggravation, acceleration, exacerbation or deterioration of a disease, when employment is a contributing factor.

### 5-6.3.2 Eligibility for compensation benefits

An employee who is injured is eligible for compensation if:

- employment was a substantial contributing factor to the injury; or
- the employee was injured on a journey to or from work, or
- the injury occurred while the employee was temporarily absent from work during an ordinary recess or authorised absence, provided that the employee did not expose themselves to any abnormal risk of injury;
- and the injury or disease resulted in at least one of the following:
  - total or partial incapacity to perform work;
  - the need for medical, hospital, rehabilitative or related treatment; or
  - permanent impairment.

### 5-6.3.3 Injuries without entitlement to benefits

An employee is not entitled to workers' compensation if:

- the employee intentionally injured themselves
- it is proved that the injury is solely attributable to the serious and wilful misconduct of the employee, unless death or serious and permanent disablement occurs, or
- the injury occurred on a journey to or from work and the employee materially increased the risk of injury by interrupting or deviating from the journey, provided that the interruption was not work related; or if the injury was caused by serious and wilful misconduct of the employee.

### 5-6.3.4 Other entitlements

#### Medical and hospital

Under Provisional Liability (see 5-6.4.4), the insurer will pay for such medical, hospital and ambulance expenses incurred by the employee in connection with the injury or illness up to \$7,500.

If a claim form is lodged and liability on that claim is accepted, the insurer will pay for such medical, hospital and ambulance expenses reasonably incurred by the employee in connection with the injury or illness.

In either case, the employee is not to pay any of the bills for these services but must forward them promptly to the department for referral to the insurer.

#### Clothing, spectacles, artificial aids, and the like

The *OH&S Act* also provides a benefit to an employee who, in the course of employment, damages clothing, spectacles or artificial aids when this is associated with an accident. The employee is entitled to this benefit in respect of damage occurring on a journey.

#### Rehabilitation

Rehabilitation and the payment of rehabilitation expenses may be claimed by the injured employee.

### 5-6.3.5 Cover for special leave in certain circumstances

When special leave is granted

- to employees for employee development and training activities;
- to transferred employees; and
- to employees acting in distant locations and living away from home,

the department head should state whether or not the activity is incidental to or consequent upon the employment of the employee attending. People undertaking activities incidental to or consequent upon their employment are covered by workers compensation.

## 5-6.4 Notification of Injuries and claims

### 5-6.4.1 Responsibility to notify employer

Employees are required to report formally to their departments all injuries or illnesses that may give rise to a workers' compensation claim. The failure of an employee to report an injury, even one of a minor nature, could prejudice any future claim arising as a result of that injury.

### 5-6.4.2 Register of Injuries

All departments must keep a register of injuries that is readily accessible. A worker, or someone acting on their behalf, may enter any injury received by the worker into the register.

### 5-6.4.3 Responsibility to notify insurer

The *Workplace Injury Management and Workers Compensation Act 1998* stipulates that an employer must notify the insurer within 48 hours of an injury and forward to the insurer any required documents within 7 days of their receipt or face a maximum fine of \$5000. A notifiable injury is one where the injured worker is unable to undertake their normal duties for 7 or more calendar days continuously. The employer must also complete and return an Accident Report Form to the nearest WorkCover office for significant injuries supported by a WorkCover Medical Certificate. This applies whether the injured person is a worker, contractor or visitor to the workplace.

Failure to process notifications or claims promptly could result in severe financial hardship for the employee.

### 5-6.4.4 Provisional Liability

Significant changes to workers compensation claim making and processing in NSW were introduced on 1 January 2002. These provisions apply to new claims made on or after 1 January 2002 even when the injury occurred prior to that date.

From 1 January 2002, an injured worker does not necessarily need to submit a claim form to receive workers compensation. Generally, weekly payments will commence

within 7 days of the insurer being first notified of the injury (the “initial notification”), unless the insurer has what is called a “reasonable excuse” (see 5-6.4.6).

Notification of an injury to the insurer can be provided by post, phone, fax or electronic means and can be made by the employer, the injured worker or a third party (for example, a close relative). The insurer must advise a notification number immediately if the notification is by phone or within 7 days, in writing, if the notification is by another means.

The payments made following this initial notification are called “provisional liability payments”. The length of time provisional liability payments are made will depend on an assessment by the claims officer on the nature of the injury and the expected period of incapacity. They can be made for a total of 12 weeks from the first date the worker becomes entitled to weekly benefits compensation. In the same way, a claim for medical expenses compensation of up to \$7,500 medical expenses as part of an injury management plan may be accepted provisionally.

Provisional liability payments do not mean an admission of liability by the insurer or employer.

As insurers only have 7 days in which to ensure weekly payments have commenced following the initial notification of the injury to the insurer (unless they have a reasonable excuse to not do so) departments should ensure that contact details for the employer (and, if permission is granted, the contact details of the injured worker) are made available to the insurer in case the insurer needs to obtain further information. In most cases contact will be by phone with advice confirmed in writing.

At the time of the initial notification the insurer needs to gather minimum identifying information:

- information about the worker
- information about the employer
- information about the treating doctor
- injury or illness and accident details
- information about the person making the notification.

In completing the employer’s report of the injury and, if required by the insurer, a claim form (or a claim form lodged by an injured worker), it is important that all questions are fully answered to facilitate the insurer’s decision-making process.

If the injured employee cannot lodge a report it should be completed on the injured employee’s behalf, by for example the supervisor, witnesses, spouse or any other suitable person.

A Statement of Witness should be completed, if possible, by all people who were witnesses. This should be forwarded to the insurer upon request or if it would facilitate the insurer’s decision-making process.

If the employer has factual information casting doubt on the validity of a claim, this should be forwarded promptly to the insurer.

In some cases an injured worker may still need to lodge a workers compensation claim form:

- if the insurer asks the injured worker to lodge one;
- if an injured worker requires benefits that exceed their entitlements (that is weekly payments for more than 12 weeks or medical expenses of more than \$7,500); or
- if the insurer has stopped making provisional payments and the injured worker thinks that they are still entitled to more benefits.

An injured worker may complete a claim form for compensation if they so wish. If the claim form is the first notification of the injury received by the insurer then the provisional liability rules will apply and, unless there is a reasonable excuse, payments must be commenced within 7 days of the claim being received prior to a decision being made on liability.

#### **5-6.4.5 Acceptance of Workers Compensation Benefits by Insurer**

The insurer must inform the injured worker and the department, in writing, as to the provisional acceptance or otherwise of a claim within 7 days of the initial notification of injury to the insurer. If provisional weekly payments are

commenced then the payments are to start within 7 days after the initial notification. The insurer must advise the injured worker in writing about the decision to commence payments, the time period the payments will cover, the amount to be paid each week and how that amount is calculated.

If a claim form is received by the insurer, the insurer has 21 days to accept or deny the claim. This may be beyond the provisional liability period.

If the 12-week period of provisional weekly payments has not been exceeded the insurer may decide to extend the provisional liability period to cover the 21-day period to determine the claim.

#### **5-6.4.6 Reasonable Excuse for not commencing payments within 7 days**

Below are the only reasons that an insurer can use to not commence payments within the usual 7 days. No other reasons are considered to be a “reasonable excuse”. These are taken from the WorkCover Guidelines that insurers are required to comply with.

##### **Insufficient medical information**

The insurer has a reasonable excuse if it does not have enough medical information. For example, the insurer may have been unable to confirm with the treating doctor, hospital or the employer that an injured worker has been treated for a workplace injury and the expected period the injured worker will be away from normal duties. However, the insurer may have to allow special consideration for workers in remote rural areas where access to medical treatment is not readily available. This excuse can only be used where there has been a failure to provide a medical certificate or information to the insurer despite requests from the insurer.

Also refer to the WorkCover Guidelines [Claiming Compensation Benefits](#) cl 7.1 Part1.

##### **Worker unlikely to be a “worker”**

The insurer has a reasonable excuse if:



- the worker has been unable to verify their status as a worker (under NSW workers compensation legislation), or
- the employer is able to verify that the worker is not a worker.

#### **Insurer unable to contact worker**

The insurer has a reasonable excuse if it needs to contact the worker to determine whether to pay or not and it is unable to do so after trying repeatedly, by phone, electronic means or in writing.

#### **Worker refuses access to information (privacy)**

The insurer has a reasonable excuse if the worker will not consent to the release or collection of personal and health information in relation to the workplace injury to determine the worker's entitlement to provisional payments.

#### **Injury is not work related**

The insurer has a reasonable excuse if the employer has provided evidence that the worker's employment is not a substantial contributing factor to the injury.

Acceptable forms of evidence could include:

- a signed statement from a third party specific to the circumstances of the worker's injury that conflicts with the workplace injury as notified
- available public information specific to the circumstances of the worker's injury that conflicts with the workplace injury as notified
- medical information that confirms the existence of the workplace injury before the date of the workplace injury reported by the worker. This excludes initial notifications for aggravation, acceleration, exacerbation or deterioration of a pre-existing condition.

However, in these cases anecdotal or unsupported information received from any source, including the employer alone, is not acceptable.

#### **Injury notified after 2 months**

The insurer has a reasonable excuse if the notice of injury is not given to the employer within 2 months after the date of the injury. However, the insurer may ignore this excuse if a liability is likely to exist and if it believes paying provisional payments to the worker will be an effective injury management intervention.

#### **5-6.4.7 Process if there is a reasonable excuse**

If the insurer has a reasonable excuse for not making provisional weekly payments they must notify the worker in writing within 7 days after the initial notification and inform the employer as soon as practicable. In their notice to the worker, the insurer must advise the reason(s) for not commencing payments, advise the worker that they can make a claim and provide a claim form. Advice must also be given to the worker that they may contact the WorkCover Claims Assistance Service for assistance.

If the reasonable excuse the insurer relied on no longer exists the insurer may commence weekly payments.

#### **5-6.4.8 Interim Payment Directions**

If the insurer does not commence payments within 7 days after the initial notification or does not advise the injured worker that the insurer has a reasonable excuse for not commencing payments or does not give the injured worker the reasonable excuse they have used to not have payments commenced then the injured worker is entitled to apply to the Workers Compensation Commission for an Interim Payment Direction. Decisions on such requests will be made by the Commission within 3 days.

#### **5-6.4.9 Stopping and Recommencing Workers Compensation Benefits**

Under the WorkCover Guidelines on Claiming Compensation Benefits an insurer may stop payments during the first 12 weeks for a number of reasons (for example if the worker has returned to work). Payments may be recommenced (for example, the worker is off work again). The period of non-payment is not included in the 12 weeks. However, the total period paid under interim payments should not exceed 12 weeks..

#### **5-6.4.10 Denial of Claims**

If a claim is denied the injured worker will be advised of this in writing by the insurer. They will also be advised of their right to have the decision reviewed or that they could lodge a dispute with the Workers Compensation Commission.

If the department is satisfied that the employee is unable to attend for work, the employee is eligible to be granted sick leave to credit followed, if requested by the employee, by recreation or extended leave or sick leave without pay.

In such cases payment for accrued leave is to be at the usual rate of pay and the absent employee is to be treated as any other employee who is absent from the workplace as a result of illness or injury. They should be provided with assistance to return to work once certified fit to undertake some duties in the same way as workers with compensable injuries are assisted.

#### **5-6.4.11 Claims Assistance Service**

WorkCover has established a Claims Assistance Service (telephone 13 10 50) that provides advice and assistance to injured workers and employers in connection with injury notification and claims for workers compensation. The Claims Assistance Service provides assistance in relation to prompt payment of benefits; delays in treatment and payment of medical expenses; return to work issues and reporting of injuries.

### **5-6.5 Return to Work**

#### **5-6.5.1 General**

The *Workplace Injury Management and Workers Compensation Act 1998* requires all employers to:

- have a workplace Return to Work program detailing the policy and procedures which will be followed to help the injured employee return to work;
- display a summary of the program in all work sites under their control; and

- have a written return to work plan for any employee who is initially unfit or partially fit for work and requires assistance to return to work.

Agencies are also required to comply with the [M2010-07 Working Together: Public Sector Workplace Health and Safety and Injury Management Strategy 2010 – 2012](#) to enhance the care, rehabilitation and early, safe and durable return to work of injured workers.

#### 5-6.5.2 Procedures at the time of the Accident

Following the initial notification of the injury to the employer or supervisor, the department's Return to Work coordinator should be notified to ensure proper case management in accordance with the workplace Return to Work program. This should be considered even if the injury does not require an absence from work.

Keeping copies of all relevant documents on case files assists injury and claims management. Compensation and rehabilitation files are confidential. The injured employee's permission is required to obtain medical or rehabilitation reports, although their consent to the collection, use and disclosure of personal and health related information is obtained when they sign the medical certificate or claim form (refer WorkCover Guidelines: [Claiming Compensation Benefits](#) p3)

Progress with cases should be regularly reviewed with the insurer, the worker, the Return to Work coordinator and rehabilitation provider (if one is appointed).

#### 5-6.5.3 Category 1 Employers

A category 1 employer is:

- a self insurer, including self insurance through the Treasury Managed Fund;
- insured with a Scheme Agent and has a Basic Tariff Premium of more than \$50,000 a year; or
- insured with a specialised insurer and has more than 20 employees.

Nearly all NSW departments and public authorities are category 1 employers. In addition to the general responsibilities above, Category 1 employers must:

- ensure that their workplace return to work program is consistent with WorkCover's Guidelines for Workplace Return to Work Programs;
- employ a Return to Work coordinator; and
- ensure that their Return to Work coordinator is suitably qualified.

#### 5-6.5.4 Return to Work Program

All departments and authorities are required to develop a Return to Work program that is consistent with the insurer's injury management program and is in accordance with the WorkCover Guidelines.

The Return to Work program addresses the way in which the organisation will assist the injured worker to return to work as quickly and safely as possible. The name of the organisation's Return to Work coordinator and his or her responsibilities are to be included in the Return to Work program, as are the names of accredited rehabilitation providers.

#### 5-6.5.5 Return to Work Coordinator

An important role of the Return to Work coordinator is to consult with management, the supervisor and employee to ensure on-going commitment to the return-to-work plan. The return-to-work coordinator should also discuss the likely period of incapacity, convalescence and need for rehabilitation with the treating doctor or rehabilitation provider. Further details are provided in 5-6.7 Rehabilitation and retraining, in the WorkCover Guidelines for Employer's Return to Work Programs.

Departments can arrange to share a Return to Work coordinator. WorkCover should be contacted for details on 13 10 50.

#### 5-6.5.6 Return to Work Plan

A return to work plan is a written statement of the steps that the employer will take to assist the injured employee to return to work. All employers must provide a return to work plan for injured employees who require assistance to return to work. The return to work plan must:

- identify the injured employee's restrictions;
- identify suitable duties which are available to the injured employee;
- include an outline of the steps that will be taken by the employer to facilitate return to work; and
- specify times of attendance at work and plan dates;
- document agreement to the plan by the employee, nominated treating doctor and the supervisor.

The rehabilitation provider will develop an individual return-to-work plan if involved in the case.

#### 5-6.5.7 Suitable Work

Section 49 of the [Workplace Injury Management and Workers Compensation Act 1998](#) requires the employer to provide an employee with suitable work if they are capable of returning to the workplace. The WorkCover guidelines on return to work provide advice on suitable duties in these circumstances. Suitable duties may be provided in many different ways:

- at the same or different worksite
- the same job with different hours and/or modified duties
- a different job altogether

Suitable duties need to be time limited, monitored closely and regularly upgraded. All offers of suitable duties should be in writing, clearly listing the duties to be performed, working hours, physical/medical restrictions, dates and times of treatments and review.

Under section 53 of this Act funds are available from WorkCover for retraining or readjustment of the workplace to assist in the return to suitable duties at work. Rehabilitation and the payment for adjustments should be available even for employees who have not been absent

from work. Further information on employing people with disabilities may be found at [2-10.5 Seeking applicants with a disability](#).

Disputes about suitable duties may be resolved through the Workers Compensation Commission.

#### **5-6.5.8 Retraining**

A very small proportion of injured employees are permanently unable to perform their pre-injury duties. If these employees have demonstrated their ability to adequately perform an alternative job at a similar level to their previous position they should be given preference in any selection process for that job.

WorkCover funds a number of vocational training and employment programs. The cost of training fees, equipment and other program expenses does not add to an employer's claim expense for the purpose of calculating premiums.

#### **5-6.5.9 Information**

For further information on rehabilitation and vocational retraining programs:

- consult the department's return to work coordinator;
- read the brochures on rehabilitation, retraining and suitable duties which are available from WorkCover;
- telephone the WorkCover Assistance Service on 13 10 50;
- visit the WorkCover website: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

For information on developing a Return to Work program:

- contact your insurer; or
- telephone the WorkCover Assistance Service on 131050.

### **5-6.6 Method of payment**

#### **5-6.6.1 General**

In all cases, whether it has been decided to commence provisional weekly payments or to accept the claim, the insurer will notify the employer who will make payments to the injured employee unless arrangements are made for the employee to be paid directly by the insurer.

Employees are entitled to access sick leave for the period that an insurer considers or denies a claim, in accordance with the medical certification.

Incapacitated employees will be paid compensation fortnightly by mailed cheque, by cheque at the place of employment or by electronic transfer. While the method of payment will be at the election of the employee, the election will be limited to the method of payment of salaries already in existence at the place of employment.

The following provisions will apply to work related illnesses and injuries suffered on or after 1 July 1987 unless greater benefits are available to the injured employee under an industrial instrument. Refer also to "[5-6.8 Incapacity for work](#)" on page 106 in regard to partial incapacity.

#### **5-6.6.2 Leave to Count as Service for Incremental Purposes**

All periods of leave during which the insurer continues to pay provisional weekly payments or accept liability count as service for incremental purposes. See also "5-2.11 Leave to count for incremental purposes".

#### **5-6.6.3 Payment for leave during the first 26 weeks Before the insurer accepts liability**

When an employee sustains an injury or illness that may give rise to a claim for workers compensation and that employee is rendered unfit for work, available sick leave, followed (if requested by the employee) by recreation or extended leave to credit may be granted until the employee returns to work or until the claim is accepted by the insurer, whichever is the earlier.

#### **After the insurer accepts liability**

If there is provisional acceptance of liability or the claim has been accepted by the insurer, leave granted pending determination of the claim is to be recredited and the period is to be recorded as workers compensation leave.

Payment during the workers compensation leave is to be at the usual rate of pay to a maximum gross per week amount, or as advised by the WorkCover Authority from time to time.

#### **Use of accrued leave for difference**

If the usual rate of pay exceeds the maximum compensation amount advised by WorkCover, the difference between the compensation payable and usual pay may be made up from accrued sick leave, recreation leave or extended leave, if the employee so desires.

If the employee elects not to take accrued leave credits to make up the difference between compensation and usual pay, then payment is to be limited to the maximum compensation rate and records are to be noted accordingly.

#### **5-6.6.4 Payment for leave after 26 weeks**

##### **Reduced rate of compensation**

When an employee's claim for compensation has been accepted and the employee is still totally unable to work after the initial 26 weeks, they will be eligible for workers compensation payments at the reduced statutory rates as provided for in the *Workplace Injury Management and Workers Compensation Act 1998* for as long as liability continues to be accepted by the insurer.

If the employee is fit for some work but the employer does not offer work, the employee is entitled to special weekly compensation, provided that they are either:

- ready, willing and able to work, or
- are undergoing rehabilitation or retraining in circumstances provided for under the *Workplace Injury Management and Workers Compensation Act 1998* during which period benefits are paid at 80% of the award rate of pay.

##### **Use of accrued leave for difference**

If the insurer continues to accept liability and accrued leave credits have not been exhausted, the injured employee may continue to be granted any accrued sick

leave to make up the difference between compensation payable and usual salary. If they so elect, the injured employee may also continue to take accrued recreation or extended leave credits to make up the difference.

## 5-6.7 Calculation of compensation pay

### 5-6.7.1 Calculating the amount of leave to be granted

$$\frac{\text{Ordinary weekly salary less weekly compensation} \times \text{Working days in the period}}{\text{Ordinary weekly salary}}$$

The result is to be taken to the nearest quarter day.

### 5-6.7.2 Calculating the period of absence which available leave will cover

$$\frac{\text{Ordinary weekly salary} \times \text{Available period}}{\text{Ordinary weekly salary less weekly compensation}}$$

This calculation is to be carried out separately for sick, recreation and extended leave.

## 5-6.8 Incapacity for work

### 5-6.8.1 Total incapacity

If the incapacity is total the employee is paid compensation as provided in "5-6.6 Method of payment".

If the total incapacity is permanent, steps should be taken to determine the employee's fitness to continue in the service in accordance with either Section 25 or Section 30 of the *PSEM Act 2002*. The provisions of 4-4 Medical Retirement are to be applied.

### 5-6.8.2 Partial incapacity

When the incapacity is partial the employee is paid compensation at the rate of the difference between the amount which would have been earned in the same or some comparable employment had an injury not occurred, and that amount which is now able to be earned. This payment is subject to the total amount received not exceeding the maximum gross per week amount as advised by the WorkCover Authority from time to time.

A partially incapacitated employee unable to carry out the duties of the position occupied when the injury or illness occurred has a right to call on the employer to provide suitable alternative employment. If the employer does not have, or is unable to provide, suitable work then compensation may be paid for a maximum period of 52 weeks on the basis that the employee is totally incapacitated.

When the 52 weeks have expired and the employee remains partially incapacitated, that employee will be paid the difference between the amount that would have been earned but for the injury, and the amount which could be earned in some suitable employment. There is a limit to the adjustment amount payable, and the maximum amount payable is advised by the WorkCover Authority from time to time.

An employee may be eligible for a payment for non-economic loss for permanent impairment, for example, for the loss of use of a limb, or for pain and suffering, if above the threshold. This lump sum is in addition to any weekly payments.

The status of all claims should be reviewed with the insurer regularly, such as quarterly.

### 5-6.8.3 Injured employee does not cease work

If an employee is injured at work but has continued to work while undergoing medical or hospital treatment the matter is to be submitted to the insurer for determination and, if appropriate, reimbursement of expenditure incurred. The department's Return to Work coordinator should determine whether any adjustments to the workplace or work practices are required to avoid re-injury.

## 5-6.9 Insurer declines further liability or employee refuses duty

If further liability is declined by the insurer or the employee refuses to resume duty in the position offered by the employer, the employee is to be granted leave

without pay or at the employee's option, available leave, until Nominated Medical Assessor determines fitness to continue in employment.

## 5-6.10 Medical examinations

### 5-6.10.1 Requirement to attend

When the insurer has arranged a medical examination, details of the appointment will be forwarded directly to the employee and a copy will be sent to the local office of the department from which the employee lodged the claim.

Failure to submit to a medical examination may result in the suspension of the employee's rights until the employee agrees to be examined.

### 5-6.10.2 Travelling allowances

Employees who are required to attend medical examinations arranged by the insurer are eligible to receive travelling allowances in accordance with "7-18 Travelling and meal allowance for employees required to attend examinations".

### 5-6.10.3 Costs associated with medical examination

Departments are to meet all such costs initially and seek recoupment from the insurer. The recoupment of such costs is in accordance with the scale adopted by the insurer following the principles outlined in the *Workplace Injury Management and Workers Compensation Act 1998*.

## 5-6.11 Poster

Under workers' compensation legislation, all employers must display in workplaces a poster with a summary of the *Workplace Injury Management and Workers Compensation Act 1998*, the requirements of giving notice of injuries, how to make a claim and the name and address of the insurer.

## 5-6.12 Information

For further information on provisional liability or claim procedure:

- Read the brochure on how to deal with an injured worker available from WorkCover;
- Telephone the WorkCover Assistance Service on 13 10 50;
- Visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

## 5-7 Travel injury insurance

### 5-7.1 Departments participating in the NSW Treasury Managed Fund

The NSW Treasury Managed Fund covers employees of participating departments and their personal property when travelling on official business. Cover is for:

- loss of life or disablement during travel except when the employee is covered under the *Workplace Injury Management and Workers Compensation Act 1998*;
- recoupment of overseas hospital, medical and ambulance expenses arising from any one accident; and
- loss of or damage to baggage and personal effects.

#### 5-7.1.1 Cover while travelling abroad

Further information may be obtained from the Treasury Managed Fund on 9249 8110.

#### 5-7.1.2 Departments not participating in the NSW Treasury Managed Fund

Departments not participating in the NSW Treasury Managed Fund are free to make their own arrangements but generally, should comply with the Treasurer's Direction in this regard.

## 5-8 Fitness to Continue Procedures

### 5-8.1 Sources of Authority

- [M2010-18](#), Procedures for Managing Non-Work Related Injuries or Health Conditions

- [C2011-23](#) Medical Assessment Services for the NSW Public Sector
- [Section 25](#) of the Public Sector Employment and Management Act 2002.
- [Clause 13](#) of the Public Sector Employment and Management Regulation 2009

### 5-8.2 Principles

The procedures have been developed to assist all public sector agencies to apply a consistent approach in managing situations where an employee is suffering from a non-work related injury or health condition only which is impacting on their ability to perform the inherent requirement/s and demands of their position.

Work related health issues are to be managed through the Return to Work program that exists within each agency and the workers compensation legislation.

These procedures are based on the following principles:

- An employer is responsible for ensuring the health, safety and welfare of all employees at work.
- An employee is responsible for their own health, well being and ability to perform the duties for which they are employed. This includes taking appropriate steps to address any non-work related health issues they may have/develop, if these impact on their capacity to safely perform the inherent requirements and demands of their position.
- An employer has the right to request an assessment of the employee's non-work-related injury or health condition where it impacts on their ability to safely perform the inherent requirements and demands of their position.
- The employee is to seek medical or other appropriate advice when directed to do so by the employer in the case of an employee having reduced capacity to safely perform the inherent requirements and demands of their position.

The objectives of these procedures are to:

- Provide clarity in respect of the action to be taken where an employee's non-work related injury or health condition impacts on their ability to safely perform the inherent requirements and demands of their position.
- To set out rights and obligations of agencies and employees when taking action in respect of the employee's non-work related injury or health condition.
- To minimise costs associated with an employee's non-work related injury or health condition and to assist such employees to be able to safely perform the inherent requirements and demands of their position.
- To provide a transparent and consultative procedure that supports the employer, the employee and consulting medical practitioners in deciding the most appropriate course of action to ensure the employee can safely perform the inherent requirements and demands of their position.

### 5-8.3 Overview of the Procedures

See flow chart "Appendix 5A: Flow Chart: Managing Non Work Related Injuries or Health Condition".

This document can be directly accessed via [M2010-18](#) Procedures for Managing Non-Work Related Injuries or Health Conditions.

### 5-8.4 Initiating a Medical Assessment

#### 5-8.4.1 General basis for referrals

An agency may need to seek medical advice on how to safely manage a non-work related injury or health related issue that is affecting an employee's ability to perform the inherent requirements and demands of the position for which they were engaged. Any advice sought must be in accordance with:

- the overriding legislative responsibility under the Work Health and Safety Act 2011 for agencies to manage risk and ensure the health, safety and welfare at work of employees; and

- a Chief Executive Officer's responsibilities and functions for ensuring the effective, efficient and economical management of their agency.

The type of medical advice requested may relate to an employee's:

- ability to safely carry out the inherent requirements and demands of the position for which they were employed, in the short or long term
- safe return to work
- medical restrictions that may apply in the workplace
- temporary or permanent adjustments that may need to be made in order to facilitate a safe return to work or to remain safely on duty

It may also become necessary to seek medical advice relating to:

- whether a medical condition has contributed to a conduct or performance issue
- whether a second opinion is required, for example, in respect of advice from an employee's medical practitioner which seems inconsistent with other available evidence
- any impact the health of the employee may have on the health and safety of other employees in the workplace, or on non-employees, for example visitors or client.

#### 5-8.4.2 Employee initiated medical retirement

Where an employee who is suffering a non-work related injury or health condition requests an independent medical assessment with the view of accessing medical retirement benefits an agency may:

- If the employee is employed in Public Service Departments (Principal Departments and Other Agencies) listed in Part 1, Schedule 1 of the Public Sector Employment and Management Act 2002, request the nominated medical assessor to provide the assessment.
- If the employee is employed elsewhere in the public sector (not the Public Service), the agency may rely on the employee's treating doctor's advice supporting medical retirement.

Where an agency has a separate procedure or entitlement within an industrial instrument, the provisions of that instrument take precedence.

This advice relates solely to a medical retirement from the position held by the employee. Any superannuation processes are independent to this process and is between the employee and their superannuation provider.

#### 5-8.4.3 Costs of referral

The referring agency is liable to pay for the cost of the medical assessment for the employee only and any reasonable associated costs including travel, reports, accommodation, meals, and wages.

#### 5-8.4.4 Employee's treating doctor

In the first instance the agency must rely on the available medical advice from the employee's treating doctor in relation to the doctor's assessment of their capacity for work. Additional advice may be sought by the agency where it is unclear or there are concerns about the practicality of implementing the doctor's advice. The agency should discuss this with the employee first, and then, request additional information or clarification from the employee's treating doctor.

Agencies should obtain a signed general consent from the employee to enable appropriate advice to be sought from the employee's medical practitioners (the Authority to Release Medical Information Form is at Appendix 1).

All requests for employees to attend their treating doctor must be consistent with the "Referral of Employees" section in this document. The agency is to provide the treating doctor with a contact name and phone number of an appropriate person in the agency who will be available to be contacted in case clarification is required of the questions being asked.

If the information is not made available from the employee's treating doctor or is inconsistent with other available evidence, or inadequate, or would result in an unreasonable delay, then the agency may seek independent medical advice from the nominated medical

assessor. (It should be noted that appointments with specialists may take time, depending on the availability of the specialist).

#### 5-8.4.5 Specific referrals based in legislation, an industrial instrument or policy

Referrals for medical advice may also be initiated under specific legislative, industrial or policy provisions. Agencies must specify when they are referring employees under a specific provision which applies to the employee and provide information on the standards which are to be met or procedures required under the instrument, for example see:

- Section 25 of the *Public Sector Employment and Management Act 2002*
- Clause 13 of the Public Sector Employment and Management Regulation 2009
- Clause 80.5 of the Crown Employees (Public Service Conditions of Employment) Award 2009
- Clause 76(e) Crown Employees (NSW TAFE Commission - Administrative and Support Staff Conditions of Employment) Award 2005
- Clause 16.10 of the Crown Employees (School Administrative and Support Staff) Award
- Clause 9 of the Crown Employees (Police Officers Death and Disability) Award 2005
- Clause 13 of the Crown Employees (NSW Fire Brigades Firefighting Staff Death and Disability) Award 2009
- Clause 11 of the Ambulance Services Regulation 2005
- *Superannuation Act 1916*
- *Police Act 1990*
- Managing Sick Leave Policy

#### 5-8.4.6 Direction to cease duty – allocation of leave pending medical assessment

For staff employed in Public Service Departments (Principal Departments and Other Agencies) listed in Part 1, Schedule 1 of the Public Sector Employment and *Management Act 2002*, if a direction has been given to an employee to cease

duty pending a medical assessment, paid special leave should be granted. Following the medical assessment, should the employee be deemed unfit and the nominated medical assessor advises that sick leave is appropriate, then available sick leave is to apply from when the employee was directed to cease duty.

For employees in other agencies, leave shall be granted in accordance with the relevant industrial instrument's provisions for leave or discretionary leave.

#### **5-8.4.7 Direction to attend a medical assessment**

Whether a referral for a medical assessment is under an agency's general OH&S obligations or other specific provision, employees are required to comply with an agency's reasonable direction to attend and participate in a medical assessment. Employees should remain aware that if they fail to comply with such a reasonable direction they may be subject to disciplinary procedures.

An agency should take reasonable steps to check that an employee is capable of attending a medical assessment.

### **5-8.5 Nominated Medical Assessor**

The Public Service Commissioner determines the nominated medical assessor/s that must be used by Public Service Departments (Principal Departments and Other Agencies) as listed in Part 1, Schedule 1 of the *Public Sector Employment and Management Act 2002*.

Other agencies may still elect to use the nominated medical assessor but are not required to do so. These agencies may use another appropriately qualified medical provider to undertake independent medical assessments of employees.

### **5-8.6 Referral of Employees**

All agencies must provide objective, accurate and relevant information to the employee's treating doctor or nominated medical assessor. The minimum standards listed below apply to all referrals.

#### **5-8.6.1 Referrals to a nominated medical assessor**

A nominated medical assessor may require agencies to provide referral information in a standard format, in addition to the written report.

#### **5-8.6.2 Referrals to be made by a duly authorised person**

The chief executive or a specifically authorised delegate, such as, the Human Resources Manager, must authorise all referrals and sign the written report.

#### **5-8.6.3 Written report**

A written report that contains all of the following information must always accompany a referral:

1. Basis for referral - refer to General basis for referrals and Specific referrals based in legislation, an industrial instrument or policy in this document under the section Initiating a Medical Assessment.
2. Inherent requirements and demands of the position - information which documents the inherent requirements and demands of a position and the work performed including both items below:
  - a description of the common tasks performed, any tools and technologies commonly used and the work environment (eg outdoor work)
  - the knowledge, skills, abilities and other characteristics required which are commonly contained in a position description.
3. Outline the health-related issue(s) that is/are affecting the ability to perform the inherent requirement/s and demands of the position - agencies should refrain from making any assumptions about a medical condition in the absence of a diagnosis from a qualified medical practitioner. Include all sick leave records in chronological order and any recent medical certificates and related information.
4. How the injury or health condition is affecting the ability to perform the inherent requirement/s and demands of the position - Reports should be based on factual information on how work performance relating

to the inherent requirement/s of the position is being affected by the injury or health related condition provided by the employee's immediate supervisor. Information needs to be provided on both positive and negative aspects of the employee's performance.

5. Specific question(s) – state the agency's specific question(s) that require an answer from the medical provider. Unless clinical advice is particularly being sought on an employee's ability to safely continue in a particular job, it is not sufficient to simply request an assessment of an employee's "fitness to continue" or assume the question(s) will be inferred from the general background. If clinical advice is being sought on an employee's ability to continue in a particular job or to undertake alternative employment this must be made clear in the referral.
6. Agency proposals - outline any proposal to facilitate the employee safely continuing or returning to duty including:
  - Temporary or permanent alternative or modified duties either in the substantive position or another work area
  - flexible working arrangements appropriate to the workplace or operations of the unit
  - support or protective mechanisms (eg equipment or additional assistance in the workplace)
7. Previous referrals - detail any previous referrals and the outcome of any action to implement the previous advice. This must include copies of employee's treating doctor reports where provided and where the employee has consented to their inclusion. If a treating doctor report has not been made available this should be noted in the report for the assessor's information.
8. Workers compensation – include a statement that this referral, in so far as the agency understands, is only related to a non-work related health issue and should it be identified that the health issue is related to an employee's compensable health matter then the referring agency should be contacted immediately.

9. Summary of documents – a summary of the documents in checklist format.

#### **5-8.6.4 Referrals must be based on health related issues**

It is not the role of the nominated medical assessor to undertake medical assessments arising from non health related matters that must be managed by the agency.

There may be occasions where an agency seeks medical advice to confirm it is safe for an employee to be involved in a complaints resolution, performance management or disciplinary process. In providing contextual information for a referral, it is only necessary to provide relevant details of the discipline, investigation or performance appraisal process, unless those details are prevented from being disclosed due to confidentiality requirements. Any information provided must not pre-empt the outcome of the process and allegations or complaints should not be brought to the employee's attention for the first time as a result of the referral.

#### **5-8.6.5 Security and confidentiality of documentation**

Agencies must ensure that all referral records are secure against loss, unauthorised access, modification or other misuse in accordance with the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.

#### **5-8.6.6 Employee to be consulted and provided with copies of documentation**

The employee must be made aware of the reason for the referral and where possible, in person (particularly if their ability to continue in a particular job is raised).

Agencies must provide the employee with copies of all information sent to the nominated medical assessor by either registered post or courier. If the employee wants to elect an alternative form of delivery they must advise the employer in writing. If the employee is absent from the workplace, the agency should securely deliver the material to the employee.

Agencies are to advise employees that they may be accompanied by a support person at the medical assessment. This may be a union representative. The agency is to inform the employee that they may request an interpreter if required.

When copies of referral documents are sent to the employee they must be accompanied by a form requiring the employee to sign and return to the agency acknowledging receipt of the documentation. If this acknowledgement cannot be made or is not received, the agency should make reasonable attempts to contact the employee to confirm receipt. Any lack of formal acknowledgement is not an indication that the employee has not received the documentation and this should not delay the assessment process. However, the agency should notify the nominated medical assessor of the lack of acknowledgement.

#### **5-8.6.7 Employee may provide information**

Employees have the right to send a written response to the nominated medical assessor about the information in the agency's referral. Any such response must be relevant and confined to the same health-related issues contained in the referral.

Employees should ensure the nominated medical assessor is provided with any additional medical information not contained within the referral at the earliest possible opportunity and no later than the day of the appointment.

Employees should also provide the additional information to their agency to ensure that any future decisions are based on all relevant information. To this end employees may need to consider the balance between their desire for confidentiality and the need for the agency to have sufficient information to ensure that the agency can provide a safe place of work for the employee, to enable appropriate support to be offered and to address any specific workplace issues affecting the employee.

#### **5-8.6.8 Employee consent form**

The employer should make available to the employee at the time of referral the Authority to Release Medical Information Form (Appendix 1). The employee may sign the consent form at the time of referral or sign at a later date after discussing with their treating doctor or specialist as to what information should be made available to the employer to provide the best outcome for the rehabilitation of the employee.

#### **5-8.6.9 Supplementary information**

Agencies may provide the nominated medical assessor with relevant supplementary information at any time following the initial referral. The agency must provide the supplementary information to the employee in the same way as the initial referral documentation. The agency should provide this information no later than 5 working days prior to the employee's appointment to see the nominated medical assessor or as soon as possible thereafter.

#### **5-8.6.10 Timeframes**

The time taken to conduct a medical assessment and implement the advice will vary due to a range of factors including any of the following:

- whether the employee provides information or the agency provides supplementary information
- the time taken to get an appointment with a practitioner
- the number and complexity of the health issues
- the need to refer matters to specialists and the promptness in which reports from other practitioners are provided
- the emergence of additional issues as the assessment or implementation of the advice proceeds
- whether the employee has sought a review of the medical assessment or the time taken for the agency to be notified that an employee has not sought a review.



### 5-8.6.11 Employee assistance programs

An employee may feel anxious about the process and may require additional support. Managers should encourage employees to use the Employee Assistance Program (EAP) made available through their agency.

Separately from the EAP there are many community and general welfare support services that can be accessed by individuals. An example is the Commonwealth's 'Job in Jeopardy' program which provides access to the Commonwealth Rehabilitation Service (CRS).

Welfare and other advice may also be available from the employee's relevant union.

## 5-8.7 The Medical Assessment

### 5-8.7.1 The report

Following a medical examination, the nominated medical assessor will provide a report to the agency and the employee which sets out the basis for the advice.

The nominated medical assessor's advice may include any of the examples listed below depending on the reason for referral, the basis of the referral and the agency's specific question(s):

- fit to undertake the inherent requirements and demands of their position
- may safely continue to work with reasonable adjustments, restrictions and/or a rehabilitation program
- temporarily unfit but is likely to become fit to safely return to their normal duties within an approximate time frame or date.
- temporarily unfit but is likely to become fit to safely return to modified or alternative duties within an approximate time frame or date.
- permanently unable to carry out the inherent requirements and demands of the position
- permanently unfit for any duties.

The nominated medical assessor may discuss the advice with the agency but it will be limited to health matters that relate to the employee's ability to safely undertake the inherent requirements and demands of the position and any rehabilitation or adjustment issues. The nominated medical assessor must not disclose any other health matters without the employee's written consent.

### 5-8.7.2 Implementing the medical advice

Options for managing the health related issue are listed below and will depend on the outcome of the assessment.

### 5-8.7.3 Sick leave

The assessment may recommend that the employee be absent from work on sick leave for a specified period. This may be to allow the employee time to recover or meet certain health targets. A further medical assessment may be required to determine how the return to work is to be managed and when it can safely occur.

### 5-8.7.4 Workplace adjustments

The agency needs to provide to the nominated medical assessor factual information on the physical environment of the workplace, the operational requirements of the work unit and any other unique characteristics of the workplace that the medical assessor should be aware of in making any recommendations on workplace adjustments.

The types of adjustment which may be recommended by the nominated medical assessor could include one or more of the following:

- implementing flexible work arrangements such as flexible working hours
- vocational retraining and/or job redesign aimed at ensuring the work is adjusted to assist the employee to perform their duties
- purchasing equipment to assist the employee to perform their duties
- providing services or facilities to assist the employee to undertake their duties, for example by re-arranging workplace access

- redesigning the position - this could be undertaken in consultation with an occupational health practitioner

An agency may wish to use the services of an appropriate medical or allied health professional to assist with workplace adjustments.

### Special Note:

The *Anti-Discrimination Act 1977 (NSW)* and the *Disability Discrimination Act 1992 (Commonwealth)* both require employers to make reasonable adjustments (services or facilities) to enable a person with a disability who was selected on the basis of merit to carry out the inherent job requirements and job demands of a position.

Many forms of adjustment can be made to the workplace to reduce or eliminate the effects of a disability upon a person's ability to carry out the inherent requirements of a job. This can be undertaken by supporting the capabilities of people with disabilities and assisting them to perform the inherent job requirements and job demands of the position.

The nature of adjustment required needs to be determined in consultation with the person concerned and should not be based on generalisations about particular disabilities. Such an approach acknowledges that there are variations between individuals with particular types of disability, as to the degree of disability experienced by them as well as other characteristics, such as skills, qualifications and experience.

### 5-8.7.5 Alternative duties

Another type of workplace adjustment is alternative duties whether on a temporary or permanent basis.

Where the medical advice states that an employee could fulfil alternative duties, the agency is obliged to investigate whether alternative duties exist in the agency.

Agencies may investigate the employee's transfer to a more suitable position elsewhere in the public sector through an agency level negotiation either on a temporary or permanent basis. This is possible through a transfer under

section 86 to section 88 of the *Public Sector Employment and Management Act 2002*. A transfer may be considered when:

- it is not possible to offer suitable employment within the same agency
- the employing agency cannot retrain the employee
- it is not possible to redesign the position in order to provide them with meaningful work at their pre-injury/illness level of employment.

#### **5-8.7.6 Unjustifiable hardship**

Unjustifiable hardship is a legal defence to a complaint of disability discrimination. An employer must provide services or facilities to enable an employee or potential employee to carry out the inherent requirements and job demands of a position. However, an employer may in some circumstances claim that the provision of such services or facilities would cause the employer 'unjustifiable hardship'.

This defence may only apply in relation to a job applicant or dismissed employee. It does not apply to an existing employee. An existing employee who has a disability and requires services or facilities in order to carry out the inherent requirements and job demands of a position must be provided with those services or facilities.

Unjustifiable hardship is a stringent standard for employers to meet. All the relevant circumstances must be taken into account when determining whether the provision of services and facilities would cause unjustifiable hardship to the employer, including:

- an assessment of the adjustments required;
- the nature of the benefit and detriment likely to accrue or be suffered by any person;
- the benefits or detriment likely to accrue to others;
- the costs of the adjustment and the financial situation of the agency;

- in the case of the provision of services or the making available of facilities, the existence of an action plan given to the Australian Human Rights Commission pursuant to the *Disability Discrimination Act 1992 (Commonwealth)*.

No single factor alone is likely to constitute unjustifiable hardship.

#### **5-8.7.7 Medical retirement**

The nominated medical provider may assess that the employee has long-term health issues affecting their ability to safely continue in their position or fulfil the inherent requirements of their position, or the employee's unfitness or incapacity appears likely to be permanent.

In this case the chief executive or delegate is to decide whether an employee is to be medically retired. This decision should happen on receipt of the advice and following the expiry of any review period. Before deciding, the chief executive or delegate must:

- be satisfied that the elements set out in the relevant legislation and policy have been met
- be clear on the medical basis on which the proposed medical retirement will be based
- be satisfied that the proposed medical retirement is the last resort and the employee is genuinely unable to carry out the full inherent requirements and demands of the position
- be satisfied that reasonable attempts have been unsuccessful in identifying duties commensurate with identified medical restrictions, and there are no suitable alternative positions in which the employee can be placed.

#### **5-8.7.8 Other health risks**

The chief executive or delegate is responsible for managing risks under the Work Health and Safety Act 2011. If the chief executive or delegate is of the opinion that the employee is considered to be a health risk to themselves

or others in the workplace the chief executive or delegate may direct the employee to cease duty immediately or, if absent from duty, to not resume duty.

The chief executive or delegate may decide on this action in the following circumstance:

- where evidence in the workplace contradicts the treating doctor's initial advice and clarification is being sought from the treating doctor, or
- while waiting for the employee's assessment by the nominated medical assessor, or
- after the employee's assessment by the nominated medical assessor and in accordance with their advice. In this case, the agency should inform the employee and, if necessary, direct the employee verbally and in writing to cease duty immediately.

This list is an example only and does not constitute all the circumstances that a chief executive or delegate may have to take into consideration when carrying out their responsibility under the *Work Health and Safety Act 2011*.

### **5-8.8 Review of Medical Assessment**

#### **5-8.8.1 Independent Review Panel – administered by the nominated medical assessor**

The nominated medical assessor will administer requests for a review of a medical assessment to be undertaken by an independent review panel. An employee may lodge a request with the appropriate officer of the nominated medical assessor and/or must notify the agency. Where the request for review has been provided to the agency first, then the agency should notify the appropriate officer of the nominated medical assessor. A review of the medical assessment can only be lodged if it meets the criteria for review below.

The review will be conducted by a panel of three members which include a senior occupational physician who did not undertake the primary medical assessment of the employee. The other two panel members will be determined on the basis of their clinical management and

occupational health knowledge, public sector management skills and knowledge of the principles of advocacy and natural justice.

The review panel will only take into account matters that impact on the medical assessment

The panel, will then make an independent decision regarding the appropriateness of the medical assessment and recommendations

### 5-8.8.2 Criteria for review

A request for a review must be lodged by an employee within 21 days from the date of the Medical Assessment Report and on the basis that:

- a) the employee can demonstrate that relevant information about their medical condition was available and offered but not considered at the time of assessment ; and/or
- b) the employee can demonstrate that the reasons for the nominated medical assessor's recommendation were not consistent with the available information.

The review is limited to an examination of the appropriateness of the medical assessment and associated recommendations by the nominated medical assessor. The review does not consider other issues such as actions taken or not taken by the employer either before or after the assessment.

### 5-8.8.3 Review of medical assessment

Agencies must provide a review process in relation to an employee's medical assessment.

- 1) Staff who are employed under Chapter 2 of the Public Sector Employment and Management Act 2002 in Public Service Departments (Principal Departments and Other Agencies) as listed in Part 1, Schedule 1, will be able to lodge a request for a review with the nominated medical assessor administering the independent Review Panel

- 2) Agencies who are not required to use the nominated medical assessor may either:
  - (a) elect to use the nominated medical assessor and its review process , or
  - (b) continue to use their own medical assessment process.

Agencies that do not have an existing review mechanism will need to develop a review mechanism in consultation with the relevant union/s.

## 5-8.9 Appeals against a Decision/Action of the Agency

### 5-8.9.1 Grievance procedures

Agencies must manage all work-related concerns and grievances in accordance with the grievance and dispute resolution procedures contained in the relevant industrial instrument.

### 5-8.9.2 External tribunals and bodies

An employee may have recourse to other appropriate tribunals and bodies. Examples include any of the following:

- Employee's union
- Industrial Relations Commission of NSW
- Anti-Discrimination Board of NSW
- Australian Human Rights Commission
- NSW Ombudsman
- Independent Commission Against Corruption.

## 5-8.10 Related Policies and Procedures

### 5-8.10.1 Pre-Employment Health Assessments

These procedures deal with managing employee health related issues that impact on the ability to perform the inherent requirement/s and demands of the position. Pre-

placement medical assessments and health monitoring is dealt with in [C2000-26](#) Employment Health Assessment Policy and Guidelines.

### 5-8.10.2 Other related policies and procedures

- [C2009-16](#) Managing Sick Leave Policy
- [C2007-39](#) A Healthy Workforce – Policy on improving the health and well being of public sector employees
- [C1998-80](#) Premier's Department Policy and Guidelines: Alcohol and Other Drugs
- [M2007-02](#) Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying
- [C2003-37](#) Occupational Stress - Hazard Identification and Risk Management Strategy
- [M2010-07](#) Working Together: Public Sector Workplace and Safety and Injury Management Strategy 2010-2012
- [C2007-48](#) Leading Well: The role of leadership in improving the prevention and management of psychological injury

## 5-8.11 Sample of Authority for Release of Medical Information

See sample at "Appendix 5B: Authority for Release of Medical Information". This document can be directly accessed via [M2010-18](#) Procedures for Managing Non-Work Related Injuries or Health Conditions.

## 5-9 Private employment

### 5-9.1 Sources of authority

- *Public Sector Employment and Management Act 2002*
- [Public Sector Employment and Management Regulation 2009](#)
- Model Code of Conduct for NSW Public Sector Agencies: Policy and Guidelines, Department of Premier and Cabinet
- [C2010-22](#) Contesting Elections.

- [C2010-40](#) Employment Arrangements for the March 2011 General Election

### 5-9.1.1 Statutory provisions

Section 59 of the *PSEM Act 2002* provides that:

- A person employed in the Public Service is not to undertake any other paid work without the permission of the appropriate department head.
- This section does not apply:
  - to a casual employee, or
  - to a person working part-time,

during the period that the person is not required to discharge duties in the Public Service, but only if the discharge of those duties is not adversely affected and no conflict of interest applies.

### 5-9.2 General policy

Employees may not engage in any form of paid employment outside their official duties without the prior approval of their department head.

The prohibition against undertaking private employment continues during any period of leave, whether the leave is paid or unpaid, and applies to all employees.

#### 5-9.2.1 Disciplinary action

An employee who fails to comply with the requirements of section 59 may incur disciplinary action under section 43 of the *PSEM Act 2002* (in the case of an officer). A temporary employee failing to comply with the requirements of section 59 may have their services dispensed with in accordance with s30 of the *PSEM Act 2002*.

#### 5-9.2.2 Authority to approve or decline applications

Department heads have the authority under the *PSEM Act 2002* to approve or decline applications from employees seeking to engage in private employment or extra-official activities including lecturing, tutoring and demonstration work. The decision to approve or decline is to be made in accordance with the principles below.

### 5-9.3 Approvals

An employee seeking approval to engage in private employment or to significantly vary existing approvals must submit written information concerning the nature of the employment and the time involved. This information should be accompanied by an assurance in writing, that:

- the work does not arise from, nor will it interfere with, the employee's official duties;
- the work will not involve a conflict of interest with the employee's official duties;
- the work will be undertaken outside working hours;
- no relevant information has been withheld in relation to (a), (b) and (c); and
- the arrangements will not be varied without further application.

An applicant is not required to divulge any personal circumstances associated with the application to engage in private employment.

Approval to engage in private employment other than in the employee's own time will only be granted in exceptional circumstances. Approval is subject to "[5-1.1 Sources of authority](#)".

Generally part time employees may engage in private employment outside their hours of duty but approvals are subject to the guiding principles specified above.

### 5-9.4 Work with government agencies and international agencies

See "[6-8.4.1 Working with the NSW and other governments or international organisations](#)".

### 5-9.5 Payment for private employment

Payment received by an employee for undertaking activities, either during or outside normal working hours, which are part of that employee's duties and responsibilities, must be paid in full to the Crown.

Payment received by employees for undertaking activities which are not part of their normal duties and:

- the activity is during normal working hours and the employee is considered to be on duty or acting as a representative of the department; or
- the activity is outside normal working hours but the employee is acting as a representative of the department,

is to be paid in full to the Crown.

Payment received by employees for undertaking activities which are not part of their normal duties and

- when the activity is outside normal working hours; or
- the activity is during normal working hours but the employee is on recreation leave, extended leave or leave without pay; and
- the employee is not acting as a representative of the department,

may be retained by the employee.

### 5-9.6 Specific private employment activities

#### 5-9.6.1 General

Policies for specific activities are set out as follows and, if payment is involved, the appropriate provisions apply.

#### 5-9.6.2 Lecturing, teaching, tutoring, demonstration, and the like

Employees may make themselves available to provide expert knowledge in the form of lecturing, teaching, tutoring or demonstration for universities, institutions under the Department of Education and Training, recognised professional associations, and generally recognised educational bodies.

If these activities form part of the employee's official duties, and the activity is during normal working hours, departmental approval must be obtained for leave of absence from the work place.

If the activities form part of the employee's official duties, and the activity is outside normal working hours, departmental approval must be obtained. The department may choose to grant time in lieu for these approved out of hours activities.

If the activities do not form part of the employee's official duties, and the activity is undertaken during normal working hours, approval will be conditional upon:

- the institution certifying that it requires the services of the employee;
- the period of employment being of a temporary nature and subject to periodic review until such time as the institution has been able to obtain a suitable replacement;
- departmental convenience; and
- the provisions of [5-9.5 Payment for private employment](#) being met.

If the activities do not form part of the employee's official duties, and the activity is undertaken outside normal working hours, or, if the activities are undertaken in private institutions or in a private capacity, then the general policy provisions of these guidelines apply.

### **5-9.6.3 Examiners or members of examining committees**

Department heads have been delegated authority to approve retention of fees by employees who are appointed as examiners or members of examining committees under statutory authority, if the examination fees are laid down under the provisions of the appropriate Act or Regulation of the statutory authority.

### **5-9.6.4 Appearances in radio and television programs**

Approval is required when employees wish to appear in a radio or television program if:

- the subject matter of the program is directly related to their duties and responsibilities or their department or another Government department; and
- their appearance is not part of their duties.

Approval is not required when employee are to appear in casual radio or television programs, the subject matter of which is not related to their normal duties, their department or another government department. For example this may include appearances on game shows, current affairs programs, or performances for which the employee has musical or other particular talents.

### **5-9.6.5 Publications**

Employees may write books or articles for magazines and other publications, provided this work is not related to or interferes with official duties.

If the work is related to the employee's duties, or contains information obtained in the course of such duties, approval to publish must be obtained from the department head prior to publication.

### **5-9.6.6 Directors of companies**

Employees below Senior Executive Service level may accept directorships subject to the approval of the department head or delegate.

### **5-9.6.7 Primary producing properties**

Employees may own and operate primary producing properties or hobby farms but must ensure that they do not claim or make use of any departmental service not available to other members of the community.

Employees owning or participating in the ownership of primary producing properties must seek the approval of the department head to engage in commercial activity associated with any such property if the commercial activity is related to their official duties.

Ownership or operation of a rural property must not interfere with the proper and efficient performance of official duties.

### **5-9.6.8 Volunteer fire fighting**

Employees wishing to join the Rural Fire Service Volunteers are required to make application in the usual manner. Applications may be approved provided the department

head is satisfied that no undue inconvenience to the department will result. The remuneration received for approved work may be retained.

## **5-10 Employees contesting Federal and State elections**

### **5-10.1 Federal elections**

#### **5-10.1.1 Employee required to resign prior to a federal election**

Section 44 (iv) of the *Commonwealth of Australia Constitution Act* provides that:

Any person who holds any office of profit under the Crown shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

This provision has been interpreted to mean that Government employees must resign from their positions before they can nominate for election to the Commonwealth Parliament.

#### **5-10.1.2 Last day of service**

The last day of service of an employee who is contesting a Federal election must be no later than the day prior to the closing date for nominations.

#### **5-10.1.3 Entitlement to reappointment**

- Section 103 of the *PSEM Act 2002* provides for the reappointment of employees who resigned to contest a Commonwealth Election.

#### **5-10.1.4 Leave arrangements**

An employee who is reappointed as in 5-10.1.3 Entitlement to reappointment is regarded as being on leave without pay between the dates of resignation and reappointment. The monetary value of recreation or extended leave credits paid on resignation may be retained, applied in whole or

part to the period of leave without pay, or refunded to reestablish leave credits according to the preference of the employee concerned.

Refer to [C2010-22](#) Contesting Elections.

## 5-10.2 State elections

### 5-10.2.1 Legislative provisions

The legislative provisions relevant to the position of employees contesting State elections include section 13B of the *Constitution Act 1902*, the *Constitution Public Service (Amendment) Act 1916*, the *Teaching Services Act 1980* (s. 98) and the *PSEM Act 2002* (s102).

[C2010-22](#) should also be consulted.

An employee who is standing for election to State Parliament is not required to resign until declared elected. The last day of service is the date upon which the employee is declared elected (see *Constitution (Public Service) Amendment Act 1916*).

### 5-10.2.2 Leave arrangements

Notwithstanding [5-10.2.1 Legislative provisions](#), employees who are intending to nominate as candidates should be advised to consider appropriate leave arrangements to cover the election period.

In order to avoid potential conflict between political interests and public employment it would be preferable for employees to take leave for election campaigning purposes from and including the day of nomination for the election.

When contesting an election, leave may be taken with or without pay according to the employee's preference and entitlements available.

## 5-11 Taxis for employees working late

### 5-11.1 Provision of transport

Refer to the Crown Employees (Public Service Conditions of Employment) Award 2009 cl 99 Provision of transport in conjunction with working overtime.

Departure or arrival of an employee after 8:00 pm whether on overtime or a regular or rotating shift roster does not in itself warrant the provision of transport. It needs to be demonstrated that the normal means of transport, public or otherwise, is not reasonably available or that travel by such transport poses a risk to the safety of the employee.

The responsibility for deciding whether the provision of assistance with transport is warranted rests with administrative units of departments where knowledge of each particular situation enables appropriate judgments to be made.

#### 5-11.1.1 Overtime arrangements

When overtime is required it should be arranged as far as is possible so that employees can use public transport or other normal means of transport to and from work.

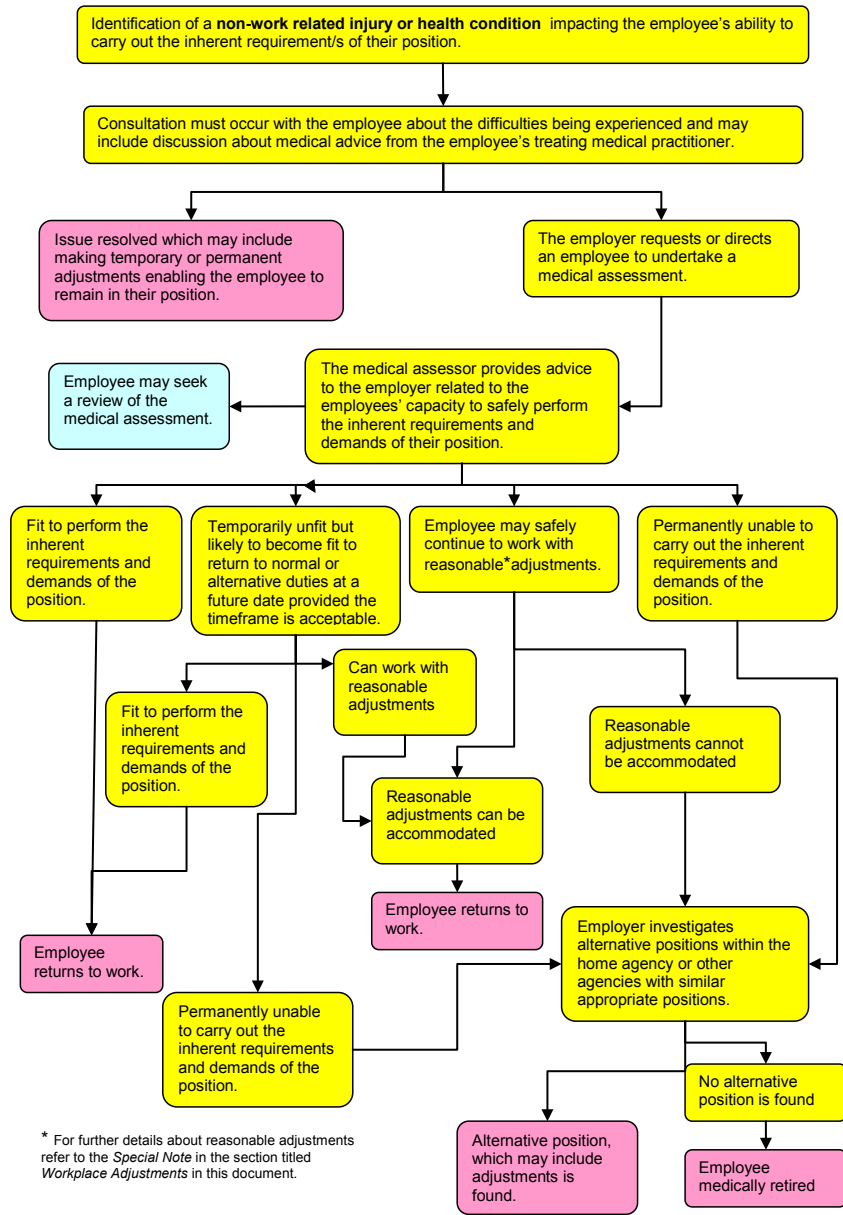
#### 5-11.1.2 Taxis

If an employee:

- ceases overtime duty after 8:00 pm; or
- ceases or commences duty performed as part of a regular or rotating roster of shift duty after 8:00 pm, and public transport or other normal means of transport is not reasonably available,

the department may provide transport or arrange transport by taxi to or from home.

Appendix 5A: Flow Chart: Managing Non Work Related Injuries or Health Condition



## Appendix 5B: Authority for Release of Medical Information

I, \_\_\_\_\_ of \_\_\_\_\_  
(employee's full name) (employee's full address)

give permission to \_\_\_\_\_  
(name of agency where employee is employed)

in accordance with the procedures set out in "Managing Non-Work Related Injuries or Health Conditions", to obtain any relevant medical information and advice from my medical or other health practitioners, concerning my fitness to safely undertake the duties of my position and other health related matters that have been identified by my employer that need to be considered in respect to my employment.

Further, should I be referred to a nominated medical assessor in accordance with the procedures set out in "Managing Non-Work Related Injuries or Health Conditions", I consent to any or all of the information obtained by my employer being provided to that nominated medical assessor for the purpose of the assessment (and to the Independent Review panel if I seek a review of that assessment).

Listed below are details of my current (and previous) treating medical and health practitioners and my consent is provided to my employer to obtain any relevant medical information and advice from them concerning my fitness to safely undertake the duties of my position and other health related matters that have been identified by my employer that need to be considered in respect to my employment.

Type of health/medical practitioner(s)

Name

Address

Telephone

(\*If the space provided above is insufficient please list on a separate page and attach to this form)

I approve a copy of the authority, including an electronic version or facsimile, being treated as the original. The authority is valid for the duration of my rehabilitation or my return to the full duties of my substantive position.

Signed \_\_\_\_\_ Date / /  
(employee's signature)

Important information

- The employee may wish to discuss with their treating medical or health practitioner as to what information should be made available to the employer to assist with addressing any health related matters that need to be considered in respect to the employee's employment.
- Withholding consent may compromise your employer's ability to formulate an appropriate work plan to accommodate your health condition and a return to full duties. If all relevant medical details can be considered, your employer can consider all options available if there are any health issues affecting your fitness to safely undertake the duties of your position.



## Chapter 6 **Attendance, leave and absences**

## 6-1 Introduction

The provisions contained in this chapter reflect the provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 (the Award). They apply to all employees employed under Chapters 1A and 2 of the Public Sector Employment and Management Act 2002 (PSEM Act 2002) in Departments listed in Part 1 of Schedule 1 of the PSEM Act 2002 unless other arrangements apply under another industrial instrument or under a local arrangement negotiated between the Department Head and the relevant union in terms of clause 10, Local Arrangements of the Award.

A full list of definitions used in this chapter is contained in the introduction to this **Handbook**.

## 6-2 Hours of duty

### 6-2.1 Sources of authority

Crown Employees (Public Service Conditions of Employment) Award 2009, Clauses 11 to 25; Clause 99 Provision of Transport in Conjunction with Working of Overtime.

Department of Premier and Cabinet, Flexible Work Practices – Policy and Guidelines, October 1995.

### 6-2.2 Attendance

#### 6-2.2.1 Determination of hours of attendance

See clause 11.1 of the *Award*.

See also clause 3 of the *Award*.

#### 6-2.2.2 Observance and recording of hours

See clause 11.2 of the *Award*.

#### 6-2.2.3 Requirement to work overtime

See clauses 11.3 and 88.1 of the *Award*.

### 6-2.3 Absence from duty

#### 6-2.3.1 Absence from work

See clause 68 of the *Award*.

#### 6-2.3.2 Notification requirements

See clause 18 of the *Award*.

### 6-2.4 Working hours

#### 6-2.4.1 General

See clause 11 of the *Award*.

The ordinary daily full time hours are 7 or 8 depending on the classification of the employee. The ordinary daily hours may be standard or flexible and may be worked full time or part time.

The department head must ensure that all employees are informed of the hours of duty required to be worked and of their rights and responsibilities in respect of such hours of duty.

#### 6-2.4.2 Morning and afternoon tea breaks

See clause 14 of the *Award*.

#### 6-2.4.3 Meal breaks

See clause 15 of the *Award*.

#### 6-2.4.4 Variation of hours generally

See clause 16 of the *Award*.

#### 6-2.4.5 Natural emergencies and major transport disruptions

See clause 17 of the *Award*.

#### 6-2.4.6 Assistance with transport

See clause 99 of the *Award*.

### 6-2.5 Public holidays

See clause 19 of the *Award*.

### 6-2.6 Standard hours

See clause 3 of the *Award* defining Standard Hours and clause 20 of the *Award* outlining the operation of standard working hours.

### 6-2.7 Flexible working hours

#### 6-2.7.1 General

The conditions under which flexible working hours operate are set out in clause 21, Flexible Working Hours and clause 24 Flexible Work Practices of the *Award*.

#### 6-2.7.2 Exclusion

If it is inconvenient for departmental services for employees to work flexible hours, the Department Head may require the working of standard hours.

#### 6-2.7.3 Flexible work practices

The provisions of clause 21, Flexible Working Hours of the *Award* do not affect the hours of duty of an employee who is covered by a written flexible working hours agreement negotiated under Flexible Work Practices, Policy and Guidelines. See clause 24 of the *Award*.

#### 6-2.7.4 Local arrangements

Local Agreements negotiated with the union and approved by the Director General, Department of Premier and Cabinet, may be made in accordance with clause 10 of the *Award* varying flexible working hours provisions.

### 6-2.8 38 hour week workers – rostered days off

See clause 22 of the *Award*.

### 6-2.9 Determinations made prior to 28 October 1997

Any determinations on local arrangements in respect of the hours of duty which operated in a department or part of a department at 28 October 1997 continue to apply until renegotiated.

## 6-3 Leave administration

### 6-3.1 Sources of authority

- **Crown Employees (Public Service Conditions of Employment) Award 2009**, clauses 67 to 84
- **Public Sector Employment and Management Regulation 2009**; Part 5
- Department of Premier and Cabinet, Flexible Work Practices – Policy and Guidelines, October 1995.

### 6-3.2 General

#### 6-3.2.1 Part time employees

Part time work is the working of fewer than the full time weekly hours for the job. Unless otherwise specified part time employees receive conditions of employment on a pro rata basis, calculated according to the number of hours worked per week. See also subclause 67.2 of the Award.

Unless another industrial instrument applies part time work is to be worked in accordance with [clause 13](#) of the Award.

#### 6-3.2.2 Apprentices

Apprentices are entitled to the same leave provisions as the trade staff in the organisation and occupation group in which the apprentice is employed.

#### 6-3.2.3 Departmental temporary employees

See subclause 67.3 of the Award.

#### 6-3.2.4 Ministerial employees

Ministerial employees are not employed under the *PSEM Act 2002* but by Ministerial authority. Their leave conditions are determined by the Premier and prescribed in the Uniform Leave Conditions for Ministerial Employees in Government Departments and Equivalent Employees in Corporate Bodies – usually known as the Uniform (Ministerial) Leave Conditions – issued by the Department of Premier and Cabinet on 23 December 1993.

Carer's Leave was added to the Conditions from 1 January 1998 in C1998-11.

#### 6-3.2.5 Leave on reduced pay

When leave is granted with reduced pay (for example, half pay), the period of reduced pay starts from the next working day after the higher paid leave period ends. If pay at the higher rate ceases on a half day or a quarter day, pay at the reduced rate takes effect immediately for the balance of the day.

#### 6-3.2.6 Combining paid and unpaid leave

See subclause 67.4 of the Award.

#### 6-3.2.7 Minimum period of Leave

See subclause 68.4 of the Award.

### 6-3.3 Application for leave

#### 6-3.3.1 General

See [clause 69](#) of the Award.

#### 6-3.3.2 Retention of applications

All leave applications may be destroyed after 6 years, except for the following applications which are to be placed on the employee's personnel file:

- extended leave;
- study leave; and
- leave without pay in excess of 6 months.

### 6-3.4 Pay in advance

#### 6-3.4.1 Payment for leave accrued

Employees may elect to be paid in advance for recreation leave or extended leave.

Payment in advance is for only such leave as has accrued up to the day immediately before starting leave. An employee may elect to include in the leave period any leave that will accrue while they are on leave. Payment

for the leave that accrues while the employee is on leave cannot be made until the first pay day after the employee returns to work.

## 6-4 Adoption leave

See [clause 75](#) of the Award.

Refer to "6-9 Parental Leave" for maternity, adoption and 'other parent' leave entitlements.

## 6-5 Concessional leave

### 6-5.1 Sources of authority

- See the Christmas Closedown Premier's Memorandum (issued annually).
- See also subclause 21.19 of the Award.

### 6-5.2 Christmas concession

#### 6-5.2.1 General

It is a practice of the Premier to grant a half-day's concessional leave for Christmas on the condition that adequate service to the public is maintained and on any other conditions specified by the Circular on each occasion.

#### 6-5.2.2 Eligibility

To be eligible to receive the concession, an employee must be on duty in the morning and must work half the standard full time daily hours for the appropriate category of employment.

#### 6-5.2.3 Concession to apply to Christmas or New Year's Eve

Employees who are directed to remain on duty for the full day on Christmas Eve are entitled to a half-day's leave on New Year's Eve, provided they satisfy the eligibility criteria in "[6-5.2.2 Eligibility](#)" above.

#### 6-5.2.4 Periods of leave

An employee who is on leave on the concessional leave day is not entitled to claim a half-day's credit as concessional leave or to take an alternative half-day as concessional leave, except as provided in "[6-5.2.8 Deferment of concession](#)" below.

#### 6-5.2.5 Effect of standard hours

An employee who works standard hours may not at their own initiative work more than half a day and still claim the full concessional leave. However, if a department requests employees to work more than half a day, but less than a standard day, any concessional leave not taken on that day may be taken as time in lieu within a month.

#### 6-5.2.6 Effect of study leave

An employee whose approved study leave falls on the afternoon of Christmas Eve or New Year's Eve is entitled to either the concessional leave or the study leave, whichever is the more favourable.

#### 6-5.2.7 Forfeiture of concession

Employees are expected to take concessional leave as directed. Employees who choose to remain on duty on their designated concessional leave day are not entitled to alternative concessional leave.

#### 6-5.2.8 Deferment of concession

If an employee is directed by the department to work full days on both Christmas Eve and New Year's Eve, concessional leave may be granted by the department within one month of the Christmas-to-New Year period.

Similarly, if an employee is absent on approved leave on one of the above mentioned days and is directed by the department to work a full day on the other, then concessional leave may be granted also within one month of the Christmas-to-New Year period.

The granting of concessional leave in these circumstances is subject to the eligibility criteria set out in "[6-5.2.2 Eligibility](#)" above.

### 6-5.3 Flex leave on the Thursday before Easter

#### 6-5.3.1 General

See [subclause 21.19](#) of the *Award*.

All other provisions of clause 21 – Flexible Working Hours of the *Award* are to apply, including the requirement that no more than 10 hours credit or debit is carried forward to the next settlement period.

For departments that have negotiated a Local Agreement in accordance with clause 10 of the *Award*, access to the additional half day's flex leave is to be determined by the Department Head. In making this determination the department head should consider the flexibility of the local agreement to accommodate the extra flex leave.

## 6-6 Extended leave

### 6-6.1 Sources of authority

- *Public Sector Employment and Management Act 2002 (PSEM Act 2002)*
- [Public Sector Employment and Management Regulation 2009](#)
- [C 2005-50](#) – Commencement of the amendments to the Extended leave provisions in the *Public Sector Employment and Management Act 2002* and repeal of the *Transferred Officers Extended Leave Act 1961*
- [M2011-11 Changes to the Management of Excess Employees](#).

### 6-6.2 Introduction

This section outlines the provisions of:

- Schedule 3 of the *PSEM Act 2002* relating to the entitlement to extended leave.
- Schedule 3A of the *PSEM Act 2002* relating to the recognition of previous governmental service for extended leave.

NOTE: from 1 January 2006 the *Transferred Officers Extended Leave Act 1961* and its Regulation were repealed and provisions relating to recognition of service for extended leave purposes were consolidated into Schedule 3A to the *PSEM Act 2002*. The provisions remain largely unchanged, continuing to allow previous eligible service with a recognised governmental employer to be taken into account when assessing and determining an employee's extended leave entitlement.

The changes to the recognition of service provisions under Schedule 3A to the *PSEM Act 2002* only apply to employees who commenced with a NSW public sector agency on or after **1 January 2006**. The recognition of service provisions of the *Transferred Officers Extended Leave Act 1961* will continue to apply to employees who commenced in a NSW public sector agency prior to this date.

Information relating to the transfer of extended leave entitlements when moving between NSW departments and public sector agencies is contained in "[6-6.6.2 Criteria for recognition of service](#)" of this section.

### 6-6.3 Entitlement

#### 6-6.3.1 Public Sector Employment and Management Act 2002

All public service officers, special temporary employees and departmental temporary employees are entitled to leave in accordance with the provisions of Schedule 3 of the *PSEM Act 2002*.

Except as provided in Schedule 3 of the *PSEM Act 2002* all broken periods of full time service under the *PSEM Act 2002*, or the *Public Sector Management Act 1988*, *Public Service Acts of 1902* and *1979*, are to be taken into account for extended leave purposes regardless of the duration of the break or breaks in the employee's service.

From 1 January 2005 employees covered by the Crown Employees (Public Sector Salaries 2004) *Award*, with 7 years or more service are entitled to take (or be paid out on resignation) extended leave in the usual manner. The amount of leave available is that which would have applied

if pro rata leave was granted. For example, an employee with 7 years service will be able to access an extended leave entitlement of 30.8 working days.

Other employees should check the level of payment with their Human Resources section.

For example an employee with 7 years service has an extended leave entitlement of 30.8 working days. Calculations for other periods of service are set out at Table 4 Extended Leave accrual table (below) or online via HR Expert at [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au).

There is no requirement for an employee with 7 or more years of service to have been terminated or to have left employment because of illness, incapacity or domestic or other pressing necessity to claim an entitlement. No repayment will be required if an employee does not reach 10 years service.

Calculations for periods of service are set out in the Extended Leave Accrual Table as referred to in [Table 4-Extended leave accrual table](#) or online via HR eXpert at [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au).

Employees not covered by the Crown Employees (Public Sector – Salaries 2008) Award should check the level of payment and service requirement with their Human Resources section.

### 6-6.3.2 Calculation

Prior to April 1991, extended leave entitlements were calculated and taken on a calendar day basis. From 1 April 1991, all extended leave entitlements, regardless of whether they accrued prior to or after 1 April 1991, are calculated and taken on a working day basis in accordance with [Table 4 Extended leave accrual table](#).

Information regarding calculations on a calendar day basis applicable prior to 1 April 1991 is provided [Appendix 6A-7](#) of this Chapter.

### 6-6.3.3 Minimum period of leave to be granted

Extended leave, whether on full or half pay, is not to be granted for less than a quarter of a day.

### 6-6.3.4 Calculation for extended leave taken before 1 April 1991

1. Calculate the full entitlement in accordance with [Table 4 Extended leave accrual table](#).
2. Convert extended leave taken in calendar days to a 5-day basis using the formula:  
$$\begin{array}{r} \text{Leave taken} \\ \text{in working days} = \frac{5 \times \text{Leave taken in} \\ \text{calendar days}}{7} \end{array}$$
3. Balance due =  $\frac{\text{Entitlement (working days)}}{7}$
4. (working days) =  $\frac{\text{Entitlement (working days)}}{7} - \text{Leave Taken (working days)}$

### 6-6.3.5 Calculation when no extended leave was taken before 1 April 1991

1. Calculate full entitlement in accordance with the [Table 4 Extended leave accrual table](#).
2. Use the Accrual per day figure (0.0169 or 0.0422), not the Accrual per week figure.
3. The Accrual per day figure in the Table refers to working days. Therefore, calendar days must be converted to working days by using the following formula:  
$$\text{Working days} = \text{Calendar days} \times \frac{5}{7} \times 0.0422$$
  
(or 0.0169 if less than 10 years service)

### 6-6.3.6 Example 1

An employee has served 14 years 5 months. Their extended leave entitlement will be 92.6 working days.

### 6-6.3.7 Example 2

An employee has served 14 years 5 months 23 days. Their extended leave will be calculated as follows:

$$\begin{array}{l} 14 \text{ years } 5 \text{ months} = 92.6 \text{ days} \\ 23 \text{ days} \times \frac{5}{7} \times 0.0422 = 0.6933 \text{ days} \\ \text{Total extended leave entitlement} = 93.2933 \text{ days} \\ \text{(in working days)} \end{array}$$

**Table 4** Extended leave accrual table

Years	Months	1	2	3	4	5	6	7	8	9	10	11
5 to 10 years service Accrual per week – 0.0843 days. Accrual per day – 0.0169 days												
5	22.0	22.4	22.7	23.1	23.5	23.8	24.2	24.6	24.9	25.3	25.7	26.0
6	26.4	26.8	27.1	27.5	27.9	28.2	28.6	29.0	29.3	29.7	30.1	30.4
7	30.8	31.2	31.5	31.9	32.3	32.6	33.0	33.4	33.7	34.1	34.5	34.8
8	35.2	35.6	35.9	36.3	36.7	37.0	37.4	37.8	38.1	38.5	38.9	39.2
9	39.6	40.0	40.3	40.7	41.1	41.4	41.8	42.2	42.5	42.9	43.3	43.6
After 10 years service Accrual per week – 0.2108 days. Accrual per day – 0.0422 days												
10	44.0	44.9	45.8	46.8	47.7	48.6	49.5	50.4	51.3	52.3	53.2	54.1
11	55.0	55.9	56.8	57.8	58.7	59.6	60.5	61.4	62.3	63.3	64.2	65.1
12	66.0	66.9	67.8	68.8	69.7	70.6	71.5	72.4	73.3	74.3	75.2	76.1
13	77.0	77.9	78.8	79.8	80.7	81.6	82.5	83.4	84.3	85.3	86.2	87.1
14	88.0	88.9	89.8	90.8	91.7	92.6	93.5	94.4	95.3	96.3	97.2	98.1
15	99.0	99.9	100.8	101.8	102.7	103.6	104.5	105.4	106.3	107.3	108.2	109.1
16	110.0	110.9	111.8	112.8	113.7	114.6	115.5	116.4	117.3	118.3	119.2	120.1
17	121.0	121.9	122.8	123.8	124.7	125.6	126.5	127.4	128.3	129.3	130.2	131.1
18	132.0	132.9	133.8	134.8	135.7	136.6	137.5	138.4	139.3	140.3	141.2	142.1
19	143.0	143.9	144.8	145.8	146.7	147.6	148.5	149.4	150.3	151.3	152.2	153.1
20	154.0	154.9	155.8	156.8	157.7	158.6	159.5	160.4	161.3	162.3	163.2	164.1
21	165.0	165.9	166.8	167.8	168.7	169.6	170.5	171.4	172.3	173.3	174.2	175.1
22	176.0	176.9	177.8	178.8	179.7	180.6	181.5	182.4	183.3	184.3	185.2	186.1
23	187.0	187.9	188.8	189.8	190.7	191.6	192.5	193.4	194.3	195.3	196.2	197.1
24	198.0	198.9	199.8	200.8	201.7	202.6	203.5	204.4	205.3	206.3	207.2	208.1
25	209.0	209.9	210.8	211.8	212.7	213.6	214.5	215.4	216.3	217.3	218.2	219.1
26	220.0	220.9	221.8	222.8	223.7	224.6	225.5	226.4	227.3	228.3	229.2	230.1
27	231.0	231.9	232.8	233.8	234.7	235.6	236.5	237.4	238.3	239.3	240.2	241.1
28	242.0	242.9	243.8	244.8	245.7	246.6	247.5	248.4	249.3	250.3	251.2	252.1
29	253.0	253.9	254.8	255.8	256.7	257.6	258.5	259.4	260.3	261.3	262.2	263.1

Years	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
30	264.0	264.9	265.8	266.8	267.7	268.6	269.5	270.4	271.3	272.3	273.2	274.1
31	275.0	275.9	276.8	277.8	278.7	279.6	280.5	281.4	282.3	283.3	284.2	285.1
32	286.0	286.9	287.8	288.8	289.7	290.6	291.5	292.4	293.3	294.3	295.2	296.1
33	297.0	297.9	298.8	299.8	300.7	301.6	302.5	303.4	304.3	305.3	306.2	307.1
34	308.0	308.9	309.8	310.8	311.7	312.6	313.5	314.4	315.3	316.3	317.2	318.1
35	319.0	319.9	320.8	321.8	322.7	323.6	324.5	325.4	326.3	327.3	328.2	329.1
36	330.0	330.9	331.8	332.8	333.7	334.6	335.5	336.4	337.3	338.3	339.2	340.1
37	341.0	341.9	342.8	343.8	344.7	345.6	346.5	347.4	348.3	349.3	350.2	351.1
38	352.0	352.9	353.8	354.8	355.7	356.6	357.5	358.4	359.3	360.3	361.2	362.1
39	363.0	363.9	364.8	365.8	366.7	367.6	368.5	369.4	370.3	371.3	372.2	373.1
40	374.0	374.9	375.8	376.8	377.7	378.6	379.5	380.4	381.3	382.3	383.2	384.1
41	385.0	385.9	386.8	387.8	388.7	389.6	390.5	391.4	392.3	393.3	394.2	395.1
42	396.0	396.9	397.8	398.8	399.7	400.6	401.5	402.4	403.3	404.3	405.2	406.1
43	407.0	407.9	408.8	409.8	410.7	411.6	412.5	413.4	414.3	415.3	416.2	417.1
44	418.0	418.9	419.8	420.8	421.7	422.6	423.5	424.4	425.3	426.3	427.2	428.1
45	429.0	429.9	430.8	431.8	432.7	433.6	434.5	435.4	436.3	437.3	438.2	439.1
46	440.0	440.9	441.8	442.8	443.7	444.6	445.5	446.4	447.3	448.3	449.2	450.1
47	451.0	451.9	452.8	453.8	454.7	455.6	456.5	457.4	458.3	459.3	460.2	461.1
48	462.0	462.9	463.8	464.8	465.7	466.6	467.5	468.4	469.3	470.3	471.2	472.1
49	473.0	473.9	474.8	475.8	476.7	477.6	478.5	479.4	480.3	481.3	482.2	483.1
50	484.0	484.9	485.8	486.8	487.7	488.6	489.5	490.4	491.3	492.3	493.2	494.1
51	495.0	495.9	496.8	497.8	498.7	499.6	500.5	501.4	502.3	503.3	504.2	505.1
52	506.0	506.9	507.8	508.8	509.7	510.6	511.5	512.4	513.3	514.3	515.2	516.1
53	517.0	517.9	518.8	519.8	520.7	521.6	522.5	523.4	524.3	525.3	526.2	527.1
54	528.0	528.9	529.8	530.8	531.7	532.6	533.5	534.4	535.3	536.3	537.2	538.1
55	539.0	539.9	540.8	541.8	542.7	543.6	544.5	545.4	546.3	547.3	548.2	549.1

### 6-6.3.8 Taking and recording of extended leave

Extended leave commences on the first working day after ceasing duty or at the expiration of some other form of leave.

A period of extended leave cannot be broken by other forms of leave, except as provided in "6-17.5 Sick leave entitlements". If accrued extended leave is exhausted, then recreation leave to credit, flex leave or leave without pay may be granted at the end of extended leave to cover the full period of absence.

See also "6-6.4.7 Combining recreation and extended leave"

## 6-6.4 General conditions

### 6-6.4.1 Public holidays during extended leave

From 1 January 2005, public holidays that fall while an employee is on a period of extended leave will be paid and not debited from an employee's leave entitlement. This applies to employees covered by the Crown Employees (Public Sector – Salaries 2008) *Award*. Other employees should check the level of payment with their Human Resources section.

In respect of public holidays that fall during a period of double pay extended leave an employee will be not be debited in respect of the leave on a public holiday. The employee's leave balance will however be reduced by an additional day to fund the non-superable taxable allowance.

See clause 8 (2) of Schedule 3 to the *PSEM Act 2002*.

### 6-6.4.2 Extended leave to count as service

Extended leave taken on full pay (single time rate) counts as service for all purposes.

Extended leave taken on double pay counts as service at the single time rate for all purposes.

Extended leave taken on half pay counts as service at the single time rate for all purposes, except for recreation leave which accrues at half the full pay rate. See paragraph 77.4.6 of the *Award*.

### 6-6.4.3 Higher duties allowance

Employees who have acted for one year in the same higher graded position and receive the full rate of allowance and who continue to act in that position up to the first day of extended leave or date of retirement or resignation are to be paid the higher duties allowance for extended leave taken during the period of relief or paid out or granted as leave prior to retirement or resignation.

### 6-6.4.4 Shift workers

When a shift worker takes a period of extended leave the number of working days to be debited is to equal the number of days that the employee would otherwise be rostered to work during the period of leave, even though those days may sometimes be Saturdays or Sundays.

### 6-6.4.5 Illness while on extended leave

See sub clause 80.8 of the *Award*.

### 6-6.4.6 Increments due during extended leave

Any increments falling due during a period of extended leave must be paid to the employee if their services were satisfactory prior to the start of extended leave.

### 6-6.4.7 Combining recreation and extended leave

If the Department Head approves of an employee combining recreation and extended leave, the extended leave follows after the recreation leave and continues unbroken for the nominated period. Recreation leave may be granted immediately after extended leave only if extended leave to credit has been exhausted and the employee has elected to take such recreation leave.

## 6-6.5 Part time service for extended leave purposes

### 6-6.5.1 General

Part time employees are entitled to extended leave on the same basis as that applying to full time employees but pay for the leave is pro rata.

The eligibility period for extended leave accrues in the same way. As a general rule, when calculating the amount of leave to be debited, it will be necessary to calculate the amount of leave that a full time employee would be debited during the period in question, and then to convert the leave to hours in order to calculate the entitlement.

### 6-6.5.2 Leave to be debited on a five day basis

From 1 April 1991, extended leave should be calculated and leave taken should be debited on a working day basis.

### 6-6.5.3 Examples of calculations

The following examples should be used as a guide to calculating extended leave entitlements for part time employees.

#### 6-6.5.4 Example A

An employee has five years full time service (35 hours/week) and five years part time service at 17½ hours/week. That is, total service over ten years. The employee wishes to take all extended leave to credit.

#### 6-6.5.4a i. 5 Years full time service

The employee's accrual for 5 years full time service is 1 month (22 days). This is converted to hours as follows:

Accrual	=	1 month (22 days)
	=	22 × 7
	=	154 hrs

#### 6-6.5.4b ii. 5 years part time service

The employee's accrual for 5 years part time service is calculated as follows:



$$\begin{aligned} \text{Accrual} &= \frac{\text{part time hrs/week}}{\text{full time hrs/week}} \times 22 \text{ working days} \times 7 \text{ hrs} \\ &= \frac{17.5}{35} \times 22 \\ &= 77 \text{ hours} \end{aligned}$$

$$\begin{aligned} \text{Total extended leave to credit} &= (i) + (ii) \\ &= 154 + 77 \\ &= 231 \text{ hours} \end{aligned}$$

### 6-6.5.5 Example B

An employee with three years full time service has also completed two years part time service at 21 hours/week, that is, a total of five years service.

The employee resigns for domestic reasons and is therefore entitled to the cash equivalent of extended leave for five years service.

#### 6-6.5.5a i. 3 years full time service

The accrual for three years full time service is converted to hours as follows:

$$\begin{aligned} \text{Accrual} &= \frac{\text{yrs of full time service}}{\text{yrs of total service}} \times 5 \text{ yrs accrual} \times \text{hrs/day} \\ &= \frac{3}{5} \times 22 \text{ days} \times 7 \text{ hours} \\ &= 92.4 \text{ hours} \end{aligned}$$

#### 6-6.5.5b ii. 2 years part time service

The accrual for two years part time service is calculated as follows:

$$\begin{aligned} \text{Accrual} &= \frac{\text{yrs of p/t service}}{\text{yrs of total service}} \times \frac{\text{p/t hrs/week}}{\text{f/t hrs/wk}} \times 5 \text{ yrs accrual} \times \text{hrs/day} \\ &= \frac{2}{5} \times \frac{21}{35} \times 22 \text{ days} \times 7 \text{ hours} \\ &= 36.96 \text{ hours} \\ \text{Total extended leave to credit} &= (i) + (ii) \\ &= 92.4 + 36.96 \\ &= 129.36 \end{aligned}$$

$$\begin{aligned} \text{Convert to full time days} &= \frac{129.36}{7} \\ &= 18.48 \text{ days} \\ \text{To nearest half day} &= 18\frac{1}{2} \text{ days} \end{aligned}$$

### 6-6.5.6 Example C

An employee with seven years full time service has also completed five years part time service at 21 hours/week, that is, a total of 12 years service. The employee wishes to take six weeks extended leave.

Convert the accrual to hours as follows:

#### 6-6.5.6a i. 7 years full time service

$$\begin{aligned} \text{Accrual} &= \frac{\text{yrs of service}}{10 \text{ years}} \times 10 \text{ yrs accrual} \times \text{hrs in normal day} \\ &= \frac{7}{10} \times 44 \text{ days} \times 7 \text{ hours} \\ &= 215.6 \text{ hours} \end{aligned}$$

#### 6-6.5.6b ii. 3 years part time service (between 7th and 10th year of service)

$$\begin{aligned} \text{Accrual} &= \frac{\text{yrs of service}}{10 \text{ years}} \times \frac{\text{p/t hrs/wk}}{\text{f/t hrs/wk}} \times 10 \text{ yrs accrual} \times \text{hrs in normal day} \\ &= \frac{3}{10} \times \frac{21}{35} \times 44 \text{ days} \times 7 \text{ hours} \\ &= 55.44 \text{ hours} \end{aligned}$$

#### 6-6.5.6c iii. 2 years part time service (between 10th and 12th year of service)

$$\begin{aligned} \text{Accrual} &= \frac{\text{part time hrs/wk}}{\text{full time hrs/wk}} \times 2 \text{ yrs accrual} \times \text{hrs in normal day} \\ &= \frac{21}{35} \times 22 \text{ days} \times 7 \text{ hours} \\ &= 92.4 \text{ hours} \\ \text{Total extended leave accrual} &= (i) + (ii) + (iii) \\ &= 215.6 + 55.44 + 92.4 \\ &= 363.44 \text{ hours} \\ \text{Leave to be debited} &= \text{No. of wks leave} \times \text{part time hrs/wk} \\ &= 6 \text{ weeks} \times 21 \text{ hours} \\ &= 126 \text{ hours} \end{aligned}$$

## 6-6.6 Recognition of Service with an authority, the Commonwealth or another State – employees commencing on or after 1 January 2006

### 6-6.6.1 General

NOTE: The provisions contained in 6-6.6 apply only to employees who commenced employment with a NSW public sector agency **on or after 1 January 2006**. Provisions applying to employees who commenced employment prior to 1 January 2006 can be found in "Appendix 6E: Extended leave - Recognition of service with an authority, the Commonwealth or another State for employees commencing in the NSW public service prior to 1 January 2006".

The *Transferred Officers Extended Leave Act 1961* was repealed and replaced by Schedule 3A to the *Public Sector Employment and Management Act 2002* with effect from 1 January 2006. The amendments made no change to what is recognised, that is, there is no provision to transfer any accrued leave that has fallen due or other entitlements from a recognised Commonwealth or interstate agency,

to NSW. Only previous 'service' is recognised for future accruals of extended leave in NSW if the previous service satisfies requirements.

The changes to the recognition of service provisions under Schedule 3A to the *PSEM Act 2002* only apply to employees who commenced with a NSW public sector agency on or after 1 January 2006. The recognition of service provisions of the *Transferred Officers Extended Leave Act 1961* will continue to apply to employees who commenced in a NSW public sector agency prior to this date.

#### 6-6.6.2 Criteria for recognition of service

For an employee's previous service to be recognised by a NSW Government agency for extended leave purposes, it must satisfy the following criteria:

It must:

- be with a body that is recognised under Schedule 3A to the *PSEM Act 2002*; and
- satisfy the definitions of 'continuous' and 'immediately follows' as set out under clauses 3 and 4 of Schedule 3A to the *PSEM Act 2002*.

#### 6-6.6.3 Recognised Body

In order to be recognised, an employee's period of service must be in:

- a 'Commonwealth or interstate agency' (see clause 1, Definitions of Schedule 3A of the *PSEM Act 2002* and clause 10 of Schedule 3A to the *PSEM Act 2002*, or
- a Department listed in Part 1 Schedule 1 to the *PSEM Act 2002*.

A comprehensive list of agencies recognised under Schedule 3A to the *PSEM Act 2002* is available on HR eXpert.

#### 6-6.6.4 Two limb requirement

In addition to "[6-6.6.3 Recognised Body](#)", previous service must also satisfy the definitions of 'continuous' and 'immediately follows' as set out in clause 6 of schedule 3A to the *PSEM Act 2002*.

The singular concept of 'continuity' of service previously used has been replaced by this two limb requirement of 'continuous' and 'immediately follows'. See "[6-6.6.5 'Continuous' service](#)" and "[6-6.6.6 'Immediately follows'](#)" (below).

#### 6-6.6.5 'Continuous' service

Continuity of service is determined by clause 3 of Schedule 3A to the *PSEM Act 2002* and relates to the requirement to remain continuously employed with the eligible employer for the whole of the relevant period.

#### 6-6.6.6 'Immediately follows'

A person's period of employment 'immediately follows' another period of employment if it commences within 2 months of leaving the previous recognised employer.

If the earlier period of employment was full-time war service as a member of the Australian Defence Force, then the following period of employment 'immediately follows' if it commences within 12 months after the end of the earlier period, provided that the person was not dismissed for disciplinary reasons.

See clause 4 of Schedule 3A to the *PSEM Act 2002*.

### 6-6.7 Transfer of entitlements to extended leave

#### 6-6.7.1 Transfer of entitlements from another NSW public sector agency.

Transfer of entitlements must be in accordance with Division 2 of Part 3.2 of the *PSEM Act 2002*.

For information on liability see [3-19 Transfer of funds](#).

Note: the definition of public sector has the same definition as public sector service, that is State Owned Corporations (SOCs) are excluded unless prescribed. Accordingly, provisions relating to recognition of prior service do not apply to SOCs.

#### 6-6.7.2 Transfer of entitlements from employment with another government agency.

If previous governmental service has been recognised, the total period will be regarded as service for the purpose of calculating extended leave. The extended leave entitlement is calculated as if the employee had been employed in the NSW Government for the entire period, less any extended or long service leave taken or paid in lieu by the previous employer, or that amount which is deemed to have been taken in accordance with clause 9 of Schedule 3A to the *PSEM Act 2002*.

#### 6-6.7.3 Only 'service' recognised from employment with another government agency.

There is no provision to transfer any accrued leave that has fallen due from a recognised government agency to the NSW Government. An employee who was entitled to take leave in the former government agency is deemed to have taken or been paid out the value of the leave by the former employer. That is, only previous 'service' is recognised for future accruals of extended leave in NSW, provided that the previous service satisfies the requirements set out in "[6-6.6.2 Criteria for recognition of service](#)".

See clause 9 of Schedule 3A to the *PSEM Act 2002*.

#### 6-6.7.4 Evidence of service to be recognised.

An employee requesting recognition of service under Schedule 3A to the *PSEM Act 2002* is to be informed by the Department of the type of documentation required in support of the application and must provide this information to the Department.

#### 6-6.7.5 Employees dismissed from previous service

The provisions of Schedule 3A to the *PSEM Act 2002* do not apply to employees who were dismissed from their previous employment for disciplinary reasons.

#### 6-6.7.6 Service recognised by previous employer

When an employee transfers to a Department from an employer and the previous service is recognised in accordance with Schedule 3A to the *PSEM Act 2002*, all

previous service accepted by the previous employer for extended leave purposes is taken into account by the Department to the same extent as has already been allowed by the previous employer.

See Clause 6 of Schedule 3A to the PSEM Act 2002.

## 6-6.8 Other previous NSW service

### 6-6.8.1 Service as a ministerial employee

Employees engaged under Ministerial authority and not under the *PSEM Act 2002* are entitled to have their service recognised for extended leave purposes if the service was in a Department to which the *Act* applies: that is, if it is listed under Part 1 Schedule 1 to the *PSEM Act 2002* or under the *Public Service Act of 1902 or 1979*.

If the employee's service as a Ministerial employee was part time, it should be converted to the relevant full time equivalent and taken into account together with any full time service.

This provision applies to both continuous and broken service, but not to casual employment.

### 6-6.8.2 Half pay maternity leave

Prior to 1 April 1987, maternity leave taken on half-pay accrued extended leave entitlements at the full time rate.

### 6-6.8.3 Job creation schemes

Employees who had a period of service under a job creation scheme are entitled to have such service recognised for extended leave purposes.

Contact PSW Performance & Development for information about current employment programs which are recognised.

## 6-6.9 Payment of accrued extended leave

### 6-6.9.1 Payment of extended leave

#### 6-6.9.1a Payment in Advance

Payment of accrued extended leave is to be made in advance for leave to be taken if the employee so requests but payment is subject to the pay in advance provisions as determined by the Treasurer from time to time.

#### 6-6.9.1b Double pay extended leave

An employee with an entitlement to extended leave may elect to take leave at double pay. The additional payment will be made as a non-superable taxable allowance payable for the period of the absence from work. The employee's leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance.

For example, an employee with an extended leave balance of 50 working days wishing to take extended leave at double pay may take 25 working days leave from work, reducing their extended leave balance to 25 days. A further 25 working days will be debited from the employee balance to cover payment of the non-superable taxable allowance.

Other leave entitlements, eg, recreation leave, sick leave and extended leave will accrue at the single time rate where an employee takes extended leave at double time.

Superannuation contributions will only be made on the basis of the actual absence from work, i.e. at the single time rate.

Where an employee elects to take extended leave at double pay, in most cases a minimum period of absence of 1 week should be taken, i.e., 1 week leave utilising 2 weeks of accrued leave.

### 6-6.9.2 Payment of allowances

Payment for extended leave is to be at base salary, unless the Award specifically provides that an allowance is paid as part of base salary for all purposes. In that case it will be deemed to be part of ordinary pay and recognised as such for all purposes.

An example would be where annual allowances are paid as a proportion per pay, eg: Remote Areas Allowance, Award: 39.2.1

### 6-6.9.3 Rate of payment for extended leave

See Schedule 3 of the *PSEM Act*.

Full time employees who take a short period of part time leave without pay may elect to have this period converted to the full time equivalent and treated as full time service for the purposes of extended leave.

### 6-6.9.4 Previous full time service of part time employee

Previous full time service of an employee who now works part time is taken into account for accrual of extended leave but payment in these circumstances is made at the part time rate of pay for any extended leave accrued during part time employment.

## 6-6.10 Payment of accrued extended leave entitlement on ceasing employment

See "[4-3.2 Extended leave entitlements](#)".

## 6-7 Family and community service leave

### 6-7.1 Sources of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 71, Family and Community Service Leave.

### 6-7.2 General

See clause 71 of the *Award*.

Part time employees are entitled to family and community service leave on the same basis as full time employees on a pro rata basis.

Family and community service leave is not available to casual employees.

### 6-7.3 Entitlement

#### 6-7.3.1 Paid leave

##### 6-7.3.1a Employees working a 5 day week

See subclause 71.5 of the *Award*.

**Employees working a 6 day week** The maximum amount of family and community service leave on full pay which may be granted is:

- 3 working days during the first year of service and 6 working days in any period of 2 years after the first year of service; or
- 1 working day for each year of service after 2 years of continuous service, less any period of short leave or family and community service leave already taken.

**Employees working a 7 day week** The maximum amount of family and community service leave on full pay which may be granted is:

- 3½ working days during the first 12 months of service and 7 working days in any period of 2 years after the first year of service; or
- one working day for each year of service after 2 years of continuous service, less any period of short leave or family and community service leave already taken.

## 6-8 Leave without pay

### 6-8.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 72, Leave Without Pay.

## 6-8.2 General arrangements

### 6-8.2.1 Grant

See subclause 72.1 and 72.2 of the *Award*.

Casual employees are not entitled to leave without pay.

### 6-8.2.2 Principal conditions

See subclause 72.6 of the *Award*.

There is no limit to the amount of leave without pay that may be granted, if it is convenient to the department for the employee to be absent for the time proposed.

A permanent appointment may be made to the employee's position if certain criteria are satisfied - see subclause 72.8 of the *Award* for criteria.

These conditions do not apply to sick leave without pay (see subclause 79.6.6 of the *Award*) or to periods of unpaid maternity, adoption or parental leave for which there are separate arrangements (see subclause 72.11 of the *Award*).

Unauthorised absences from work during industrial action are not leave without pay and do not count as service for any purpose. (See also "[6-21.7 Industrial action](#)".)

### 6-8.2.3 Proclaimed public holidays

See subclause 72.3 of the *Award*.

### 6-8.2.4 Excess employees

Employees who have been or are to be declared excess may be granted full or part time leave without pay to allow both the employee and the Department time to consider other options available under Memorandum 2011-11 – Managing Excess Employees.

## 6-8.3 Changes to leave arrangements

### 6-8.3.1 New application

A new application for leave without pay must be submitted if an employee wishes to vary an existing part time or full time leave without pay arrangement.

Any extension to the agreed period will be granted only if the absence continues to be convenient to the Department.

### 6-8.3.2 Premature return

The Department Head may approve of employees returning from leave without pay before the agreed period of leave ends. Sufficient notice of intended early return to duty should be provided to the Department so that it can make suitable arrangements for the employee's return such as giving adequate notice to temporary replacement employees.

### 6-8.3.3 Temporary replacement employees

A temporary employee employed to replace an employee on leave without pay is to be advised in writing on commencement of employment that, on return from leave of the employee that they are replacing, their employment will be terminated. They are also to be informed that their period of employment will be terminated if an approval is given under "[6-8.3.2 Premature return](#)". Any further employment in the Department offered to a temporary replacement employee is to be a separate arrangement.

Replacement employees are to be given reasonable notice of early termination of their employment.

## 6-8.4 Other employment

See subclause 72.5 of the *Award*.

In order to obtain Departmental approval in accordance with subclause 72.5 of the *Award*, an employee should submit an application prior to commencing any kind of employment. Employees are not required to divulge any personal circumstances associated with the application to engage in employment while on leave without pay.

For detailed information on private employment, see "[5-9 Private employment](#)".

#### **6-8.4.1 Working with the NSW and other governments or international organisations**

Department Heads may grant leave without pay and approval to take temporary employment with a NSW department or public authority, an agency of another government or an agency of an international body such as the United Nations. Such approval would be on the same basis and subject to the same conditions as apply to leave without pay for other purposes. Leave without pay granted for this purpose may be regarded as service for the purposes of extended leave if considered appropriate by the Department Head, irrespective of the duration of the leave or the length of service completed prior to proceeding on such leave. The Treasurer's Directions are to be followed in these circumstances.

### **6-8.5 Full time leave without pay**

#### **6-8.5.1 Recognition of service**

As leave without pay is a form of leave there is no break in the continuity of employment with the Department. However, periods of full time leave without pay do not count as service with the Department for leave and salary benefits, except in the circumstances outlined below. Part time leave without pay also affects these entitlements and the impact on service and accrual of leave is outlined in "[6-8.6 Part time leave without pay](#)".

#### **6-8.5.1a Short-term absences**

See subclause 72.4 of the *Award*.

Leave without pay taken because of major interruptions to public transport accrues entitlements to recreation, extended and sick leave and also incremental progression, when all accrued recreation, flex and extended leave have been exhausted.

#### **6-8.5.1b Employees with less than 10 years service**

No period of leave without pay counts as service for an employee with less than 10 years service except as outlined in Short term Absences, above.

#### **6-8.5.1c Employees with more than 10 years service**

Once an employee has completed 10 years of actual service, any period of leave without pay that is less than 6 months counts as service.

#### **6-8.5.1d Major sporting events**

All periods of leave without pay that have allowed employees to participate as amateur competitors for Australia or New South Wales in major sports are to count as service for incremental progression only.

#### **6-8.5.1e Other government and international organisations**

See "[6-8.4.1 Working with the NSW and other governments or international organisations](#)".

#### **6-8.5.2 Other forms of leave without pay**

There are other forms of leave that can be granted without pay. They include:

- Parental leave; see "[6-9.5 Pay while on parental leave](#)" military leave; see "[6-10.2 General](#)" sick leave; see "[6-17 Sick Leave](#)"
- study leave. see "[6-20.3 Study time leave](#)".

#### **6-8.5.3 Effects on superannuation**

The effect of full time leave without pay on contributions payable to the various superannuation schemes accessible to employees, and on the final benefit payable under the schemes, will depend on the circumstances of the individual and the arrangements that apply to the particular fund. These details should be checked with the superannuation fund(s) to which the employee contributes.

Members of State Super funds can obtain free advice from First State Super's Advisory Service 1300 650 873.

#### **6-8.5.4 Payment of employer's superannuation contributions**

Employees who are still contributing to the State Superannuation Fund need to be advised by their Department that they are required to meet their own and

the employer's superannuation contributions when they proceed on a continuous period of leave without pay in excess of 6 months.

Arrangements should be made for employees who have applied for leave without pay in excess of 6 months to discuss the payment of the superannuation contributions with the appropriate section of their Department. Departments must ensure that the appropriate and agreed arrangements for payment by the employee of the employer's superannuation contributions during the leave without pay are properly documented and, where appropriate, are implemented before the employee proceeds on leave without pay.

### **6-8.6 Part time leave without pay**

#### **6-8.6.1 Application**

Part time leave without pay was introduced on and from 24 September 1984 as a means by which employees, with the approval of their Department Head, can reduce their normal working hours for a short period of time.

Part time leave without pay is not a substitute for permanent part time work.

#### **6-8.6.1a Employees with less than 10 years service**

Employees with less than 10 years of service who are granted part time leave without pay have only the hours they work each week counted as service for the accrual of extended leave.

#### **6-8.6.1b Employees with 10 years service or more**

Employees with 10 years of service or more who are granted part time leave without pay for more than six months have only the hours they work each week counted as service for the accrual of extended leave.

Employees with 10 years of service or more who are granted part time leave without pay for up to six months have their leave counted in full as service for the accrual of extended leave, even though they are only working part of

the time. When the part time leave without pay is for more than six months only the hours they work each week are counted as service for the accrual of extended leave.

#### 6-8.6.2 Other forms of part time leave without pay

See "[6-8.5.2 Other forms of leave without pay](#)".

#### 6-8.6.3 Effects on superannuation

Similar caution and a similar need to seek expert advice apply to part time leave without pay as apply to full time leave without pay. See "[6-8.5.3 Effects on superannuation](#)".

## 6-9 Parental Leave

### 6-9.1 Sources of authority

- *Industrial Relations Act 1996*
- *Occupational Health and Safety Act 2000*
- *Crown Employees (Public Service Conditions of Employment) Award 2009*; clause 75, [Parental Leave](#)
- *Fair Work Act 2009 (Cwlth)*

### 6-9.2 Pregnancy

#### 6-9.2.1 General

Any change in an employee's duties or working arrangements made because of her pregnancy and which are not requested or agreed to could be:

- a breach of the [Work Health and Safety Act 2011](#); or
- unlawful discrimination resulting in disciplinary or legal proceedings.

#### 6-9.2.2 Leave and return to duty

At what stage a pregnant employee chooses to stop work before her due date, and how soon she returns to full or part time duties after giving birth, are decisions to be made by the employee, subject to the provisions in "[6-9.2.3 Occupational health and safety considerations](#)".

#### 6-9.2.3 Occupational health and safety considerations

A Department Head must undertake a risk assessment of all workplaces and work related hazards in accordance with the Department of Premier and Cabinet's Taking Safety Seriously 2002: A systematic approach to managing workplace risks in NSW Public Sector – Policy and Guidelines 2nd Edition (issued as Circular 2002-51).

See subclause 75.18 and 75.19 of the *Award*.

See also "[5-4 Occupational health and safety](#)".

### 6-9.3 Entitlement

#### 6-9.3.1 Definition of parental leave

Parental leave includes maternity leave, adoption leave and 'other parent' leave. Maternity/adoption leave entitlements do not apply in foster or surrogacy situations.

This entitlement is defined in subclause 75.1 to 75.5 of the *Award*.

Casual employees are entitled to unpaid parental leave in accordance with clause 12.5.4 of the *Award*.

#### 6-9.3.2 Right to request extension of parental leave or return to work on a part time basis

An employee who has been granted parental leave may make a request to the Department to extend the period of unpaid parental leave for a further period of 12 months and to return from a period of full time parental leave on a part time basis until the child reaches school age. See subclause 75.9.1 of the *Award*.

#### 6-9.3.3 Department to consider request

The Department Head shall consider the request to extend parental leave or to return to work on a part time basis.

The Department must not unreasonably refuse such a request, having regard to the employee's circumstances and the operational requirements of the business. See subclause 75.9.2 of the *Award*.

A response to a request to extend parental leave must be given within 21 days.

### 6-9.4 Part time parental leave or return to work on a part time basis

#### 6-9.4.1 General

An employee may take any available parental leave entitlement on a part time basis.

In accordance with subclause 75.9.1(b), an employee has a right to request to return from a period of full time parental leave on a part time basis until the child reaches school age. Returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay.

#### 6-9.4.2 Calculating part time entitlement

The period of part time parental leave is calculated by dividing the untaken full time parental leave, expressed in hours, by the number of hours per week not being worked by the employee. If:

PPL = Part time parental leave;

FLT = weeks of full time parental leave already taken following birth;

NWH = normal working hours per week; and

HW = hours to be worked each week while on part time leave,

then the number of weeks of part time leave available

$$\text{PPL} = \frac{(52 - \text{FLT}) \times \text{NWH}}{\text{NWH} - \text{HW}}$$

#### 6-9.4.3 Examples of part time leave calculation

Example 1 An employee working a 38 hour week takes 6 weeks full time parental leave and then returns to work for two eight-hour days a week. The entitlement to part time leave is:

$$\frac{(52 - 6) \times 38}{38 - 16}$$

equal to 79.5 weeks.

Example 2 An employee working 35 hours a week takes 26 weeks full time parental leave and then returns to work for three seven-hour days a week. The entitlement to part time leave is:

$$\frac{(52 - 26) \times 35}{35 - 21}$$

equal to 65 weeks.

#### 6-9.4.4 Flexible working arrangements

Subject to Departmental convenience, employees on part time parental leave or returning to work on a part time basis may work flexible working hours, fixed hours or under a staggered time system. For further details see clause 13 of the *Award*.

### 6-9.5 Pay while on parental leave

#### 6-9.5.1 Payment while on maternity, adoption or other parent leave

An employee who has applied for parental leave is entitled to payment at the ordinary rate of pay, in accordance with subclause 75.5 of the *Award* provided that the employee otherwise meets the requirements for taking parental leave as set out in clause 75.5 of the *Award*.

Payment shall be made in accordance with the entitlement found in subclause 75.5 of the *Award*, or for the actual period of leave taken, whichever is the lesser period.

Otherwise, parental leave is granted without pay.

#### 6-9.5.2 Definition of continuous service

Continuous service means service with the following employers:

- the Government Service;
- the Teaching Service;
- the NSW Police;
- the NSW Health Service;
- service of either House of Parliament, or the President or Speaker, or the President or Speaker jointly;

- any other service of the Crown; or
- the service of any other person or body constituted by or under an Act, or exercising public functions (such as a SOC), being a person or body that is prescribed, or is of a class prescribed, for the purpose of this definition.

See section 3(1) of the *PSEM Act*.

Continuity is to be determined as set out at "[3-18 Eligibility](#)".

#### 6-9.5.3 Method and rate

The method of payment for parental leave is set out in subclause 75.6 of the *Award*.

#### 6-9.5.4 Calculation of averaged payment for leave following varying hours

Weekly pay for parental leave following 40 weeks of varying part time work can be calculated by adding the total number of hours worked by the employee during each of the 40 weeks before she/he starts parental leave, dividing this sum by the normal full time hours and multiplying this by the full time weekly pay.

If:

Total hours = hours worked in week 1+ hours in week 2...+ hours in week 40

NWH = normal working hours per week and

FTP = normal weekly full time pay

then the weekly rate of pay for paid parental leave

$$= \frac{FTP \times \text{total hours}}{NWH \times 40}$$

**Example:** An employee in a full time, 35 hours a week position which pays \$1000 a week has one day a week of approved leave without pay. The employee has had this arrangement for 20 weeks when their leave arrangements are changed to two days leave without pay for 10 weeks. The employee's arrangements are changed again to three days leave for a further 10 weeks before starting paid parental leave.

In the 40 weeks before starting parental leave, the employee will have worked:

- in the first 20 weeks: 20 × 4 day, equal to 20 × 4 × 7 = 560 hours;
- in the next 10 weeks: 10 × 3 days, equal to 10 × 3 × 7 = 210 hours; and
- in the last 10 weeks: 10 × 2 days, equal to 10 × 2 × 7 = 140 hours.

The employee's total hours worked over the 40 weeks: 560 + 210 + 140 = 910 hours:

The employee's weekly rate of pay while on paid parental leave is:-

$$= \frac{FTP \times \text{total hours}}{NWH \times 40} = \frac{1000 \times 910}{35 \times 40} = \$650 \text{ a week}$$

#### 6-9.5.5 Higher duties allowance while on parental leave

Pay for parental leave includes a higher duties allowance if the employee:

- has acted in the higher position for more than a year; and
- the period of relief continues up to the day before the start of maternity leave; and
- the higher duties allowance is at the full difference in salary.

#### 6-9.5.6 Pay during return to work on a part time basis

An employee returning to work on a part time basis is to be paid according to the formula:-

$$\text{Wkly pay} = \frac{\text{Ordinary wkly salary} \times \text{hours worked per wk}}{\text{Ordinary wkly full time hrs for the classification}}$$

Pay is calculated without the addition of part time loadings unless such payment is required by a State industrial instrument.

#### 6-9.5.7 Overtime during return to work on a part time basis

An employee who has returned to work on a part time basis and who is directed to work overtime is to be paid:

- at the ordinary hourly rate for hours in excess of the employee's regular part time hours, and up to the ordinary full time hours for the classification; and
- at the rate specified by clause 89 Overtime worked by Shiftworkers, clause 90, Overtime worked by Day workers and clause 95, Rate of Payment for Overtime of the *Award*, for hours in excess of the ordinary full time hours for the classification.

#### **6-9.5.8 Public holidays during return to work on a part time basis**

An employee who has returned to work on a part time basis is to be paid for public holidays that fall on days on which they would have been on duty under their part time work arrangement. They are to be paid only for the hours they would have worked had the day not been a public holiday.

#### **6-9.5.9 Allowances during return to work on a part time basis**

Allowances paid to individual employees continue pro rata during a period of return to work on a part time basis.

Reimbursement for expenses incurred in the course of official business is to be paid in full.

### **6-9.6 Superannuation**

For employees who are contributors to the State Superannuation Scheme (SSS), personal contributions continue to be payable during paid and unpaid parental leave, although Pillar Administration (the administrator of SSS) may approve a deferral of payments. However, interest at the fund earning rate will be payable on any deferred contributions.

For employees who are contributors to the State Authorities Superannuation Scheme (SASS), personal contributions continue to be payable during paid and unpaid parental leave, though Pillar Administration (the administrator of SASS) may authorise a reduction in contributions where a member would have difficulty in maintaining contributions at their nominated rate.

If an employee's Superannuation Guarantee Contributions are made to First State Super (FSS) or another complying accumulation superannuation scheme then employer-financed benefits accrue for periods of paid parental leave but not unpaid parental leave.

Members of the following schemes may obtain information by calling the relevant number below:

- First State Super (FSS) on 1300 650 873
- State Authorities Superannuation Scheme (SASS) on 1300 130 095
- State Superannuation Scheme (SSS) on 1300 130 096
- The Treasurer's Directions should also be consulted.

### **6-9.7 Notification requirements and changes to parental leave**

#### **6-9.7.1 Information to employees**

When a Department becomes aware that an employee or their partner is pregnant, or is adopting a child, the Department must inform the employee of their entitlements and obligations under the *Award*, including notification requirements. Notification requirements are set out in subclause 75.10 of the *Award*.

#### **6-9.7.2 Changes to parental leave**

Before actually starting parental leave an employee may change the period of leave or any part time arrangement any number of times.

Once an employee has commenced parental leave the period of leave or any part time arrangement may only be changed in accordance with subclause 75.10.8 of the *Award*.

#### **6-9.7.3 Communication during parental leave**

Where an employee is on parental leave, there is an obligation on the Department Head to communicate significant changes in the workplace to the employee. In addition, there is an obligation on the employee to

communicate possible changes to the duration of their parental leave and/or changes to contact details. See subclause 75.20 of the *Award*.

#### **6-9.7.4 Return from part time parental leave to full time work**

An employee granted part time parental leave may resume full time work on giving the Department Head four weeks notice.

### **6-9.8 Other leave before or during parental leave**

#### **6-9.8.1 Leave before parental leave**

An employee who is sick during her pregnancy may take available sick leave or apply for leave in accordance with subclause 75.15 of the *Award*.

An employee who wishes to cease duty before the date of the birth of the child or, in relation to adoption leave, before taking custody of the child, may apply for accrued recreation leave extended leave or leave without pay prior to taking parental leave.

Any leave taken before parental leave ceases at the end of the working day before the start of parental leave.

Parental leave starts on the date of birth of the child, or the date that the employee takes custody of the child. This applies irrespective of whether the date is before or after the expected date of birth, or the date on which the court makes an order for the adoption of the child by the employee.

An employee on maternity leave must notify the Department of the date of the birth as soon as is convenient in accordance with paragraph 75.10.6 of the *Award*.

#### **6-9.8.2 Leave during parental leave**

An employee may, with Departmental approval, combine available leave with full time or part time parental leave in accordance with subclauses 75.16 and **75.17** of the *Award*.



Where an employee is to combine forms of leave, parental leave is to be taken in the first instance, followed by recreation leave and then by extended leave. See ["6-6.4.7 Combining recreation and extended leave"](#). Therefore, any leave taken in accordance with subclause 75.16 and [75.17](#) of the *Award* shall not be taken during a period of paid full time parental leave.

When calculating other leave accruing during a period of recreation leave at half pay, pursuant to paragraph 75.17.3 of the *Award*, recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for the accrual of further recreation, extended and other leave at the full time rate.

For example, if an employee has 3 weeks available recreation leave and elects to take this at half pay for a period of 6 weeks, then the six weeks at half pay shall be converted to the full time equivalent (3 weeks) for the purposes of leave accrual. Accordingly, the employee shall accrue further recreation, extended and other leave based on 3 weeks recreation leave.

#### **6-9.8.3 Leave for miscarriage, still birth or death of child.**

In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions as contained in clauses 79 to 83 of the *Award*. An employee must notify the Department in accordance with paragraph 75.10.7 of the *Award*.

If a child is stillborn or dies shortly after birth, the employee may elect to take available sick leave or parental leave. An employee electing to take parental leave is also entitled to change the period of leave to be taken in accordance with paragraph 75.10.8 of the *Award*.

The Australian definition of stillbirth is that there is no sign of life after birth in babies of at least 20 weeks gestation or at least 400 grams birth weight.

## **6-9.9 Leave during work on a part time basis**

### **6-9.9.1 Payment for leave**

Except as provided below, or in any State industrial instrument, payment for leave granted during work on a part time basis is to be only for the hours worked and at the rate of pay under the part time leave arrangement.

### **6-9.9.2 Concessional leave**

An employee who has returned to work on a part time basis is entitled to any concessional leave granted to full time employees when, under their part time leave arrangement, the employee would have been working on the day for which the concessional leave is granted. If the employee would not have been working on that day, or would have worked less than full time hours on that day, the employee is not entitled to concessional leave.

### **6-9.9.3 Leave without pay**

Department heads may, without affecting the continuity of an employee's part time parental leave, grant short periods of leave without pay for necessary periods of absence which are not covered by other leave entitlements.

When an employee takes, subject to the usual conditions, an extended period of leave without pay, then the part time work ceases at the end of the day before the start of leave without pay.

See ["6-8 Leave without pay"](#)

## **6-9.10 Calculation of increments and leave credits**

### **6-9.10.1 Increments**

Paid parental leave at full pay or half pay in accordance with subclause 75.5 of the *Award* counts as full service for the purposes of determining incremental progression. Unpaid parental leave does not count as service for determining incremental progression, except for increments based on age.

### **6-9.10.2 Increments during part time maternity leave**

If an employee's performance is satisfactory, increments are granted on completion of 12 months part time service, or a combination of full time and part time service.

Employees on an incremental scale based on age advance to the next increment on the designated birthday.

### **6-9.10.3 Leave credits**

- Parental leave at full pay counts as full service for determining all forms of leave.
- Parental leave at half pay counts pro rata as service for determining all forms of leave. Note: Parental leave at half pay is paid leave taken at a reduced rate and is not a combination of full pay leave and leave without pay.
- Unpaid parental leave does not count as service for determining any leave entitlement, except for extended leave when at least 10 years of service has been completed and unpaid parental leave does not exceed 6 months. See also "6-8 Leave without pay".

The hours an employee works while on part time parental leave count pro rata as service for all forms of leave. The accruals may be calculated using the formula:-

$$\text{Leave accrued} = \frac{\text{Full time accrual} \times \text{Hours worked}}{\text{Ordinary full time hours for her classification}}$$

## **6-9.11 Further pregnancy or adoption**

### **6-9.11.1 General**

When an employee or their partner becomes pregnant, or adopts another child, while on parental leave, the employee is entitled to a further period of parental leave. The normal conditions contained in this chapter apply to the second period of parental leave. However, any remaining parental leave from the former birth or adoption lapses as soon as the new period of parental leave begins.

### 6-9.11.2 Rate

Subclause 75.6 of the Award is to be applied, except where a staff member commences a subsequent period of maternity or adoption leave for another child within 24 months of commencing an initial period of maternity or adoption leave.

Subclause 75.7 of the Award prescribes the rate at which a staff member is to be paid for a subsequent period of maternity or adoption leave, where that second period commences not more than 2 years after the commencement of the initial period of maternity or adoption leave.

See above "6-9.11.1 General".

Examples of the application of the 24-month rule

**Example 1** – A full time staff member has taken 11 months full time parental leave, at which time they proceed on a subsequent period of parental leave. In accordance with subclause 75.7.1, the second period of parental leave would be paid at the full time rate.

**Example 2** – A full time staff member has taken 12 months full time parental leave and returns to work on a part time basis for 20 weeks before proceeding on another period of parental leave. In accordance with subclause 75.7.2, the second period of parental leave would be paid at the full time rate.

**Example 3** – A full time staff member has taken 12 months full time parental leave and returns to work on a part time basis for 45 weeks before proceeding on parental leave again. In accordance with subclause 75.7.2, the second period of parental leave would be paid at the full time rate because the second period of leave is being taken within the 24-month period provided for under subclause 75.7.

**Example 4** – A staff member has successfully requested 24 months parental leave in accordance with paragraph 75.9.1(a). At month 22 the staff member proceeds on another period of parental leave. In accordance with subclause 75.7.1, the second period of parental leave would be granted at the rate the staff member was paid prior to commencing the initial period of maternity leave.

**Example 5** – A staff member has successfully requested to return to work part time until the child reaches school age in accordance with paragraph 75.9.1(b). The staff member undertakes this arrangement for a period of 3 years and then proceeds on another period of parental leave. In accordance with subclause 75.6, the second period of parental leave would be paid at the part time rate. The 24-month rule does not apply in this case.

## 6-9.12 Return to work

### 6-9.12.1 Right to former position after parental leave or after working on a part time basis

An employee has the right to their former position if resuming duty immediately after a period of parental leave or work on a part time basis in accordance with subclause 75.11 of the Award.

### 6-9.12.2 No right to former position during return to work on a part time basis

An employee does not have a right to their former position for the duration of any return to work on a part time basis, as set out in subclause 75.13 of the Award.

### 6-9.12.3 Former position abolished

If the position occupied by the employee immediately prior to parental leave has ceased to exist, the employee may be appointed to a position in accordance with subclause 75.12 of the Award, subject to the mobility provisions of the [PSEM Act 2002](#).

### 6-9.12.4 Former position relocated

An employee still retains a right of return to their former position if the position has been relocated. If an employee wishes to continue working in the former location, or another more convenient location, the Department should try to transfer the employee, if practicable, to a suitable position at the same classification and grade.

### 6-9.12.5 Reversion to maternity leave

An employee who has returned to full time duty without exhausting their parental leave entitlements may revert back to parental leave in accordance with subclause 75.14 of the Award.

## 6-10 Military Leave

### 6-10.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, Clause 73, Military Leave.

*Defence Reserve Service (Protection) Act 2001* (Cwlth)

### 6-10.2 General

#### 6-10.2.1 Leave Entitlement

In accordance with section 17 (1) of the *Defence Reserve Service (Protection) Act 2001*, it is unlawful to prevent an employee from rendering or volunteering to render, defence Reserve service. Accordingly, Departments are legally obliged to release employees to undertake duties as members of the Defence Forces. Such leave is to be granted as leave without pay.

See also subclause 73.2 of the Award and [C 2006 – 25](#) Military Leave – *Defence Reserve Service (Protection) Act 2001*.

The entitlement to military leave on full pay is subject to subclause 73.1 of the Award.

#### 6-10.2.2 Travelling time

The minimum time necessarily spent in travelling to and from an annual training activity may be included in leave granted, provided that:

- the time spent travelling is during normal working hours; and
- no pay is received from the Defence Forces for the time spent travelling.

## 6-10.3 Entitlement

### 6-10.3.1 Maximum amount of leave

See subclause 73.3 and 73.4 of the *Award*.

### 6-10.3.2 Top up pay

See subclauses 73.5, 73.6 and 73.7 of the *Award*.

For further details refer to [C2004 – 38](#) Extension of Military Leave Through 'Top Up' Pay.

The cost of 'Top Up' Pay can be partly offset by the Commonwealth Defence Employer Support Payment Scheme (ESP Scheme), which compensates Departments for the absence of employees on military leave. For further details refer to [C2007–53](#) - Australian Defence Force Reserve Employer Support Payment Scheme.

## 6-10.4 Documentation required

See subclause 73.8 of the *Award*.

## 6-10.5 Full time military service

If it is essential for a member of the part time Defence Forces to serve full time then the particulars of the case are to be referred to the Director General, Department of Premier and Cabinet, for determination of conditions in accordance with [s 130](#) of the *PSEM Act 2002*.

## 6-10.6 Military leave and remote areas allowance

### 6-10.6.1 Retention, reduction or forfeiture of allowance

A member of the Defence Forces receiving the remote area allowance at the non-dependant rate is not paid the allowance while on military leave (see ["7-14 Remote areas – allowances and travelling on recreation leave"](#)).

A member of the Defence Forces receiving the remote area allowance at the dependant rate may continue to receive the allowance at the normal rate for the duration of the military leave provided that:

- the employee continues in employment; and
- the dependants continue to reside in the area specified; and
- military pay does not exceed departmental salary plus the remote areas allowance.

If the military salary exceeds departmental salary plus the allowance at the dependant rate, the allowance is to be reduced to the non-dependant rate.

## 6-11 Natural emergencies and major transport disruptions

### 6-11.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 17, Natural Emergencies and Major Transport Disruptions.

### 6-11.2 Work location

Employees should make every effort to attend their normal work location during natural emergencies and major transport disruptions. If an employee is prevented from so doing by a natural emergency (such as a bush fire, flood, and the like) or because of a major transport disruption, any one or more of the following procedures outlined in subclause 17.1 of the *Award* should be adopted.

#### 6-11.2.1 Teleworking

In situations such as those outlined in ["6-11.2 Work location"](#), teleworking should be considered for the duration of the disruption, subject to Departmental convenience, the nature of the employee's duties, and agreement by the Department and the employee on the procedures to be followed.

#### 6-11.2.2 Reporting to another office or department

Subject to Departmental convenience, the employee may arrange to report to another office of the Department where suitable work is available.

If unable to be accommodated in the same Department, the employee should arrange to report to the office of another Department, subject to the concurrence of both Department Heads and work being available.

## 6-11.3 Extension of settlement period

When a prolonged transport disruption occurs, Department Heads may extend the flexible working hours settlement period during which the transport disruption occurred by a further four weeks, in order to allow employees to make up additional time taken during the disruption.

Normal provisions regarding maximum debits and credits at the end of the extended settlement period are to apply. That is, not more than 10 hours debit or credit is to be brought forward to the next four weekly settlement period.

## 6-12 Observance of essential religious duties and cultural obligations

### 6-12.1 Source of authority

- [C2011-03](#) – Accessing leave entitlements and flexible work hours arrangements to observe religious duties;
- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 74, Observance of Essential Religious or Cultural Obligations.

### 6-12.2 Essential religious duties during normal working hours

Clause 74 of the *Award* provides for staff members to access leave to observe essential religious or cultural obligations. This supports the Government's commitment to accommodating culturally diverse employees in the workplace.

Managers and supervisors need to be sensitive in accommodating the needs of employees requiring access to their leave entitlements and flexible work hours for the purposes of observing essential religious or cultural

observations. The Community Relations Commission publishes a guide to days of religious significance for this purpose on its website at [www.crc.nsw.gov.au/days\\_of\\_religious\\_significance](http://www.crc.nsw.gov.au/days_of_religious_significance)

In the case of an employee observing religious duties on a daily basis, a simple agreement should be negotiated between employee and supervisor, the terms of which should be considered as covering the situation on an ongoing basis.

See also 5-5 Employees' retreat space.

### 6-12.3 Events of religious or cultural significance

C2011-03 – Accessing leave entitlements and flexible work hours arrangements to observe religious duties

## 6-13 Carer's leave

### 6-13.1 Sources of authority

Crown Employees (Public Service Conditions of Employment) Award 2009, clause 81, Sick Leave to Care for a Family Member.

### 6-13.2 Policy statement – management of carer's leave

#### 6-13.2.1 General

Carer's leave is only to be taken when Family and Community Service Leave is exhausted or unavailable.

See clause 81.1 of the Award.

See also "[6-7 Family and community service leave](#)",

Under the carer's leave provisions, an employee's paid sick leave may be used to provide care and support for a family member (as defined in clause 81.4 of the Award) who is ill. Initially the leave is taken from the employee's sick leave accumulated over the previous 3 years but additional leave

may be granted in special circumstances as per clause [81.2](#). The Award also provides at 8.1.3 for evidence of the family member's illness if required.

Where paid sick leave is not available to the employee, make-up time, time off in lieu of overtime, flex leave, recreation leave or carer's leave without pay may be used to enable employees to combine paid employment with other responsibilities.

Like sick leave, carer's leave should be managed in a fair and equitable way and mechanisms put in place to monitor sick leave taken as carer's leave.

It is important that departments ensure that separate records are maintained for sick leave taken by the employee for their own illness and for a sick family member.

Carer's leave is not available to casual employees.

#### 6-13.2.2 Family and community service leave

See "[6-7 Family and community service leave](#)".

#### 6-13.2.3 Meaning of family member

See subclause [81.4](#) of the Award.

#### 6-13.2.4 Casual employees

For carer's leave entitlements for casual employees, see subclause 12.6 of the Award.

### 6-13.3 Entitlement

#### 6-13.3.1 Sick leave

See subclause [81.2](#) of the Award.

In special circumstances the Department Head may grant sick leave that accrued during service in the period prior to the 3 years referred to in subclause 81.2 of the Award. Department Heads are reminded that special circumstances do not include a employee's intention to take all or most of their accrued sick leave in order to provide full time care to a sick family member for a prolonged period or for an indefinite period of time.

#### 6-13.3.2 Proof of illness

See subclause [81.3](#) of the Award.

## 6-14 Public Holidays

### 6-14.1 Source of authority

- Crown Employees (Public Service Conditions of Employment) Award 2009, clause 19, Public Holidays.

### 6-14.2 General

See clause 19 of the Award.

See the Christmas Closedown Premier's Memorandum (issued annually).

## 6-15 Recreation leave and annual leave loading

### 6-15.1 Sources of authority

- Crown Employees (Public Service Conditions of Employment) Award 2009, [clauses 77](#), Recreation Leave, and [78](#), Annual Leave Loading.

### 6-15.2 Recreation leave entitlement

#### 6-15.2.1 Basis of grant

See subclause [77.1](#) and [77.4](#) of the Award.

#### 6-15.2.2 Additional leave – central or western division

See paragraph [77.1.2](#) of the Award.

#### 6-15.2.3 Additional leave – work on Sundays and public holidays

See subclause [77.7](#) of the Award and refer also to paragraph [87.7.2](#), [87.7.3](#) and [87.7.4](#) of the Award.

## 6-15.3 Accrual

### 6-15.3.1 Taking of leave

See subclause 77.2 of the *Award*.

After taking into account the wishes of the employee, the Department Head may direct an employee to take accrued recreation leave at a time convenient to the Department.

For areas not involved in the delivery of front line services, Department Head's should maximize the taking of leave over the Christmas period by encouraging employees to take 2 week's leave between the last week in December and the first week in January. See the Christmas Closedown Premier's Memorandum (issued annually).

### 6-15.3.2 Only accrued leave to be granted

If recreation leave is insufficient to cover the whole of the absence applied for, leave accruing between the first day and the last day of the period of leave applied for may be granted. Leave accrued during recreation leave is not paid for until the first pay after resuming duty.

### 6-15.3.3 Transfer from full time to part time employment

An employee who transfers from full time to part time employment may take all recreation leave accrued during full time service before entering part time service. Recreation leave accrued during full time service is not forfeited if it is not used before starting part time service. It may be taken later and is paid at the rate that applied immediately before the change to part time employment.

### 6-15.3.4 Transfer from part time to full time employment

An employee who transfers from part time to full time employment may take all recreation leave accrued during part time service before starting full time service. If the recreation leave accrued during part time service is not used before starting full time service, the leave is converted to its full time equivalent and incorporated with future recreation leave accruals. Payment for leave is then at the rate of pay received at the time of taking the leave.

The formula for converting the leave to its full time equivalent is:

$$\frac{\text{Amt of recreation leave accrued during P/T service} \times \text{hrs worked p/t}}{\text{Full time hours worked per week for the classification}}$$

#### Example:

A 35 hour per week employee works for 12 months for 17½ hours per week. The full time recreation leave equivalent will be calculated as follows:

$$\frac{20 \text{ days per annum} \times 17\frac{1}{2} \text{ hours per week}}{35 \text{ hours}} = 10 \text{ days}$$

### 6-15.3.5 Limits on Accumulation and Direction to Take Leave

See paragraph 77.2.3 and 77.2.4 and 77.2.5 of the *Award*.

### 6-15.3.6 Conservation of leave

See subclause 77.3 of the *Award*.

### 6-15.3.7 Temporary employees employed for three months or less

Temporary employees who are employed for a period of three months or less are not eligible to accrue recreation leave but are entitled, on cessation of employment, to be paid in lieu of recreation leave 1/12th (or 4/48th) of the salary or wages excluding overtime earned during the period of employment.

### 6-15.3.8 Apprentices

See "6-3.2.2 Apprentices".

## 6-15.4 Accrual while on other forms of leave

### 6-15.4.1 General

See paragraph 77.4.3 and 77.4.4 of the *Award*.

See also "6-8 Leave without pay"

### 6-15.4.2 Extended leave

See subclause 77.4.6 of the *Award*.

Recreation leave does not accrue when extended leave is paid in lieu of leave on resignation, retirement or termination of services. If however all accrued extended leave is taken as leave before the last day of service then recreation leave accrues as above.

### 6-15.4.3 Leave without pay

See subclause 77.8 of the *Award*.

### 6-15.4.4 Deductions for leave without pay

Deductions for any leave without pay taken during the year should be made from the accrued recreation leave once each year. Leave without pay taken in the 12 month period is calculated to an exact quarter of a day (fractions less than a quarter of a day being rounded down).

## 6-15.5 Payment for leave

Payment for recreation leave accrued is at the rate of pay applicable on the day immediately prior to the first day of the leave. When an increase in the rate of pay occurs during the period of leave, adjustment to the payment must be made as soon as practicable.

## 6-15.6 Transfer of accumulated recreation leave

See Chapter 3, Part 3.2 Division 2 Cross Public Sector Leave Arrangements, of the PSEM Act 2002.

## 6-15.7 Payment of leave entitlements on ceasing employment

See "4-3.1 Recreation leave entitlements"

## 6-15.8 Payment of recreation leave after death

See "4-3.3 Payment for leave on the death of an employee" Teachers appointed to the service

When a teacher who is employed under the *Teaching Services Act 1980* is appointed to a position under *PSEM Act 2002*, credit of recreation leave may be granted in accordance with the following table:

**Table 5 Teachers - credit of recreation leave**

Appointments from a position under the Teaching Services Act 1980 to a position under the PSEM Act 2002	Recreation leave to be credited
January-before 18th	10 days
January-on or after 18th	5 days
February	5 days
March-before 30th	5 days
March-on or after 30th	10 days
April-before vacation	10 days
April-during vacation see notes below*	
April-after vacation	5 days
May	5 days
June-before 15th	5 days
June-on or after 15th	10 days
July-before vacation	10 days
July-during vacation see notes below*	
July-after vacation	5 days
August	5 days
September-before 7th	5 days
September-on or after 7th	10 days
October	5 days
November-before 10th	5 days
November-on or after 10th	10 days
December	10 days

Thereafter recreation leave accrues at the normal rate.

\*Notes: When a teacher is appointed from the start of the:

- first week of the April vacation and the vacation is for 2 weeks, the recreation leave credit is 10 days;
- second week of the April vacation, or when the vacation is only for 1 week, the recreation leave credit is 5 days;

- first week of the July vacation the recreation credit is 10 days ; and
- second week of the July vacation the recreation leave is 5 days.

## 6-15.9 Employees seconded to the teaching services

### 6-15.9.1 Accrued leave to be taken

When possible, Departments must approve a release date sufficiently early to allow all accrued recreation leave to be exhausted prior to the secondment.

### 6-15.9.2 If accrued leave cannot be taken

When, due to departmental or personal exigencies, it is not possible to comply with "6-15.9.1 Accrued leave to be taken", the employee may elect to:

- be paid either at the start or at any time during the period of secondment the monetary value of recreation leave accrued at the rate applicable immediately prior to the start of the secondment. Payment is made by the department from which the employee was seconded; or
- retain the accrued leave entitlement for the duration of the secondment.

### 6-15.9.3 Subsequent appointment to teaching services

If the employee elects to retain accrued leave during the secondment but is subsequently appointed to one of the Teaching Services then the Department from which the employee was seconded must pay to the employee the monetary value of accrued leave at the rate applicable immediately before the start of the period of secondment.

### 6-15.9.4 Conditions of secondment

During a period of secondment the following conditions apply:

- future movements in remuneration are to be in accordance with the appropriate teaching rate;
- salary progression in the substantive position does not apply;

- recreation leave entitlements do not accrue in the substantive position.

### 6-15.9.5 Written concurrence to secondment required

The concurrence of the employee must be obtained in writing before the start of these arrangements.

### 6-15.9.6 Reciprocal arrangements for recognition of leave

Reciprocal arrangements for recognising sick leave and extended leave entitlements exist when secondments occur between the Teaching Services and the Public Service.

## 6-15.10 Remote areas – travelling on recreation leave

See 7-14 Remote areas – allowances and travelling on recreation leave.

## 6-15.11 Annual leave loading entitlement

### 6-15.11.1 Loading payable

See subclauses 78.1 – 78.4 of the *Award*.

If a shift worker is to be paid shift premiums, penalty rates and the like, such payments are not made for public holidays, or any period of compensatory leave which has been added to a period of annual leave for public holidays worked during the preceding leave year.

### 6-15.11.2 Seven day continuous shift workers

1. In the case of 7 day continuous shift workers, the 17½ per cent loading is calculated on the basis of 17½ per cent of 5 weeks ordinary salary or wages; or
2. In the case of 7 day continuous shift workers entitled to additional leave under clause 87.7.6 of the *Award*, the 17½ per cent loading is calculated on such additional leave, and added to the leave loading calculated on 4 weeks leave in accordance with

**"6-15.11.1 Loading payable"** Previous service in non public service divisions and special employment divisions

Further information concerning the transfer of annual leave loading may be found 3-17.3.5 Annual leave loading.

### 6-15.11.3 Maximum loading payable

See subclause 78.4 of the *Award*.

## 6-15.12 Leave year

### 6-15.12.1 General

See subclause 78.5 of the *Award*.

### 6-15.12.2 First year of service

See paragraphs 78.6.1 and 78.6.3 of the *Award*.

The annual leave loading is paid on the recreation leave accrued during the previous leave year. The annual leave loading is not paid on any recreation leave taken in the first leave year of employment, that is, from the date of employment to the following 30 November.

The loading on leave accrued in the employee's first leave year of employment is paid during the second leave year of employment. For example:

1 March.	Employment begins.
1 March to 30 November - First leave year.	No entitlement to annual leave loading although entitled to 3 weeks recreation leave.
1 December to 30 November - Second leave year.	Entitled to payment of annual leave loading of 17½ per cent on 3 weeks salary or wages on the first occasion that recreation leave is taken after 30 November in the first leave year.

## 6-15.13 When loading is paid

### 6-15.13.1 Payment with leave taken

See paragraph 78.6.1 of the *Award*.

### 6-15.13.2 Payment as at 30 November

See subclause 78.6.2 of the *Award*.

For example, an employee who has accrued 20 days leave at 30 November of one year, and does not take more than 2 consecutive weeks leave before 30 November of the following year, is paid the annual leave loading based on the 20 days leave as soon as practicable on or after 30 November of the following year.

### 6-15.13.3 Resignation, retirement or termination

See paragraphs 78.6.4 and 78.6.5 of the *Award*.

### 6-15.13.4 Employee transferring to another employer

Leave loading is transferred to another employer provided the provisions of 3-18 Eligibility are met.

## 6-15.14 When loading is not paid

See paragraph 78.6.5 of the *Award*.

## 6-15.15 Calculation of loading

### 6-15.15.1 Basis of calculation

Calculation of the annual leave loading is based on the ordinary salary or wage applicable at the time the leave is taken. Ordinary salary or wage does not include any regular payment made on an annual or weekly basis as compensation for shift work but does include all allowances payable during recreation leave.

### 6-15.15.2 Variation of rates under an industrial instrument

Any new rate granted by award, agreement, determination, increment, or other such instrument during the period of leave, is to be taken into account in the calculation of

the annual leave loading, unless otherwise prescribed by the instrument. If necessary, the adjustment is to be made retrospective.

### 6-15.15.3 Payment as at 30 November

When payment is made at 30 November under the provisions of **"6-15.13.2 Payment as at 30 November"**, the payment is 17½ per cent of the recreation leave accrued at the previous 30 November but calculated on the current rate of pay and subject to the provisions of **"6-15.11 Annual leave loading entitlement"**.

### 6-15.15.4 Calculation

The loading may be calculated in the following manner:

**Table 6** Leave Loading calculation

Annual Salaries:	
Loading on 4 weeks leave:	Divide the annual salary by 74.54
Loading on 5 weeks leave:	Divide the annual salary by 59.63
Weekly Rates:	
Loading on 4 weeks leave:	Divide the weekly rate by 1.4286
Loading on 5 weeks leave:	Divide the weekly rate by 1.1429

## 6-15.16 Endorsement of leave and salary records

When the annual leave loading is paid, leave and salary records are endorsed to the effect that payment for the year ending 30 November of the appropriate calendar year has been made.

## 6-15.17 History of recreation leave accrual

### 6-15.17.1 Officers

1. From the *Public Service Act in 1902* until 31st December 1963, recreation leave accrued at the rate of 3 weeks per annum.
2. As from 1 January 1964, the recreation leave entitlement was increased to 4 weeks per annum.

### 6-15.17.2 Departmental Temporary Employees

1. Before 1945, temporary employees generally accrued recreation leave as follows:
  - 1 week to every employee who had served continuously for one year.
  - 2 weeks to every employee who had served continuously for two years.
  - 3 weeks to every employee who had served continuously for three years.
2. Following the introduction of the *Annual Holidays Act* operative from 1 January 1945, temporary employees were granted 2 weeks leave per annum for the first 2 years of service and 3 weeks leave per annum thereafter.
3. In December 1957, it was decided that all temporary employees in the service on 3 December 1957, were to accrue recreation leave at the rate of 3 weeks per annum in respect of service on and from 3 December 1956, or if appointed after 3 December 1956, from date of appointment.
4. From 1 January 1964, the recreation leave entitlement was increased to 4 weeks per annum.

## 6-16 Purchased Leave

- See clause 76 of the *Award*.
- [C2009-22 Purchased Leave Policy](#).

The Purchased Leave Policy, a Fact Sheet and template Agreement Form for agency use are available from [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au)

Purchased Leave is a voluntary arrangement where employees may purchase additional leave. The approval of Purchased Leave Agreements is subject to departmental business needs.

## 6-17 Sick Leave

### 6-17.1 Sources of authority

- [Crown Employees \(Public Service Conditions of Employment\) Award 2009](#)
- [C2009-16 Managing Sick Leave Policy](#)

### 6-17.2 Policy Statement

Managing absenteeism is part of the Government's commitment to achieving and sustaining productive, healthy, efficient and high performing workplaces. Agencies must ensure the health, safety and wellbeing of their employees as well as training managers and briefing employees about their responsibilities.

The Managing Sick Leave Policy (the Policy) has been developed to assist agencies to better manage absenteeism in the workplace pursuant to the Memorandum of Understanding in settlement of the *Crown Employees (Public Sector Salaries – 2008) Award*. The key issues are outlined below:

**Healthy workplaces:** the Policy has been developed to better manage absenteeism and is part of the Government's commitment to achieving and sustaining productive, healthy, efficient and high performing workplaces.

**Responsibilities** of agencies, managers and employees are outlined in the policy.

**Key changes include that evidence of illness** is to be provided for absences of more than two consecutive days; and

**Absence reviews** will be undertaken where there are five or more unsupported absences in a calendar year or where an absence trend is identified.

**Analysis and review** of sick leave strategies and data is to be undertaken regularly to ensure effective sick leave management.

### 6-17.3 Related policies and procedures

Refer to the following policies and procedures to assist in identifying and developing programs and strategies that will help to achieve healthy workplaces.

- [M2010-18 Procedures for Managing Non-Work Related Injuries or Health Conditions](#)
- [M2007 – 15 Working Arrangements in an Influenza Pandemic](#)
- [M2007 – 02 Dignity and Respect: Policy and Guidelines on Preventing and Managing Workplace Bullying](#)
- [M2010-07 Working Together: Public Sector Workplace Health and Safety and Injury Management Strategy 2010 – 2012](#)
- [C2011-08 Support for Employees Experiencing Domestic Violence](#)
- [C2007 – 48 Leading Well: The role of leadership in improving the prevention and management of psychological injury](#)
- [C2007 – 39 A Healthy Workforce: policy on improving the health and well being of public sector employees](#)
- [C2007 – 27 Privacy Guidelines on Disclosures of Information during Industrial Consultations](#)
- [C2003 – 37 Occupational Stress – Hazard Identification and Risk Management Strategy](#)

### 6-17.4 Sick leave general

See clause 79 of the *Award* for:



- meaning of illness
- notification of absence by employees
- granting sick leave

### 6-17.5 Sick leave entitlements

See subclauses 79.6, 79.7 and 79.8 of the *Award*.

**Temporary employees** – accrue sick leave as per subclause 79.6 of the *Award*.

**Casual employees** – are not entitled to sick leave.

**Part time employees** – there are three types of part time work where sick leave will accrue at a pro rata rate with any unused sick leave being fully cumulative:

- temporary part time work
- permanent part time work; and
- part time work combined with part time parental leave.

The annual entitlement of an employee who changes from full time to part time is calculated as follows:

**Step 1** calculate sick leave entitlement in hours for those months worked full time

months full time  $\times \frac{15}{12} \times$  full time hours per day

**Step 2** calculate sick leave entitlement in hours for those months worked part time

months full time  $\times \frac{\text{hrs worked/wk} \times \frac{15}{12} \times \text{full time hrs/day}}{\text{full time hr/wk}}$

**Step 3** add step 1 to step 2 for entitlement in hours

**Election to use other paid leave or proceed on sick leave without pay** – when all paid sick leave entitlements have been exhausted, an employee may elect to use part or all of any recreation or extended leave credits or both, or to take sick leave without pay.

**Former employees engaged under Ministerial authority** – an employee with former service under Ministerial authority (not under the *PSEM Act 2002*) who has

exhausted all other sick leave entitlements may be granted the remaining sick leave entitlements according to Chapter 3 Mobility.

**Sick leave without pay to count as service** see paragraph 79.6.6 of the *Award* and Leave without pay

**Commonwealth Sickness Allowance** – an employee who is on sick leave without pay is entitled to apply for a Commonwealth Sickness Allowance. It is the employee’s responsibility to make enquiries about any such entitlement. However, to avoid any unnecessary delay in the commencement of payments, agencies should take the following precautions:

- give the employee two weeks notice, if possible, that paid sick leave is about to expire if the employee is not expected to return to work within that time
- give the employee a statement showing the date on which all paid sick leave expires, and whether or not a workers’ compensation claim has been lodged
- advise the employee that unless they elect to use another form of leave as referred to in Election to use other paid leave or proceed on sick leave without pay (above) a Commonwealth Sickness Allowance may be applied for to cover the sick leave without pay.

If the employee applies for the Commonwealth Sickness Allowance, Centrelink will forward a form to the agency seeking information relevant to the application. To avoid hardship, agencies must complete and return these forms as soon as practicable.

### 6-17.6 Managing absences due to illness

Trigger points for review of absences are outlined in C2009-16 Managing Sick Leave Policy and includes five cumulative days of unsupported sick leave taken in a calendar year.

**Medical assessments** – if there is the likelihood of an employee being absent for longer than two months, an agency may consider referring them for a medical assessment. This may be useful in just confirming an illness,

or could assist in returning an employee safely to work. It is advised that this action be taken before available sick leave is exhausted.

**Return to work program** see subclause 79.5 of the *Award* and related policies.

**Allocation of leave** – provided the employee has submitted appropriate medical certificates supporting the absence on sick leave, sick leave is granted to the limit of entitlement, followed by recreation leave or extended leave to credit or sick leave without pay, subject to election under Election to use other paid leave or proceed on sick leave without pay. (“6-17.5 Sick leave entitlements”).

### 6-17.7 Evidence of illness for sick leave

See clause 80 of the *Award* for:

- when evidence is required
- backdated evidence of illness
- clarification of diagnosis
- nature and disclosure of the illness
- sick leave while on extended or recreation leave
- sick leave prior to resignation or termination.

### 6-17.8 Confidentiality

It is the agencies responsibility to ensure that all records pertaining to an individual’s sick leave are secure. See C2009-16 Managing Sick Leave Policy.

### 6-17.9 Sick leave to care for a family member

See clause 81 of the *Award*.

### 6-17.10 Leave for matters arising from domestic violence

See “6-19 Leave for matters arising from domestic violence”

## 6-17.11 Health risks to employees and the public

### 6-17.11.1 Direction to cease duty

See subclause 79.4 of the *Award*.

### 6-17.11.2 Grant of special leave

An employee directed to cease duty or not to resume duty is to be granted special leave until such time as the nominated health provider has formed a recommendation on the appropriateness or otherwise of granting sick leave. Such time may involve medical assessment by the nominated health provider, other specialists and consultation with the employee's treating medical practitioner.

### 6-17.11.3 Allocation of sick leave

When the nominated health provider advises that sick leave is appropriate, the sick leave applies from the date of the Agency Head's direction to cease duty or not to resume duty. The grant of sick leave continues until the Agency Head, on the advice of the nominated provider gives the clearance to resume duty. Additional sick leave may be necessary to cover the assessments and consultation referred to in Grant of special leave.

### 6-17.11.4 Unnecessary direction to cease duty

If the nominated provider advises that the employee had been fit for duty and the direction to cease duty or not to resume duty had not been necessary on medical grounds, the employee is to be allowed to resume duty immediately and be granted special leave for the duration of the absence.

### 6-17.11.5 Evidence of illness

The Agency Head cannot accept any evidence of illness either in support of the employee's continued absence or resumption of duty unless the evidence has the endorsement of the nominated provider.

## 6-17.12 Other sick leave

### 6-17.12.1 Special sick leave

**Definition** – special sick leave is a grant of paid sick leave additional to the annual or cumulative entitlement, and its application is reserved for long term employees (over 10 years) for occasions of long term illness only.

**Recording** – special sick leave is to be shown on the leave record as Special sick leave. It is not to be taken into account when calculating normal annual or cumulative entitlements. It is to be taken into account when assessing the availability of further entitlement to special sick leave.

**Conditions of grant** – special sick leave shall be granted by the Agency Head if an employee satisfies the following criteria:

- has 10 or more years service
- has been or will be absent for a period of at least 3 months; and
- has exhausted or will exhaust, all normal sick leave entitlements

**Calculations** – the grant of special sick leave will be on the following basis:

**Table 7** Calculation - special sick leave

Completed years in the service	Number of working days		
	5 day week	6 day week	7 day week
10	22	26	30
20	44	52	60
30	66	78	90
40	88	104	120
50	110	130	150

**Full time and permanent part time service** – if an employee has had a period of full time service followed by a period or periods of part time service or vice versa, the entitlement to special sick leave is still 22, 26 or 30 days for each completed 10 years of service.

The rate at which the special sick leave is granted however will depend on how the employee was employed at the time just prior to proceeding on sick leave. If the employee worked full time, they will be granted available special sick leave at the full time rate. If the employee was a permanent part time employee, the payment for the period covered by special sick leave will be made only for the hours when the employee would have been on duty.

A full time employee who was absent on part time adoption, maternity, or parental leave or short term part time leave without pay prior to proceeding on sick leave is granted special sick leave, when applicable, as a full time employee.

### 6-17.12.2 Sick leave for war caused disabilities

**Definition** – a war caused disability is an injury or illness resulting from armed service in a recognised war zone. Injury or illness resulting directly or indirectly from service in the armed forces but not in a war zone is not regarded as war caused.

**Additional entitlement** – employees who are former armed services personnel and who have an accepted war caused disability receive an additional annual entitlement of 15 days per calendar year non-cumulative. This is an additional grant of leave to be applied only to absences directly related to the war caused disability and is separate from the annual sick leave, cumulative or special sick leave entitlement.

**Evidence of disability** – to be eligible for the additional leave the employee must provide a statement from the Department of Veterans' Affairs to the effect that the illness or injury is a result of service in a recognised war zone.

## 6-17.13 Illness/injury not covered by workers' compensation

See clause 83 of the *Award*.

When an employee who is sick or injured claims compensation or damages other than under the *Workplace Injury Management and Workers' Compensation Act 1998* an

undertaking and authority in the form of those contained in Appendix 6C and Appendix 6D of this Chapter should be signed and returned to the agency as soon as possible.

**Conditions applying to grant of sick leave** – available sick leave may be granted provided the employee is aware that:

- the monetary value of the sick leave must be claimed as part of any claim for compensation or damages and is to be included in any assessment of damages or compensation;
- the monetary value of the sick leave must be repaid to the agency once the claim for compensation or damages has been paid; and
- the undertaking must be signed and returned to the agency as soon as practicable.

**Leave options** – when absences occur as a result of injury or illness and a claim for compensation or damages has been made, an employee may elect to take:

- available sick leave; or
- recreation or extended leave to credit; or
- leave without pay; or
- a combination of any of the above.

**Provision of information** – if information is requested from an agency by the employee or their legal representative the agency is obliged to provide an accurate statement of the total salary or wage that would have been received had the employee been on duty, including leave payments made for the period of incapacity.

**Refund of leave** – see subclause 83.3 of the *Award*.

If the monetary value of sick leave is refunded in accordance with subclause 83.3 of the *Award*, the period of absence resulting from the injury or illness is then to be regarded as special leave without pay but is to count as service for the accrual of all types of leave and incremental progression.

**Other leave** – if an employee has taken recreation or extended leave they may, upon receipt of compensation elect to repay the monetary value of the recreation or extended leave taken and have the leave reccredited; or not to repay it, in which case the leave remains as a debit.

**Refusal of claim** – when a claim for compensation is refused, normal sick leave provisions apply.

## 6-18 Special leave

### 6-18.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, clause, 84, Special Leave.

### 6-18.2 General

Special leave is paid leave which applies to activities not regarded as being on duty and which are not covered by other forms of leave.

Department Heads may grant special leave to employees for such purposes and during such periods and subject to such conditions as are specified in the *Award*, included in this Section, or determined by the Director General, Department of Premier and Cabinet, from time to time.

Casual employees are not entitled to special leave.

#### 6-18.2.1 Union activities

See subclause 84.6 of the *Award*. Refer also clause 54 of the *Award*.

See also "6-21 Trade union and employee representative activities, and industrial action".

### 6-18.3 Course attendance

A maximum of 10 days may be granted to attend courses conducted by officially recognised organisations. See "6-20.9.12 Special leave" which refers to subsection 85.6 of the *Award*.

## 6-18.4 Jury service

### 6-18.4.1 Employee notification

See paragraphs 84.1.1 and 84.1.2 of the *Award*.

### 6-18.4.2 Entitlement

See paragraph 84.1.3 of the *Award*.

## 6-18.5 Witness at court – official capacity

See subclause 84.2 of the *Award*.

## 6-18.6 Witness at court – other than in official capacity

### 6-18.6.1 Crown witness

See paragraphs 84.3.1 and 84.3.2 of the *Award*.

### 6-18.6.2 Union witness

See paragraph 84.3 of the *Award*.

### 6-18.6.3 Private capacity

See subclause 84.4 of the *Award*.

In addition to the leave available under subclause 84.4 of the *Award*, an employee may also elect to be granted available flex leave or extended leave.

### 6-18.6.4 Court attendance as an interpreter

An employee who is required to attend at court to work as an official interpreter for the Community Relations Commission is granted special leave, provided that the costs are allocated to and recouped from the Language Services Division of the Community Relations Commission.

### 6-18.6.5 Traffic offences occurring in course of duty

An employee charged with a traffic offence while driving in the course of duty is granted leave for the period necessary to attend court to answer the charge. If the employee is acquitted, special leave is granted. If the

charge is found proven, the employee may choose to take available recreation leave, extended leave, flex leave, or leave without pay.

An employee who is a witness at the trial of a traffic offence alleged against another employee in the course of duty is to be granted special leave for the necessary period.

### 6-18.7 Special leave – examinations

See subclause 84.5 of the *Award*.

See also "6-20.5 Approved examinations".

## 6-18.8 Emergencies

### 6-18.8.1 Emergency volunteers and volunteer members of safety organisations

Employees who are volunteer members of the:

- Bushwalkers' Federation;
- Cave Rescue Association;
- NSW Volunteer Fire Brigade;
- Public Service Support Group;
- Rural Fire Services;
- State Emergency Services;
- Volunteer Coastal Patrol;
- Volunteer Rescue Association of NSW (or affiliated groups); or
- Wireless Institute Civil Emergency Network;

may be granted special leave of up to 5 days in any period of 12 months for the purpose of assisting as volunteers in one of these organisations.

### 6-18.8.2 Declared emergencies

If a situation arises requiring a major operational response, or an emergency is declared under section 44 of the *Rural Fires Act 1997*, under other relevant legislation or by the Premier, employees who volunteer to assist are granted special leave with no upper limit. Leave granted under

this clause does not count towards the 5 day upper limit specified in "6-18.8.1 Emergency volunteers and volunteer members of safety organisations"

### 6-18.8.3 Proof of attendance at emergencies

An application for leave must be accompanied by a statement from the local or Divisional Controller, the Fire Controller, Deputy Fire Controller or the Police, certifying the times of attendance. The leave application should indicate the period and area of attendance together with the name of the organisation to which the volunteer member belongs.

### 6-18.8.4 Rest periods

If a volunteer employee remains on emergency duty for several days, the Department Head may grant special leave to allow reasonable time for recovery before returning to duty.

If a volunteer employee assists in a rescue at a time such that it would be unreasonable to expect them to report for duty at the normal time, the Department Head may grant up to 1 day special leave for rest.

In the emergency referred to in the preceding two paragraphs is not a declared emergency, in accordance with "6-18.8.2 Declared emergencies", the leave granted is included in the general 5 day annual limit prescribed in "6-18.8.1 Emergency volunteers and volunteer members of safety organisations"

### 6-18.8.5 Emergency services courses

If the Director of State Emergency Services considers it essential that a volunteer employee attend a course of training or lectures, the Department Head should make every effort to release the employee from duty. If the employee is so released, the necessary absence from work is regarded as being on duty.

The Director of the State Emergency Services may nominate volunteer employees for attendance at courses of training or lectures when their attendance is not

regarded as essential. In these circumstances special leave may be granted for the time employees are absent from duty.

A certificate of attendance is not necessary. The State Emergency Services will advise the Department whether attendance is required and any non-attendance will be reported to the Department.

### 6-18.8.6 Bush fire fighting training courses

Emergency volunteers nominated to attend courses approved by the Rural Fire Service or by organisations recognised by the Service are to be granted the necessary special leave to attend, up to a maximum of 10 working days in any period of 12 months.

Applications are to be supported by written approval of the Rural Fire Service. Approval of leave is subject to Departmental convenience and written confirmation of attendance.

### 6-18.8.7 Payment of higher duties allowance during voluntary emergency service

Employees who commence relief or who are due to commence relief in a higher graded position and then volunteer to assist the State Emergency Services during bushfires, floods, and so on, may be eligible to receive the higher duties allowance for the period of time with the State Emergency Services. For further information see "7-10 Higher duties allowance".

## 6-18.9 Aboriginal rural education program

Employees who identify themselves as Indigenous Australians and who are undertaking one of the courses included in the Aboriginal Rural Education Program at the University of Western Sydney are entitled to special leave to cover any compulsory attendance and essential travel required during usual working hours.

The grant of special leave became effective from the start of the 1986 academic year.

## 6-18.10 Special leave for country and relieving employees

### 6-18.10.1 Travelling to another centre for medical examination

Country employees required to travel to another centre for medical examination at the direction of the Department Head are to be granted special leave for the time they are necessarily absent from duty.

When employees are required to travel to another centre for a medical examination for appointment to the service, the relevant travelling and meal allowance provisions apply. See 7-18 Travelling and meal allowances for employees required to attend examinations.

### 6-18.10.2 Monthly return home

An employee who is temporarily living away from home as a result of work requirements is entitled to sufficient special leave as will allow them to spend two days and two nights once each month at the family home. An employee who wishes to return home more often may be granted the choice of recreation leave, extended leave, flex leave or leave without pay if the operational requirements allow.

### 6-18.10.3 Travelling on monthly return home

Travelling allowances payable in these circumstances are set out in "[Chapter 7 Allowances](#)":

- 7-2.6 Returning home on weekends
- 7-2.6.2 Allowances for home visits
- 7-11 Motor Vehicle Allowances
- 7-14.5 Remote areas – travelling on recreation leave
- 7-17.1 Travelling compensation – Source of authority.

## 6-18.11 Transferred Employees

### 6-18.11.1 Entitlement

This section applies, as appropriate, to all employees who satisfy the definition of transferred employee in accordance with clause 4, *Definitions of the Crown Employees (Transferred Employees Compensation) Award*.

See subclause 6.1 - 6.2 of the *Crown Employees (Transferred Employees Compensation) Award*.

### 6-18.11.2 Return home

See subclause 6.3 - 6.4 of the *Crown Employees (Transferred Employees Compensation) Award*.

## 6-18.12 Former armed services personnel

Up to 6½ working days special leave is available to former armed services personnel in any period of 12 months, for the following purposes:

- attending a hospital or visiting a medical officer for review;
- attending a hospital to report for periodical examination or attention in connection with a war caused disability;
- obtaining, replacing, or having repaired an artificial limb or member, prosthesis or surgical appliance; or
- attending the Department of Veterans' Affairs in connection with claims made for military pensions.

## 6-18.13 Olympic and Commonwealth Games

### 6-18.13.1 Public Service employees

Employees selected as competitors or officials at the Commonwealth or Olympic Games are entitled to up to 4 weeks special leave to participate in the Games. The same concessions may be granted to competitors or officials taking part in the equivalent Games for athletes with disabilities.

### 6-18.13.2 Officials on international federations

In view of arrangements already in place for coaches, managers and officials who represent Australia at Olympic Games, employees who hold positions on International Federations recognised by the International Olympic Committee now have access to 20 days special leave over the period leading up to the Olympic Games. The leave may be used in conjunction with other forms of leave (paid or unpaid) to cover periods of absence specifically

related to official duties as a member of one of the International Federations recognised by the International Olympic Committee.

Employees eligible for this leave are able to transfer the balance of their entitlement when changing between Government employers. Below is a list of the International Federations recognised by the International Olympic Committee for the purposes of determining a claim for this form of leave.

list of the International Federations recognised by the International Olympic Committee for the purposes of determining a claim for this form of leave.

**Table 8** List of the International Federations recognised for the purposes to determine a claim for special leave

Federation	Sport
Union Internationale de Tir	Archery
International Amateur Athletics Federation	Athletics
The International Badminton Federation	Badminton
International Baseball Association	Baseball
Federation Internationale de Basketball	Basketball
Association Internationale de Boxe Amateur	Boxing
Federation Internationale de Canoe	Canoeing
Union Cycliste Internationale	Cycling
Federation Internationale de Football Association	Soccer
Federation Internationale d'Escrime	Fencing
Federation Internationale Gymnastique	Gymnastics
Federation Internationale de Handball	Handball
Federation Internationale de Hockey	Hockey
International Judo Federation	Judo
Union Internationale de Pentathlon Modern et Biathlon	Modern Pentathlon and Biathlon
Federation Internationale des Societes d'Aviron	Rowing
Federation Internationale de Tir a l'Arc	Shooting
Federation Internationale de Softball	Softball
Federation Internationale de Natation Amateur	Swimming
The International Table Tennis Federation	Table Tennis
The World Taekwondo Federation	Taekwondo
Federation Internationale de Tennis	Tennis
International Triathlon Union	Triathlon
Federation Internationale de Volleyball	Volleyball

Federation	Sport
Federation Internationale des Luttes Associees	Wrestling
International Weightlifting Federation	Weightlifting
International Yacht Racing Union	Yachting

## 6-18.14 Miscellaneous activities attracting special leave

### 6-18.14.1 First aid courses

Leave is available for attendance at courses conducted to train or retrain first aid officers to meet departmental needs. If the employee is nominated by the Department to attend the course the cost of the course is paid by the Department.

### 6-18.14.2 Blood donors

Employees are eligible to be granted special leave to give blood, with such leave being restricted to the time reasonably necessary.

### 6-18.14.3 Retirement preparation seminars

Employees invited to attend retirement preparation seminars conducted by the SAS Trustee Corporation, are eligible for 2 days special leave, with no other concessions.

### 6-18.14.4 Professional or learned society conferences

Employees who are financial members of professional or learned societies may apply for leave to attend conferences of those societies held in Australia.

Up to 5 days special leave for attendance at and travelling to and from the conference may be granted provided:

- it is in the Department's interest for the employee to attend; and
- the matters to be dealt with are directly associated with the work of the Department; and
- it is convenient to the Department for that employee to be absent from duty; and

- attendance at the conference by employees from the one Department is minimised; and
- the full details of the proposed itinerary are submitted; and
- the employee has not been granted leave for similar purposes during the previous 12 months.

### 6-18.14.5 National Aborigines and Torres Strait Islander Day

A staff member who identifies as an Indigenous Australian shall be granted up to one day special leave per year to enable the staff member to participate in the National Aboriginal and Islander Day of Commemoration Celebrations. See subclause 84.9 of the *Award*.

### 6-18.14.6 Visits to other countries

Once approval for an overseas visit has been received from the Minister, the Department Head then determines whether the employee will be regarded as being on duty or on special leave during the visit.

The following financial arrangements usually apply:

When an official visit is regarded as:

- on duty – salary and all official travelling and associated expenses are met by the Department.
- on special leave – salary only is met by the Department.

When an employee spends a short period on duty during a private overseas visit, salary and all expenses associated with that period of duty are met by the Department but original fares are not.

When an employee spends a short period on special leave during a private overseas visit, the Department pays salary only, for the duration of the special leave.

See also [C2010-31](#), Australian and Overseas Travelling Allowances – Including Chief Executive Officers, Senior Executive Officers, Senior Officers, Statutory Officers, and Part-Time Members of Boards, Committees, as varied from time to time.

#### 6-18.14.7 Bone marrow donors

Employees, who are listed in the Australian Bone Marrow Donor Register and who are called on to donate are eligible for up to 5 days special leave for this purpose.

This grant is subject to the production of a medical certificate from a registered medical practitioner covering any absence.

#### 6-18.14.8 Union activities

See [“6-21 Trade union and employee representative activities, and industrial action”](#).

### 6-18.15 Situations requiring careful consideration by department heads

The Department Head has the discretion to grant special leave in the following circumstances:

- attendance of former armed services personnel at the RSL Congress and Conference;
- attendance at the Coral Sea Week March;
- taking delivery of a vehicle to be used primarily on official business when required to travel to another location to pick it up;
- attendance at a graduation ceremony or to accept an award for outstanding academic work; and
- attending to Council duties by employees elected as Mayor, President or Chairman of a Local Council or County Council.

### 6-18.16 Absences regarded as being on duty

Special leave is not appropriate in cases of absence directly related to an employee’s duties. In these cases, the employee is regarded as being on duty. The following are cited as the kinds of activities in this category:

- Official country visits and official visits overseas – refer to the Premier’s policy on this matter.
- Presenting a worthwhile paper at an annual conference of a professional society.

- Official departmental representative at meetings of a professional or learned society.
- Departmental representative at non-departmental special courses and schools of instruction.
- Subpoenaed or called as a witness in an official capacity.
- Essential attendance at State Emergency Services courses.
- Attendance at a training course conducted by the Department.
- Attendance at the Annual Spokeswomen’s Seminar.
- Attendance before the Department of Premier and Cabinet, the Department Head or the Minister for any specified purpose other than as a representative of an employee association.
- Attendance before an in-service selection committee.
- Attendance at a feedback interview.
- Attendance as a party to a Public Sector Promotion and Disciplinary Appeal or as a witness, as an employer or employee representative or to present the employer’s case in an appeal.

Note: this list is not intended to be exclusive.

### 6-19 Leave for matters arising from domestic violence

Clause 84A of the Award provides for employees experiencing domestic violence to access certain leave entitlements (see [C2011-08 Support for Employees Experiencing Domestic Violence](#)).

Agencies should apply the following provisions:

- Leave entitlements provided for in Sick Leave, Family and Community Service Leave, Sick Leave to Care for a Family Member (also referred to as Personal/Carers Leave) may be used by staff members experiencing domestic violence.

- Where the leave entitlements referred to in point 1 above are exhausted, the employee shall be granted five days Special Leave per calendar year.
- Agencies will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer.
- Personal information concerning domestic violence will be kept confidential by the agency.
- Agencies, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.
- Domestic Violence means domestic violence as defined in the Crimes (Domestic and Personal Violence) Act 2007.

## 6-20 Study, employee development and training activities

### 6-20.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, clauses 85 and 86, Staff Development and Training Activities and Study Assistance.

### 6-20.2 Financial assistance – general

When a particular course or type of training is an essential condition of the contract of employment, departments must meet all fees and charges levied on the employee. This applies to cadets, trainees and employees involved in formal off-the-job training programs. Apprentices fall within this category, and employing departments are already responsible for paying the Technical and Further Education (TAFE) administration charge on their behalf.

For departments recruiting graduates who have an outstanding liability under the Higher Education Contribution Scheme (HECS), and for departments with employees undertaking part time tertiary study which is not specifically required by their contract of employment, the decision concerning payment of HECS is entirely one for the department. The following should be taken into account when considering whether to pay, either in whole or in part, HECS liability and other course charges:

- the skill requirements of the Department;
- the Department Head being satisfied that the expenditure is justified in terms of the department's objectives and targets; and
- the availability of funds.

### 6-20.3 Study time leave

#### 6-20.3.1 General

Study time leave is paid leave granted to employees for part time studies in approved courses. Study time leave should be equally accessible to all eligible employees and should be used to promote a highly trained and skilled workforce responsive to the requirements of the Government.

See [subclause 86.1](#) of the *Award*.

#### 6-20.3.2 Objectives

The objectives of study time leave are:

- to assist employees to undertake study which is relevant to the department or the Public Service, and which improves their ability to perform their duties;
- to develop the skills, versatility and adaptability of people working in the Public Service;
- to provide an opportunity for employees who have suffered educational disadvantage to bridge gaps in their educational qualifications;
- to encourage employees to pursue the highest standards in courses of study which promote excellence in performance of departmental functions;

- to enhance the employability of employees, to help them to become more competitive in the labour market and more attractive to public and private employees; and
- to provide a tangible expression of the commitment to employee development in a cost effective way.

### 6-20.4 Study time leave for approved courses

#### 6-20.4.1 Availability

Study time of up to four hours a week during semester or term may be granted at full pay to employees to assist their studies in an approved course, subject to the approval of the Department Head and departmental convenience.

See subclause 86.1, 86.2 and 86.3 of the *Award*.

Four hours a week is considered to be an appropriate grant for a standard part time course offered by a post-secondary institution. Pro rata leave may be granted for less demanding programs.

#### 6-20.4.2 Criteria for approved courses of study

In determining the suitability of a program of study for approval, the Department Head should consider:

- the relevance and value of the program to the Department or the Public Service,
- the contribution the program is likely to make to enhancing the employability of the employee,
- the benefits of the program to the service, the Department and the employee in relation to the costs in time and impact on departmental services.

Appropriate courses for approval should meet the following criteria.

- Leading to a recognised qualification.
- A TAFE special course; or
- A bridging or qualifying course; or
- An incidental subject forming part of a course for which study leave would be approved, and the incidental subject is of relevance to the department or the service.
- Administered by a public institution.

- Leading to membership of a registered professional association.
- Able to be taken part time by full time employees.

#### 6-20.4.3 Value to the department and the employee

In determining whether it is appropriate to grant study time leave, departments should consider:

- the number and length of proposed absences, whether for attendance at classes or private study;
- any proposal to combine study time leave with other leave to increase the length of absence; and
- any proposal for how and when any additional study time leave will be made up.

Departments must ensure that an adequate level of service to the public is maintained, that additional time can be made up efficiently and that study time leave arrangements are adequately supervised.

#### 6-20.4.4 Part time work

See subclause 86.3 of the *Award*.

#### 6-20.4.5 Distance education, open learning and correspondence courses

Employees undertaking courses by distance education, open learning or correspondence may be granted study time leave provided that their study program and the institution offering it satisfy the criteria set out in "[6-20.4.2 Criteria for approved courses of study](#)".

Study time leave of up to four hours a week may be granted for distance programs equivalent to a standard part time course on campus (or half of a standard full time program) and a pro rata grant for less demanding programs.

See subclause 86.12 and 86.13 of the *Award*.

#### 6-20.4.6 Full time courses

Study time leave for full time employees will normally be granted to assist part time study. It should not be granted to full time employees to attend a course organised essentially for full time students or which,



in later stages, requires full time attendance, unless the employee has approval to transfer to part time employment.

See also "6-20.7 Full time study leave".

#### **6-20.4.7 More than one course studied at the one time**

Study time leave may be granted for more than one course at the same time provided that the two courses together do not impose an unreasonable load and the resulting attendance pattern is convenient to the Department. Regardless of the number of courses studied at one time, the maximum grant remains four hours per week.

#### **6-20.4.8 Calculation of Study Time Leave Grant**

See paragraph 86.2.3 of the *Award*.

Where there are block attendance requirements or field days, the grant is calculated by:

- totalling the attendance requirement, in hours, for the semester;
- dividing the amount by two; and
- dividing this by the number of weeks in the semester that lectures are held.

The resultant amount, or four hours, whichever is the lesser, is the weekly amount granted.

#### **6-20.4.9 Repeated subjects**

See subclause 86.14 of the *Award*.

#### **6-20.4.10 Combining recreation or flex leave with study time**

A half day flex leave or a half day recreation leave may be combined with half day study time leave to cover a full day's absence from duty, subject to Departmental convenience. If an employee has less than a half day study time leave and wishes to be absent for a full day, they may take sufficient recreation leave to enable them to be absent for the whole day.

#### **6-20.4.11 Additional study leave**

If an employee granted study time leave for an approved course of study is unable to accommodate necessary absences within the four hours allowed, and recreation leave, flex leave or leave without pay to cover the gap is not available or not chosen, the Department Head may approve additional study time leave.

Any approved study leave in excess of four hours a week must be made up either in advance or in retrospect. If flexible working hours apply, the time must be made up in accordance with clause 21 of the *Award*.

#### **6-20.4.12 Making up time**

In all cases, the arrangement for making up additional study time leave must be negotiated with the department. If such an arrangement is being negotiated, the following factors should be considered:

- the nature of the employee's duties;
- the needs of the workplace;
- whether additional leave granted can be made up before the next grant; and
- the use of other forms of leave to offset the additional study leave when making it up is impractical.

#### **6-20.4.13 Study time leave during bandwidth**

Employees on flexible working hours may take study time leave at any time during the bandwidth, subject to negotiation with their Department. Employees working standard hours may take study time leave during their normal working hours.

#### **6-20.4.14 Study time leave not taken at the approved time**

See subclause 86.15 of the *Award*.

In the event of a genuine personal emergency, study time for that week may be granted on another day during the same week.

#### **6-20.4.15 Use of study time leave**

See subclause 86.14, 86.5 and 86.11 of the *Award*.

Refer also "6-20.4.16 Accumulated study time leave" (below).

#### **6-20.4.16 Accumulated study time leave**

See subclauses 86.6 and 86.10 of the *Award*.

#### **6-20.4.17 Accrual during other leave**

Study time leave does not accrue during any other form of leave.

#### **6-20.4.18 Courses requiring block attendance**

Some courses require substantial block attendance to allow students to undertake compulsory practical work experience. If such attendance is compulsory, and the Department Head is satisfied that the study program is of significant value to the Department, the Public Service and the employee, the Department Head may grant a block of leave which is either additional to or instead of accumulated weekly leave, as set out below.

- Up to 10 days study time leave may be granted in addition to accumulated weekly leave, or
- Up to 20 days study time leave may be granted instead of accumulated weekly leave.

#### **6-20.4.19 Study time leave granted for the whole course**

In some circumstances, it may be more appropriate to grant an amount of study time leave for the whole course, which can then be taken according to the needs of the employee and departmental convenience. In such cases, the average yearly study time leave taken should not be more than 10 or 20 days, as appropriate.

#### **6-20.4.20 Courses involving research and thesis**

Block periods of study time leave may be granted to employees for the research and thesis or major project preparation required for -

- higher degrees;
- qualifying studies for admission to higher degrees; or
- honours studies.

- These block periods may be granted on the following basis:
- When a course at any level involves a thesis or major project as well as coursework, the usual study time leave would be granted for the coursework, and 10 days study time leave for the thesis or major project preparation.
- For qualifying studies entirely by thesis the grant is 10 days leave.
- For masters degree studies by research and thesis only, the total grant is:
- 25 days leave for courses of 2 years minimum duration; and
- 35 days leave for courses of 3 years or more minimum duration.
- For doctoral studies, the total grant for the course is 45 days leave.

#### 6-20.4.21 Monitoring study time leave

Departments should ensure:

- that employees granted study time leave have completed their enrolment;
  - that employees are continuing with the course for which the leave is granted;
  - that the employee's attendance pattern is the most convenient for the Department (as well as for the employee) if there is a choice of attendance times; and
- additional study time leave, in excess of four hours per week, is made up.

#### 6-20.4.22 Application

Employees who wish to apply for study time leave should formally notify the Department as early as possible. If study time leave is granted, employees should give the Department reasonable notice of the program for each year or semester and their proposed pattern of leave. This will allow any negotiations to be completed before the academic year or semester begins.

#### 6-20.4.23 When an application is refused

If a Department decides to refuse an application for study time leave, it should ensure that:

- timely advice is given to the applicant to allow them to consider options;
- feedback is available to assist applicants in considering options;
- the reasons for refusal are clearly and promptly stated, in writing, to the applicant;
- the applicant is informed of their right to have the decision reviewed;
- if an internal review is requested, it is conducted independently and promptly, preferably through existing grievance mechanisms; and

if the decision to refuse study time leave is later reversed, the Department Head may decide to grant the study time leave applied for retrospectively: that is, to allow accumulation of study time leave for such a period, or recredit other leave taken instead of study time leave.

#### 6-20.5 Approved examinations

See subclause 86.16, 86.17 and 86.18 of the *Award*.

This leave may be combined with other forms of leave, including flex leave, for the remainder of the day.

See also "6-18.7 Special leave – examinations".

#### 6-20.6 Leave for study of strategic importance

##### 6-20.6.1 Applicability

The Minister (in the case of a department head) and the Department Head (in the case of other employees) may grant study leave for a program of study that in the Minister's or the Department Head's opinion, is of strategic importance to the Department or to the Public Service.

The duration of the leave granted is at the discretion of the Minister or the Department Head, having regard to the principles outlined in "6-20.7.5 Determining appreciable benefit of full time studies".

Leave may be granted on full pay, less than full pay, without pay, or a combination of these, at the Minister's or the Department Head's discretion.

Leave under this provision is intended for situations when it is not appropriate to consider the employee as being on duty. It may be granted to employees undertaking intensive and competitive higher or superior degrees in administrative or executive programs offered by Australian or overseas institutions of international renown.

In the case of overseas study, the usual conditions governing overseas travel apply. See "7-13 Overseas travelling allowances".

#### 6-20.7 Full time study leave

##### 6-20.7.1 Grant

See subclause 86.19 of the *Award*.

##### 6-20.7.2 Eligibility

See subclause 86.20 of the *Award*.

##### 6-20.7.3 Financial assistance

See subclause 86.21 of the *Award*.

When determining whether financial assistance shall be provided to the employee, the Department Head shall also consider the appreciable benefit of the studies to the Department.

See also below, "6-20.7.4 Determining direct relevance of full time studies" and "6-20.7.5 Determining appreciable benefit of full time studies".

##### 6-20.7.4 Determining direct relevance of full time studies

Full time studies are considered directly relevant to the efficiency or effectiveness of the Department or the service when:

- the studies relate directly to the employee's functions and are necessary to enable these to be carried out effectively; or
- the studies involve research, the results of which are likely to have a significant impact on the department's operations; or
- the employee would gain skills and knowledge which are in scarce supply and which are required by the Department; or
- the studies would enable the Department to carry out government programs of high priority; or
- the studies would assist the department to meet EEO objectives or other special purposes of the department or Public Service, and the skills and knowledge gained would directly contribute to improvements in effectiveness and efficiency.

#### **6-20.7.5 Determining appreciable benefit of full time studies**

Full time studies are considered to be of appreciable benefit to the efficiency or effectiveness of the Department or the service when:

- the studies relate to the employee's likely future duties and are necessary to enable these to be carried out effectively; or
- the studies involve research, the results of which are likely to have an impact on the Department's operations; or
- the employee would gain skills and knowledge which are required by the department; or
- the studies would assist the department to meet EEO objectives or other special purposes, and the skills and knowledge gained would contribute to improvements in effectiveness and efficiency.

#### **6-20.7.6 No financial assistance available**

Financial assistance should not be granted if the Department considers that:

- the studies proposed are neither directly relevant, nor of appreciable benefit to the effectiveness or efficiency of the Department or the service; or
- budgetary constraints preclude the grant of financial assistance; or
- while the studies proposed are relevant, a scholarship or award won by the applicant provides sufficient financial support.

#### **6-20.7.7 Bonds**

Not all periods of study leave with financial assistance will require a bond. Bonds are generally restricted to substantial periods of study only. If required, a cost-to-the-State bond must be signed by the employee. Service under a bond is to be worked as follows:

- twice the period of study leave granted when financial assistance is at the level of full-pay;
- the same period of study leave granted when financial assistance is at the level of half-pay; and
- a proportionate period of study leave granted when financial assistance is at less than half pay.

#### **6-20.7.8 When service under bond is not completed**

If the bonded service is not completed, the bond requires the employee to reimburse any financial assistance paid for the period of full time study leave as well as the value of any incremental progression or leave accrued during the leave period.

#### **6-20.7.9 Leave accrual and increments**

See subclause 86.22 of the *Award*.

#### **6-20.7.10 Superannuation**

Employees embarking on full time study leave should obtain advice from their superannuation fund(s) about contributions they are required to meet during their leave. They must notify both their superannuation fund and NSW Treasury of their proposed leave and the arrangements that will be made for payment of contributions.

#### **6-20.7.11 Monitoring study leave**

Departments should establish an appropriate reporting mechanism for each grant of study leave in order to ensure that the study remains relevant and that the skills and knowledge acquired will be applicable to the work of the Department.

#### **6-20.7.12 Attendance at work**

In some cases it may be appropriate to require an employee to return to work during university vacations. Departments should ensure that these arrangements allow the employee to take recreation leave.

### **6-20.8 Scholarships for part time study**

See subclause 86.23 of the *Award*.

### **6-20.9 Employee development and training programs and activities**

#### **6-20.9.1 Introduction**

The following guidelines are provided to assist departments in determining the conditions to apply when an employee undertakes an employee development or training program or activity. At all times departments should be aware of the need for consistency in determining which of these conditions are applied.

#### **6-20.9.2 Departmental discretion**

Attendance at an activity is at the discretion of the Department Head and must be of benefit to the Department or the employee's career development within the Public Service. It should preferably benefit both.

#### **6-20.9.3 Definition**

See subclause 85.1 of the *Award*.

In addition to those outlined in subclause 85.1, employee development courses which are managed or sponsored by a NSW department or public authority are also regarded as staff development and training activities.

#### 6-20.9.4 Exclusions from definition

See subclause 85.2 of the *Award*.

#### 6-20.9.5 Types of activities

See subclause 85.3 of the *Award*.

For the purposes of paragraph 85.3.1 of the *Award*, activities considered to be essential for the efficient operation of the Department include, but are not confined to, attendance of selected employees at training sessions on the operation of new office equipment, or attendance at a course that is directly related to their work and essential for the performance of their duties.

For the purposes of paragraph 85.3.2 of the *Award*, activities considered to be developmental and of benefit to the Public Service include activities which are developmental and serve to enhance the knowledge and skill of employees, being of benefit both in their work and in their career development. They also have a consequential benefit for the Department or the Public Service. Most employee development and training courses run by Departments would be in this category.

#### 6-20.9.6 Other training activities

An employee who wishes to attend an activity which the Department Head decides does not satisfy "[6-20.9.3 Definition](#)", may be granted flex leave, recreation leave, extended leave or leave without pay. The course fee or any other expenses must be paid by the employee.

#### 6-20.9.7 Attendance on duty

See subclause 85.3 of the *Award*.

#### 6-20.9.8 Provisions for activities considered essential to the Department

See subclause 85.4 of the *Award*.

Refer also "[Chapter 7 Allowances](#)".

#### 6-20.9.9 Provisions for activities considered of benefit to the Government

See also subclause 85.5 of the *Award*.

#### 6-20.9.10 Activities to be conducted during normal working hours

Under "6-20.9.8 Provisions for activities considered essential to the Department" and "6-20.9.9 Provisions for activities considered of benefit to the Government"(above), such activities would usually be held during normal working hours.

#### 6-20.9.11 Employees attending compulsory training prior to appointment

The above conditions do not apply to employees who are required to complete compulsory training as a condition of substantive appointment to a position in the Public Service.

#### 6-20.9.12 Special leave

See subclause 85.6 of the *Award*.

#### 6-20.9.13 Higher duties allowance

See subclause 85.7 of the *Award*.

## 6-21 Trade union and employee representative activities, and industrial action

### 6-21.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clauses 53 to 66, about Trade Union Activities.

### 6-21.2 General

Except as specified in this section, employees who are accredited trade union delegates, or who act as employee representatives, are to do so in their own time outside their normal working hours and at their own expense.

## 6-21.3 Definitions

**On duty** means the time off with pay given by the Department to the accredited union delegate to enable the union delegate to carry out legitimate trade union activities during ordinary work hours without being required to lodge an application for leave. See also clause 53 of the *Award*.

**On loan** means an arrangement between the Department and the trade union whereby an employee is given leave of absence from the workplace to take up employment with the employee's trade union for a specified period of time during which the trade union is required to reimburse the department for the employee's salary and associated on-costs. See also clause 56 of the *Award*.

**On special leave** means the employee is required to apply for special leave in order to engage in an activity which attracts the grant of special leave as described in "[6-18.2.1 Union activities](#)" and "[6-21.4.2 Special leave activities](#)". See also clause 54 of the *Award*.

## 6-21.4 Trade union activities

### 6-21.4.1 On duty activities

See clause 53 of the *Award*.

### 6-21.4.2 Special leave activities

See clause 54 of the *Award*. See also clause 55 of the *Award*.

### 6-21.4.3 Training courses

See clause 55 of the *Award*.

### 6-21.4.4 On loan arrangements

See clause 56 of the *Award*.

For financial arrangements when an employee is placed "on loan" to the Association, see paragraph 56.1.6 of the *Award*.

### 6-21.4.5 Period of notice

See clause 57 of the *Award*.

#### 6-21.4.6 Access to facilities

See clause 58 of the *Award*.

#### 6-21.4.7 Responsibilities of the union delegate

See clause 59 of the *Award*.

#### 6-21.4.8 Responsibilities of the trade union

See clause 60 of the *Award*.

#### 6-21.4.9 Responsibilities of workplace management

See clause 61 of the *Award*.

#### 6-21.4.10 Travelling and other costs

See clause 63 of the *Award*.

Refer also paragraph 61.1.3 of the *Award*.

### 6-21.5 Employee representative activities – Special leave

#### 6-21.5.1 General

The grant of special leave to engage in employee representative activities: -

- is at departmental convenience;
- must be confined to a minimum of number of employees;
- is for the minimum necessary period;
- is dependent on an application being made to the Department in advance;
- is payable at the base rate of pay (including, if appropriate, relevant allowances that would normally be paid on that day);
- is not to incur liability by the employing Department in fares, overtime, travelling compensation, travelling and sustenance allowances, meal money, and so on; and
- is not extended beyond the standard hours for the employee for that day.

See clause 54 of the *Award* and "6-18.2.1 Union activities".

See also subclause 84.6 of the *Award*.

#### 6-21.5.2 Availability

Special leave is available for the following purposes.

- Representatives of employee associations or of individual employees attending the Department of Premier and Cabinet.
- Local meetings between employee representatives and management.
- Attendance as a witness on behalf of employee associations or of employees before an industrial tribunal. Employees who attend as witnesses before industrial tribunals are granted special leave for such a period as is necessary for them to give evidence. They should return to duty as soon as their evidence has been given unless required by the Tribunal to remain in attendance.
- Conciliation committee members. – Employees appointed as members of a Conciliation Committee or as alternate members under the provisions of the *Industrial Relations Act 1996*, may be granted special leave of absence during standard hours for the period they are engaged.

See also clause 54 of the *Award*.

#### 6-21.6 Other absences

See "6-21.2 General".

#### 6-21.7 Industrial action

##### 6-21.7.1 General

See clause 64 of the *Award*.

The following provisions apply to employees absent from duty:

- attending stop work meetings;
- complying with a direction to strike; or
- supporting industrial action of other employee organisations.

The decision to participate in industrial action or a failure to report for work during such action, rests with the individual.

##### 6-21.7.2 Work to be made available for employees during industrial action

Work is to be available for all employees during any industrial action. If premises are to be closed for health, safety, security or other reasons, employees are to be informed of this action, and if practicable, are to be advised of work arrangements at an alternative location.

##### 6-21.7.3 If alternative arrangements are not practicable

Employees who, in the opinion of the Department Head, have made a reasonable attempt to report for duty but have been unable to enter the premises, are not to be regarded as being on an unauthorised absence.

##### 6-21.7.4 Leave and increment provisions

- Approved leave is any leave which was approved prior to the date of notification of the industrial action. This date is published by the Department of Premier and Cabinet for each service-wide dispute. Departments may discuss with the Department the appropriate date when the dispute concerns a local industrial issue.
- Absences from work for which leave has not been approved, including all absences owing to industrial action are unauthorised.
- Unauthorised absences from work are not leave without pay and are not covered by any approved leave. Periods of unauthorised absence, including those which do not exceed 5 days in a period of 12 months, are not regarded as service for any purpose.
- Applications for sick leave and family and community service leave during the period of the industrial action are not to be approved: except that the Department Head may exercise discretion to approve an application for sick leave or family and community service leave if satisfied that the absence is unrelated to the industrial action and is supported by acceptable evidence such as a medical certificate.

### 6-21.7.5 Calculations for periods of absence in respect of industrial action

#### 6-21.7.5a Employees on flexible working hours – absences for part of a day

1. For employees engaged in industrial action for part of a day, any absence during core time is an unauthorised absence. For employees on a mechanical recording system, keys are to be removed for the full duration of the absence.
2. For a lunchtime meeting, employees may avail themselves of the maximum 2½ hour luncheon period provided that they have ensured by consultation with the supervisor, that the extension does not prevent the proper functioning of the section to which they are attached. See clause 21.8 of the *Award*.
3. If the Department considers that by starting late before or ceasing work early after industrial action, employees are not genuine in their efforts to work productively for at least part of the day, the unauthorised absence is to be recorded as a full day, not just core time as in (a) above. For example, employees starting work at 9.15 but ceasing again at 9.30 to attend a stop work meeting at which a resolution is passed not to return to work, the absence is to be regarded as a full day's unauthorised absence. The flex time record however, will show the 15 minutes as a credit.
4. The provisions regarding disruption of transport, as specified in clause 17 of the *Award*, will not apply.
5. All other provisions of clause 21 of the *Award* continue to apply.
6. All unauthorised absences are recorded on employees' flexible working hours records with the words unauthorised absence together with the actual times of absence. For example, unauthorised absence all day. A credit for the unauthorised absence is to be entered corresponding to the amount of deduction from salary. All entries are to be initialled by the supervisor.

#### 6-21.7.5b Employees on standard working hours

1. If employees engage in industrial action for a full day or part of a day, any absence is regarded as unauthorised for the duration of that absence.
2. When employees engage in industrial action on a designated rostered day off (of a 19 day month working pattern) any absence is to be regarded as unauthorised unless the rostered day off had been arranged and approved prior to the date of notification of the industrial action. No alteration is to be made to a rostered day off that will coincide with industrial action.

#### 6-21.7.6 Recording absences

Department Heads are to ensure that adequate provision is made for the recording of the period of absence.

#### 6-21.7.7 Deductions

- Payment is not to be made to employees for any unauthorised absence.
- Deductions are to be made for any unauthorised absence as soon as possible, irrespective of whether the employee works flexible hours or standard hours.
- In respect of a part of a day's absence, a deduction is to be made of the number of hours and minutes involved, based on the hourly equivalent of either an annual salary or weekly wage.
- In respect of a full day's absence of an employee paid on a 5 day working week basis:
  - for employees paid an annual salary (or weekly equivalent of an annual salary), a deduction of 1/5th of the weekly equivalent of annual salary is to be made; or
  - for employees who receive a weekly wage, a deduction of 1/5th is to be made.

#### 6-21.7.8 Exemption of employees from industrial action

Department Heads seeking to have their employees exempted by their respective Association(s) from participating in industrial action must approach the Association(s) directly. Exemptions may need to be sought

for each occasion of industrial action as it should not be presumed that exemptions obtained on one occasion will apply automatically on another.

The Department of Premier and Cabinet is to be notified of all exemptions sought and obtained.

### 6-21.8 Miscellaneous applications

If no specific provisions exist for an employee to engage in Association or employee representative activities, application for recreation, extended, flex leave or leave without pay may be made. Leave should not be unreasonably refused in such circumstances. If it is considered that an application for leave might be refused, the advice of the Department of Premier and Cabinet should be sought.

If shift systems operate, Departments should make every effort to roster employees, who are honorary officials representing employees or who are representing themselves or other employees, off duty at the time required to allow their attendance at meetings and similar activities.

## 6-22 Leave to attend Reserve Forces Day parades

Parades are held annually across NSW to acknowledge the service of Reservists.

Employees eligible to attend the parades who are rostered to work on the day the parade is to be held in their locality may apply for either a change in the roster for that day or for accrued leave. Accrued leave includes flex leave, recreation leave or extended leave. Applications for either a change in roster or accrued leave are subject to their agency's operational requirements.

Department Heads are encouraged to release eligible employees to attend the parades where possible.

The parades occur on or close to the first weekend in July each year. Information on the parades including dates, starting times and meeting places can be found at the Reserve Forces Day Council website: [www.rfd.org.au](http://www.rfd.org.au)

## Appendix 6A: Extended leave provisions applying before 1 April 1991

### 6A-1 Calculation

#### 6A-1.1 For Service between 5 years and 10 years

- On the completion of 5 years service the entitlement is 1 calendar month on full pay.
- For each completed year in excess of 5 years the entitlement is 6 calendar days.
- For each completed month of service after 5 years the entitlement is a half calendar day.

#### 6A-1.2 For Service of 10 Years or More

On the completion of 10 years service, employees are eligible for 2 calendar months leave on full pay and for 15 calendar days for each completed year of service after 10 years – refer Table 9. Entitlements for portions of a year are detailed in Table 10.

**Table 9** (Before 1.4.1991)

Period of Service	Period of leave due
11 years	2 months 15 days
12 years	3 months
13 years	3 months 15 days
14 years	4 months
15 years	4 months 15 days
16 years	5 months
17 years	5 months 15 days
18 years	6 months
19 years	6 months 15 days
20 years	7 months
21 years	7 months 15 days
22 years	8 months
23 years	8 months 15 days
24 years	9 months
25 years	9 months 15 days
26 years	10 months

Period of Service	Period of leave due
27 years	10 months 15 days
28 years	11 months
29 years	11 months 15 days
30 years	12 months
31 years	12 months 15 days
32 years	13 months
33 years	13 months 15 days
34 years	14 months
35 years	14 months 15 days
36 years	15 months
37 years	15 months 15 days
38 years	16 months
39 years	16 months 15 days
40 years	17 months
41 years	17 months 15 days
42 years	18 months
43 years	18 months 15 days
44 years	19 months
45 years	19 months 15 days
46 years	20 months
47 years	20 months 15 days
48 years	21 months
49 years	21 months 15 days
50 years	22 months

#### 6A-2 When service includes periods of less than a completed year

When service includes periods of less than a completed year, leave accrues as follows:

**Table 10** (Before 1.4.1991)

Period of Service	Leave Accrued (days)
12 days to 23 days	½
24 days to 1 month 5 days	1
1 month 6 days to 1 month 17 days	1½
1 month 18 days & less than 2 months	2
2 months to 2 months 11 days	2½
2 months 12 days to 2 months 23 days	3
2 months 24 days to 3 months 5 days	3½
3 months 6 days to 3 months 17 days	4
3 months 18 days & less than 4 months	4½
4 months to 4 months 11 days	5
4 months 12 days to 4 months 23 days	5½
4 months 24 days to 5 months 5 days	6
5 months 6 days to 5 months 17 days	6½
5 months 18 days & less than 6 months	7
6 months to 6 months 11 days	7½
6 months 12 days to 6 months 23 days	8
6 months 24 days to 7 months 5 days	8½
7 months 6 days to 7 months 17 days	9
7 months 18 days & less than 8 months	9½
8 months to 8 months 11 days	10
8 months 12 days to 8 months 23 days	10½
8 months 24 days to 9 months 5 days	11
9 months 6 days to 9 months 17 days	11½
9 months 18 days & less than 10 months	12
10 months to 10 months 11 days	12½
10 months 12 day to 10 months 23 days	13
10 months 24 days to 11 months 5 days	13½
11 months 6 days to 11 months 17 days	14
11 months 18 days and less than 12 months	14½
12 months	15

### 6A-3 Conversion of short periods of extended leave to whole months

When it is necessary to convert short periods of extended leave to whole months, the table below should be followed.

**Table 11** Conversion to whole months

Period of leave	Month equivalent
30 calendar days	1 month
61 calendar days	2 months
91 calendar days	3 months
121 calendar days	4 months
152 calendar days	5 months
182 calendar days	6 months
212 calendar days	7 months
243 calendar days	8 months
273 calendar days	9 months
304 calendar days	10 months
334 calendar days	11 months
365 calendar days	12 months

### 6A-4 Broken periods of service

For an employee who has had broken periods of service, including broken portions of a month, the total number of days is converted to a monthly equivalent using Table 11.

### 6A-5 Minimum period of leave to be granted

Extended leave is not granted for less than half a day, irrespective of whether it is on full or half pay.

### 6A-6 Extended leave grant based on calendar days; pay based on working days

Extended leave is granted on a calendar day basis. Unless leave is taken in complete weeks or months, all short periods of leave that do not include weekends and any public holiday falling during the period of leave are converted to the calendar day equivalent.

### 6A-7 Extended leave conversion – working days to calendar days

#### 6A-7.1 Method of Conversion

To convert leave taken from working days to calendar days, add the number of working days taken during the period in question, then debit each aggregation of 5 working days as 7 days extended leave. When leave is taken before and after a weekend, the actual number of calendar days in the period are debited. The same procedure is applied to long weekends and public holidays falling during a period of extended leave.

#### 6A-7.2 Start and end of extended leave

Extended leave taken during service begins on the first working day after ceasing duty or the expiration of other paid leave, and ends on the day immediately before resuming duty, regardless of whether that day is or is not a working day.

### 6A-8 Calculation of monetary value on cessation of employment

When calculating the monetary value of extended leave to be paid on ceasing employment, extended leave is regarded as starting from the day immediately following ceasing duty or the expiration of other paid leave regardless of whether that day is or is not a working day.



## Appendix 6B: Cumulative sick leave entitlement up to 30 April 1998

**Table 12** Cumulative sick leave entitlement up to 30 April 1988

Completed years of service	No of working days		
	5-day week	6-day week	7-day week
1st year	20	24	28
2nd year	40	48	56
5th year	60	72	84
6th year	70	84	98
7th year	80	96	112
8th year	90	108	126
9th year	100	120	140
10th year	110	132	154
11th year	120	144	168
12th year	130	156	182
13th year	140	168	196
14th year	150	180	210
15th year	160	192	224
16th year	170	204	238
17th year	180	216	252
18th year	190	228	266
19th year	200	240	280
20th year	210	252	294
21st year	220	264	308
22nd year	230	276	322
23rd year	240	288	336
24th year	250	300	350
25th year	260	312	364
26th year	270	324	378
27th year	280	336	392
28th year	290	348	406
29th year	300	360	420
30th year	310	372	434
31st year	320	384	448

Completed years of service	No of working days		
	5-day week	6-day week	7-day week
32nd year	330	396	462
33rd year	340	408	476
34th year	350	420	490
35th year	360	432	504
36th year	370	444	518
37th year	380	456	532
38th year	390	468	546
39th year	400	480	560
40th year	410	492	574

## Appendix 6C: Sample undertaking relating to illness/injury not covered by workers compensation

### THE UNDERTAKING

Undertaking relating to illness/injury not covered by workers' compensation

In the event of any damages or compensation being recovered by me either in a contested action or by way of settlement of any claim other than under the *Workers' Compensation Act 1987*, made in respect of an injury which occurred on ..... (date) involving myself and ..... (defendant) ....., I undertake, in consideration of the granting to me of sick leave to refund to the Department of ..... the monetary value of sick leave granted to me as a result of the abovementioned injury or illness.

I understand that, should any damages or compensation received by me represent a reduction from those which would have been received but for my contributory negligence, the Department may, in its discretion, reduce the amount of the monetary value of the sick leave required to be repaid as a result of this undertaking.

I further understand that this document is legally binding, and that, in claiming for compensation or damages, I must include a claim for the monetary value of sick leave granted as a result of the injury or illness. Further, the monetary value of sick leave granted is to be included in any assessment of damages or compensation. The monetary value of the sick leave granted must then be re-paid to the Department when the claim for compensation or damages has been paid.

Dated this ..... day of ....., 2.....

(Signed) .....

(Witness) .....

## Appendix 6D: Sample authority relating to illness/injury not covered by workers compensation

### Authority relating to illness/injury not covered by workers' compensation

To ..... (Insurer)

In the event of my recovering any damages or compensation (either in a contested action, or by way of settlement of any claim) in respect of an injury sustained by me on the ..... day of ....., 20...., involving myself and .....  
I hereby authorise and direct you to pay to the Department of .....  
the amount equivalent to the paid sick leave granted to me by the said Department in respect of the abovementioned injury or illness, out of any monies that are or may subsequently become payable by you either as a verdict in or as settlement of the action or claim.

And I hereby declare that:

(1) A certificate signed by or on behalf of the department head of the said Department in respect of paid leave granted to me shall, for the purpose of any payment under this authority, be conclusive evidence of such paid leave granted;

(2) I, or a solicitor or agent, acting on my behalf, will provide all information to the department in relation to the claim under the *Workers' Compensation Act 1987*, the injury or illness which gave rise to the claim, and the compensation payable by the insurer;

(3) I will immediately notify and furnish all particulars to the said Department if I, or a solicitor or agent, acting on my behalf, makes a claim being lodged under the *Workers' Compensation Act 1987* for the same injury or illness;

(4) In the event of the claim specified in (3) above being made, I will immediately sign the undertaking, in respect of repayment of sick leave granted, required for claim for compensation and damages made other than under the *Workers' Compensation Act 1987*;

(5) This authority is irrevocable.

Dated this ..... day of ....., 20....

Applicant

Witness

Address

## Appendix 6E: Extended leave - Recognition of service with an authority, the Commonwealth or another State for employees commencing in the NSW public service prior to 1 January 2006

This appendix applies to employees who commenced employment in a NSW public sector agency prior to 1 January 2006, and who are seeking to have prior service with an authority, the Commonwealth or another State recognised for extended leave purposes.

The *Transferred Officers Extended Leave Act 1961* was repealed and replaced by Schedule 3A to the *Public Sector Employment and Management Act 2002* with effect from 1 January 2006. The changes to the recognition of service provisions under Schedule 3A to the *PSEM Act 2002* only apply to employees who commenced with a NSW public sector agency on or after 1 January 2006 (see ["6-6.6 Recognition of Service with an authority, the Commonwealth or another State – employees commencing on or after 1 January 2006"](#) and ["6-6.7 Transfer of entitlements to extended leave"](#)). The recognition of service provisions of the *Transferred Officers Extended Leave Act 1961* will continue to apply to employees who commenced in a NSW public sector agency prior to 1 January 2006.

### 6E-1 Recognition

#### 6E-1.1 Application

Provisions of the *Transferred Officers Extended Leave Act 1961* apply to all NSW government authorities declared under the *Transferred Officers Extended Leave Act 1961* and to the public service departments of the Commonwealth and other States to which the *Public Service Act* or *Acts* of that Public Service apply.

Prior service with those agencies is recognised provided the continuity of service requirements of the *Transferred Officers Extended Leave Act 1961* are satisfied.

A comprehensive list of agencies recognised under the *Transferred Officers Extended Leave Act 1961* is available on HR eXpert.

#### 6E-1.2 Entitlement

Employees who commenced employment in a NSW public sector agency prior to 1 January 2006 are entitled to have any previous service in:

- an authority declared under the *Transferred Officers Extended Leave Act 1961*; or
- the public service of the Commonwealth or any State or Territory of Australia; or
- the armed forces of the Commonwealth of Australia; or
- a department recognised in accordance with Part 3.2 of the *Public Sector Employment and Management Act 2002*, relating to mobility of public sector employees;

recognised for extended leave purposes under the *Transferred Officers Extended Leave Act 1961*, provided that such service meets the continuity requirements under the Act.

#### 6E-1.3 Criteria for eligibility

Employees eligible for recognition of service are those whose services are deemed continuous in terms of the *Transferred Officers Extended Leave Act 1961* and who:

- transferred from a department of the Commonwealth or of any State or Territory public service to which the various Public Service Acts apply or from the armed forces of the Commonwealth of Australia and were employed in a department subsequent to 24 March 1961; or
- transferred from a governmental authority of the Commonwealth or another State or Territory or a New South Wales authority, and were employed in a department on or subsequent to the date of publication of a notice in the Government Gazette that such a governmental authority or State authority is declared to be an employer under the Act.

#### 6E-1.4 Evidence of service to be recognised

An employee requesting recognition of service under the *Transferred Officers Extended Leave Act 1961* is to be informed by the department of the type of documentation required in support of the application and must provide this information to the department.

#### 6E-1.5 Employees dismissed from previous employment

The provisions of the *Transferred Officers Extended Leave Act 1961* do not apply to employees who were dismissed from their previous employment, unless the dismissal was by reason of retrenchment or reduction of work.

### 6E-2 Continuity of service

#### 6E-2.1 Criteria for continuous service

For the purposes of the *Transferred Officers Extended Leave Act 1961* an employee's service is deemed continuous if:

- the employee entered on duty in a NSW Public Service department on the next working day following cessation of employment with the former Government employer, provided that the cessation of employment was for reasons other than dismissal; or
- the employee has been accepted for employment by the NSW Public Service department prior to the last day of service with the former declared governmental employer, in which case a break of up to 2 months may be allowed between cessation of duty with the former declared governmental employer and commencement of duty in the NSW Public Service department; or
- after retrenchment, the employee is reemployed by the same employer within 12 months of the date of retrenchment; or
- immediately after attending a full time course of training under the Commonwealth Reconstruction Training Scheme (CRTS) the employee was reemployed by the same employer.

- If the employee has had a period of service with the armed forces of Australia that was during or partly during a war in which the naval, military or air forces of Australia were engaged, the maximum break allowed between ceasing service with the armed forces and entering on duty in a department is 12 months. This time limit also applies to members of the armed forces who have served in an area prescribed as an operational area for the purposes of section 4(2) of the *Transferred Officers Extended Leave Act 1961* (that is, Special Service).

To enable the department to determine whether an employee's service is war service or special service, the employee is to supply to the department a service record from the Department of Defence.

The breaks in service allowed above do not count as service for the accrual of leave or for any other entitlements.

#### **6E-2.2 Commonwealth Reconstruction Training Scheme (CRTS)**

If an employee was not already in the Public Service at the time of undertaking a course of training under the CRTS, the period of time spent on the course does not count as service, although it does not break the employee's continuity of service. If the employee was already in the Public Service and was granted a period of leave without pay (LWOP) to undertake the course, then the period of LWOP counts as service.

### **6E-3 Transfer of entitlements to extended leave**

#### **6E-3.1 Transfer of entitlements from another NSW public employer**

Transfer of entitlements must be in accordance with Part 3.2 of the *PSEM Act 2002*

For information on liability see "[3-19 Transfer of funds](#)".

#### **6E-3.2 Transfer of entitlements from employment with another government**

If previous governmental service has been recognised, the total period will be regarded as service for the purpose of calculating extended leave. The extended leave entitlement is calculated as if the employee had been employed in the NSW Government for the entire period, less any extended or long service leave taken or paid in lieu by the previous employer.

#### **6E-3.3 Service recognised by previous employer**

When an employee transfers to a department from an employer declared under the *Transferred Officers Extended Leave Act 1961* and if such previous service is accepted by the current employer, all previous service accepted by that previous employer for extended leave purposes is taken into account to the same extent as has already been allowed by the previous employer.

## Chapter 7 **Allowances**

## 7-1 Introduction

This chapter reflects the provisions of the Crown Employees (Public Service Conditions of Employment) Award 2009 (*the Award*).

The current rates are set out in PSIR C2012-03 Review of Meal, Travelling and Other Allowances

Historical rates for allowances can be obtained from the following Department of Premier and Cabinet circulars:

**Table 13** Historical rates for allowances

Date of Effect	Circular Number
13 September 2000	2000-60
1 July 2001	2001-35
1 July 2002	2002-34
1 July 2003	2003-30
1 July 2004	2004-18
1 July 2005	2005-31
1 July 2006	2006-27
1 July 2007	2007-37
1 July 2008	2008-28
1 July 2009	2009-28
1 July 2010	2010-28
1 July 2011	2011-30

## 7-2 Camping and camping allowances

### 7-2.1 Sources of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 34 Camping Allowance and clause 38 Camping Equipment Allowance.

### 7-2.2 Allowances payable

Allowances apply to employees outlined in clause 34 Camping Allowance and clause 38 Camping Equipment Allowance of the Award.

Rates effective from 1 July 2012 are set out in PSIR C2012-03 Review of Meal, Travelling and Other Allowances

### 7-2.3 Established camps – responsibilities of the department

#### 7-2.3.1 General

When camping areas are necessary for employees, such areas are to be provided by the department free of charge to the employees. If necessary, the areas must be enclosed with a stock-proof fence.

#### 7-2.3.2 Accommodation and facilities

1. The department must provide each employee required to camp with accommodation in single cubicles. Each cubicle is to be fitted with the following:
  - ceiling and lining;
  - a bedstead, mattress and pillow;
  - a timber floor and floor covering;
  - a door and movable window of reasonable dimensions, both fitted with a gauze screen;
  - a table or a suitable substitute;
  - a seat and a wardrobe;
  - artificial lighting; and
  - a suitable heater if required.
2. Each cubicle must be lockable.
3. The department must provide a lined bathhouse fitted with one shower for every 10 employees and one wash basin for every 5 employees. Both hot and cold water must be available for showers and wash basins.

#### 7-2.3.3 Washhouses

In all established camps the department must provide an adequate wash house equipped with a gas copper and wash tubs or washing machine and clothes drier if electricity is available. Clothes drying lines and pegs are to be provided.

#### 7-2.3.4 Sanitary requirements

The department must install fly-proof sanitary conveniences in all camps and on the job, and must keep these conveniences clean. There must be sufficient covering to ensure privacy. Sanitary conveniences should be within a reasonable distance of the living quarters and situated so as to preclude the possibility of contamination of the water supply or food of the employees. There must be provision for the effluent from the kitchen, laundry and showers to be carried away and dispersed in such a way to avoid any risk to health. The department must also supply sufficient and proper material to keep the sanitary accommodation safe and inoffensive. The department must arrange for the disposal of any nightsoil.

#### 7-2.3.5 Drainage

The department must ensure adequate drainage for all camps.

#### 7-2.3.6 Garbage and foliage

The department must arrange for the disposal of garbage and keep the camping area free from undergrowth, long grass and dangerous trees.

#### 7-2.3.7 Kitchen

Every camp must have a separate kitchen area which includes:

- fly-proofed windows and doors;
- lined ceiling and covered floors;
- suitable cooking facilities including a stove and oven;
- storage for food and utensils;

- a sink and drainage tray connected to running hot and cold water;
- a refrigerator for food;
- bench space for food preparation;
- artificial lighting;
- a heater, cooling equipment, and adequate ventilation;
- adequate cleaning equipment and materials; and
- tables and seats.

#### 7-2.3.8 Utensils

Employees who are required to camp in the course of their duties, whether they are accommodated in established camps or not, must be provided with the following items in a quantity reasonable for their needs:

- frying pans;
- saucepans;
- baking dishes;
- enamel plates and bowls;
- cutlery;
- drinking mugs and cups;
- chopping boards;
- cutting knives and food preparation utensils;
- dishwashing and drying materials;
- kettles; and
- fire extinguishers.

#### 7-2.3.9 Caravans

The department may, if it is appropriate, provide a caravan or caravans to accommodate employees as an alternative to camp sites. They must be of sufficient size and number to accommodate the number of people occupying them in reasonable comfort, and must, as far as practicable, contain amenities at least equal to those specified in this chapter for camping. There must, as a minimum, be:

- a separate beds;
- mattresses and pillows;
- stove and oven;
- refrigerator;
- wardrobe and cupboard space;
- food preparation bench;
- sink with hot and cold running water;
- table and seats;
- shower recess with hot and cold running water;
- adequate ventilation with heater and cooling equipment;
- artificial lighting; and
- floor covering and gauze on all windows and doors.

### 7-2.4 Non-established camps – responsibilities of the department

#### 7-2.4.1 Items to be provided by the department

- Employees required to camp in other than an established camp or caravan must be provided by the department, without charge, with a tent for sleeping and personal use. It must be of reasonable dimensions to accommodate the number of people occupying the tent. It must have a floor, gauze covering on windows or openings, and, for each employee:
  - a camping bed, mattress and pillow;
  - a mosquito net; and
  - a heavy duty torch and gas lantern.
- If one or more employees are required to camp, they must be provided with the following items in sufficient number for their reasonable needs:
  - a tent of adequate dimensions as required by the employee for equipment storage, work, recreation and food preparation;

- folding chairs and table;
- utensils box;
- food box;
- portable refrigerator and gas cylinder;
- portable stove with wind guard and gas cylinder;
- camping oven;
- adequate water containers;
- washing up basin;
- clothes line and pegs;
- tarpaulins;
- spade;
- axe;
- portable heater with gas cylinder;
- portable shower; and
- first aid kit (medium industrial kit).

#### 7-2.4.2 Hire of equipment

If the department is unable to provide the equipment specified "7-2.3.8 Utensils" and "7-2.4.1 Items to be provided by the department" then (subject to the employee having obtained necessary departmental approval) an employee required to camp is to be:

- reimbursed for the necessary and reasonable cost of hiring such equipment, subject to the production of receipts; or
- paid the daily allowance for providing their own camping equipment, as specified in "7-2.2 Allowances payable"

#### 7-2.4.3 Bedding and sleeping bags

Employees who provide their own bedding or sleeping bag while camping on official business are paid the bedding and sleeping bag allowance, as specified in "7-2.2 Allowances payable" Otherwise the department must provide necessary sheets, blankets or sleeping bag.



## 7-2.5 Provision of transport and travelling allowance

- The department must provide the employee with transport to and from the camp site and home or the usual place of work.
- An employee required to use a private motor vehicle to travel to and from the camp site and home or the usual place of work is paid the appropriate rates under [clause 36](#) – Allowance payable for use of Private Motor Vehicle of the Award, or under the provisions contained in any other industrial instrument applying to the employee.
- If necessary, the department must provide a vehicle to transport employees from the camp site to the temporary work location, and transport for provisions, water, and other essentials.
- If a vehicle available to the employees is not equipped with two-way radio, the department must provide equipment that will allow communication between the vehicle and the camp site.

## 7-2.6 Returning home on weekends

### 7-2.6.1 Special leave entitlement

See [clause 84.7](#) Special Leave of the Award.

### 7-2.6.2 Allowances for home visits

An employee granted leave as provided in [sub-clause 84.7](#) of the Award is to be reimbursed for the actual and necessary travel expenses incurred.

The employee is entitled to:

- first class return rail fare for the journey; or
- reimbursement for the use of their private vehicle either by a motor vehicle allowance at the Casual Rate under [clause 36](#) – Allowance payable for Use of Private Motor Vehicle, of the Award, or an allowance under any industrial instrument covering the subject matter when approval is given to use a private vehicle; or

- an economy class air fare.

## 7-2.7 Travelling time

Nothing in this section deprives an employee of compensation for time spent in travelling as provided in [clause 27](#) – Excess Travelling Time of the Award.

## 7-3 Community Language Allowance Scheme (CLAS)

### 7-3.1 Sources of authority

- [C2008-09](#) Community Language Allowance Scheme
- [C1998-14](#), Community Language Allowance Scheme
- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [Clause 50](#) Community Language Allowance Scheme
- [Community Language Allowance Scheme Handbook](#), published by the Community Relations Commission
- [Community Language Allowance Scheme](#), published by the Community Relations Commission.

### 7-3.2 About the CLAS allowance

The Community Language Allowance Scheme (CLAS) provides an allowance that is paid to members of staff selected by their Department to communicate with clients of the Department in a language other than English as an addition to their normal duties.

### 7-3.3 Rate of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

#### 7-3.3.1 Payment of the allowance

The Community Language Allowance is to be paid as an allowance in the nature of salary for all purposes.

Part time employees receive a **pro rata** allowance.

The CLA is not portable between Departments and is payable only to employees working in a location approved by their Department.

## 7-3.4 Eligibility

To be eligible for the CLA, members of staff nominated by their Department must have:

- passed the CLAS examination conducted by the Community Relations Commission (CRC); or
  - gained accreditation at Interpreter level from the National Accreditation Authority for Translators and Interpreters (NAATI); or
  - a language Recognition award from NAATI.
- They must also be:
- public contact staff, counter staff or other clerical staff who, owing to their language skills, are required to deal with public enquiries;
  - prepared to be identified as possessing a non-English language skill for the purpose of furthering the work of their Department;
  - available to use the language skill as required by the Department; and
  - recognised by their Department as occasional or regular users of their language skill as an addition to their normal duties.

### 7-3.4.1 The CLAS examination

Members of staff selected by their Department to provide assistance under the CLAS must pass a language examination administered by the CRC which assesses the staff member's ability to speak and read a community language at a satisfactory level.

Members of staff who have gained NAATI accreditation at the Interpreter level or a NAATI language Recognition award are not required to undertake a CRC language examination.

The CLAS Examination Policy and Procedure Guidelines are available from the Community Relations Commission at [www.crc.nsw.gov.au](http://www.crc.nsw.gov.au)

#### 7-3.4.2 Base level of assistance

The base level of the CLA is paid to those members of staff who are required to meet occasional demands for language assistance (there is no regular pattern of demand for their skill); and who have passed an examination administered by the Community Relations Commission, or who are NAATI accredited.

#### 7-3.4.3 Higher level of assistance

The higher level is one and a half times the base level. It is paid to staff who, in addition to the requirements for Base Level Assistance, also meet any of the following criteria:

- regularly meet high levels of customer demand involving a regular pattern of usage of the staff member's language skills

OR

- have achieved qualifications of NAATI interpreter level or above. This recognises that staff with higher levels of language skill will communicate with an enhanced degree of efficiency and effectiveness.

Departments determine which types of work attract the higher level of the allowance.

#### 7-3.4.4 Interpreters not eligible

Members of staff who are employed as interpreters and translators or whose particular language skills are an essential requirement of their position are not eligible for the CLA.

### 7-3.5 Interpreters, translators and CLAS recipients

The CLAS is designed to help Departments meet the need to provide on-the-spot assistance for simple, uncomplicated matters such as answering counter enquiries, giving directions to another office, or making an appointment for a further visit.

For matters that will take longer, or require an intensive or formal interview, departments should use professional interpreters. CLAS recipients may not have the professional qualifications in interpreting that are desirable for extended interviews. Moreover, as CLAS duties are additional to a normal full time work load, it is important that CLAS work does not impact adversely on the employee's other work commitments.

### 7-3.6 Administering and monitoring CLAS allowances

Monitoring should result in information that will assist an annual review to recommend for the following year:

- changes needed in languages covered;
- changes needed in locations covered;
- changes in levels of payment;
- additional training needed by CLAS recipients;
- opportunities for CLAS recipients to enhance their qualifications;
- CLAS recipients whose skills need to be reassessed by the Community Relations Commission;
- cancelling allowances paid to recipients whose assistance is no longer needed; and
- changes in the use of professional interpreters.

It is important that any retesting or retraining proposed for employees be discussed helpfully and sensitively with the employee in the first instance. It is especially important that CLAS recipients receive sufficient notice before their allowance is discontinued as this could create difficulties with financial commitments that have to be resolved.

## 7-4 Compensation for personal property

### 7-4.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 47](#) Compensation for Damage to or Loss of Staff Member's Personal Property.

## 7-5 Composite allowance

### 7-5.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 35](#) Composite Allowance.

### 7-5.2 Eligibility

See [clause 35](#) Composite Allowance of the *Award*.

### 7-5.3 Rate of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### Criteria for Payment of allowance

See [clause 35](#) of the *Award*.

### 7-5.4 Employees staying in Government accommodation

See [sub clause 35.6](#) of the *Award*.

### 7-5.5 Broken portions of a day

See [sub clause 35.7](#) of the *Award*.

## 7-6 Cost of travel to and from work

### 7-6.1 Employee's liability

An employee must bear the cost of travel to and from work, unless the department head otherwise determines or the provisions of "7-6.2 Exceptions" below, apply.

### 7-6.2 Exceptions

- If the employee is directed to report for duty at a locality other than the locality at which the employee reported for duty at the beginning of the day; **or**
- if the employee is directed to report for duty on any day or days at a locality other than the locality at which the employee is normally required to report for duty; **and**
- if the employee has already incurred expenditure in relation to travel on that day or those days to the locality at which the employee is normally required to report for duty, **then**
- the cost of travel on that day or those days – up to five days – to the locality at which the employee is directed to report for duty is to be borne by the department.

#### 7-6.2.1 Five day limit

If the department head is satisfied that special circumstances exist, the department head may approve a period of assistance longer than the 5 days specified in "7-6.2 Exceptions".

## 7-7 First aid allowance

### 7-7.1 Sources of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*; [clause 51](#) First Aid Allowance
- [Work Health and Safety Regulation 2011](#).

### 7-7.2 Statutory provisions

The [Work Health and Safety Regulation 2011](#) requires that adequate first aid equipment be available in each building. If no medical or paramedical employees are employed, a first aid service must to be provided by a person qualified to undertake this task.

### 7-7.3 Authority to pay allowances

See [clause 51](#) First Aid Allowance, of the *Award*.

### 7-7.4 Rates of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-7.5 Qualifications

See [subclauses 51.2](#) and [51.3](#) of the *Award*.

Details of accredited trainers for the Occupational First Aid Certificate may be obtained by contacting the WorkCover Authority [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

### 7-7.6 Attendance at training and retraining courses

See [sub clause 51.6](#) of the *Award*.

### 7-7.7 Payment during periods of leave

See [sub clauses 51.4](#) and [51.5](#) of the *Award*.

## 7-8 Flying allowance

### 7-8.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 45](#) Flying Allowance.

### 7-8.2 Rate of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

## 7-9 Forage for Horses

### 7-9.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 49](#) Forage for Horses.
- Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

## 7-10 Higher duties allowance

### 7-10.1 Source of authority

- [Public Sector Employment and Management Regulation 2009](#)

### 7-10.2 Introduction

Under the [PSEM Act 2002](#) and the Public Sector Employment and Management Regulation 2009 the department head is responsible for the manner in which the duties of a vacant position, or a position whose occupant is absent, are carried out.

One option is to have an employee of a lower substantive grade act in the vacant position. This is commonly referred to as relieving in a higher graded position. The information below deals with the way in which employees are selected to relieve in higher graded positions, and the way in which allowances are to be assessed and paid.

If a department head decides to provide relief by way of an employee acting in a higher graded position, this could be used as an opportunity for employee development. Any such decision should best support both the performance of the department and fairness for employees.

#### **7-10.2.1 Chief Executive and Senior Executive Service**

This section does not apply to employees who act in Chief Executive Service and Senior Executive Service positions.

Information on higher duties allowances payable for employees relieving in CES and SES positions can be found in the [SES Guidelines](#) issued by the Department of Premier and Cabinet.

#### **7-10.2.2 No reduction in salary**

An employee's salary or wage cannot be reduced as a result of relieving in another position.

### **7-10.3 Filling of short term vacancies**

#### **7-10.3.1 General**

Departments are advised to develop and establish their own policies and procedures for filling short term vacancies. This subsection is offered only for guidance.

Decisions for relief arrangements must be fair, equitable and follow EEO principles. Higher duties opportunities should be shared fairly amongst employees to develop their knowledge, skills and experience to the benefit of both the department and employees.

#### **7-10.3.2 Selecting employees for a higher duties allowance opportunity**

The criteria for selecting employees for higher duties allowances can be influenced by the immediate work demands and the role of the vacant position. Depending on circumstances the dominant criterion could be either the benefit to employees of a learning opportunity, or the performance advantage likely from selecting the most suitable employee available on the basis of their knowledge, skills, experience and expertise. Ideally,

both objectives will be met to a greater or lesser degree depending, in the department head's judgment, on the demands of the particular situation.

Prior to the start of relief the supervisor of the vacant position is responsible for discussing with the selected employee:

- the full duties of the position (refer to the position description);
- those duties that are to be undertaken by the relieving employee;
- the criteria determining the rate or percentage of the allowance;
- the delegations of the position that can be exercised during the period of relief.

The relieving employee should be provided with continual feedback on their performance with a formal review upon completion of the relief.

### **7-10.4 Conditions for payment**

#### **7-10.4.1 Payment for whole of duties and responsibilities**

A relieving employee who (in the opinion of the department head) has satisfactorily performed all the duties and taken all the responsibilities of the vacant position during the period of relief is to be paid an allowance equal to the difference between the employee's current pay and what the employee would be paid if appointed to the vacant position.

#### **7-10.4.2 Payment for part of duties and responsibilities**

If the relieving employee does not undertake all the duties and responsibilities of the vacant position, the amount of the allowance payable is determined by the department head as set out in "[7-10.11.1 Formula for calculating allowances](#)" and "[7-10.11.2 Application of formula](#)". If there is a disagreement between the employee and the department, the normal grievance procedures are to be followed.

### **7-10.5 Limitations on eligibility**

#### **7-10.5.1 Periods of less than 5 days**

Higher duties allowances are not payable for a period of relief of less than 5 consecutive working days without the approval of the Department Head.

For example, if the period of relief is for one week, and one day of that week is a public holiday (or the relieving employee takes leave during that week), then no higher duties allowance is payable.

If the period of relief is for a period of more than 5 consecutive working days, then any leave taken during such period of relief is to be paid at the rate applicable to the position in which relief is being provided, unless such leave exceeds 5 consecutive working days.

For example:

- an employee relieving in a higher position for 2 weeks who takes 2 days' leave after 3 days in the position is paid at the allowance for the 2 weeks;
- an employee relieving for 3 weeks who takes 6 consecutive working days' leave during the period of relief is paid the allowance for the 9 working days.

#### **7-10.5.2 Full time relief officers**

Employees whose job is to provide relief are not eligible for payment of higher duties allowance

- until a single period of relief in the same position exceeds 13 weeks; or
- unless they act in a position three or more grades higher than their substantive grade.

### **7-10.6 Employees providing part time relief**

#### **7-10.6.1 Ongoing part time relief**

Employees providing part time relief are eligible for payment of a higher duties allowance for any ongoing and predetermined arrangement if the part time equivalent of 5 complete working days is undertaken in the higher graded position.

### 7-10.6.2 Part time allowance

An employee relieving part time on a continuing basis is to be paid an allowance calculated pro rata based on the average number of hours worked per week divided by the full time equivalent hours (see ["7-10.11.3 Calculating part time allowance"](#)).

## 7-10.7 Acting for one year or more

### 7-10.7.1 Payment for leave taken

Employees who have acted for one year or more in the same higher graded position and who, due to extraordinary circumstances, continue to act in that position are entitled to payment of the higher duties allowance for all leave taken during the further period of relief.

### 7-10.7.2 Payment for leave on retirement, resignation or redundancy

If the allowance was paid at the full rate, then payment of accrued recreation and extended leave on retirement, resignation or redundancy is to be at the higher rate of pay.

### 7-10.7.3 Increments

If a lengthy period of acting in the one higher position is unavoidable, the employee so acting may progress by way of the allowance to the pay rate of the next incremental step, provided that a 100% allowance has been paid continuously for a period of 12 months.

If the allowance has been discontinued during a period of leave, the increment should be delayed by a period of time corresponding to the period or periods of leave taken.

### 7-10.7.4 Broken periods of relief for incremental purposes

When an employee's relieving in the higher position or positions has been over broken time periods then the separate relief periods are to be aggregated and taken into account for the purpose of incremental progression within the grade of the position. This applies irrespective of the nature of the work of the position(s).

The relief periods are not included in the aggregation unless the employee's pay for the period (normal pay plus allowance) is equal to or greater than the salary of the position in which the employee is acting.

Aggregation does not apply over any break exceeding six months and any period of leave during which allowance was not paid is not counted in the aggregation.

### 7-10.7.5 Promoted employees receiving payment by allowance

Employees who have been promoted to the vacant position and are receiving payment by way of the allowance pending completion of appointment action should continue to receive the allowance during all paid leave.

## 7-10.8 Relief in positions when personal salary applies

If relief is required in a position normally or previously occupied by an employee receiving a personal salary, the relieving employee's allowance is calculated by reference to the pay the relieving employee would receive if appointed to the position. The normal or previous occupant's personal salary is ignored.

## 7-10.9 Recognition of relief for appointment to a similar grade

If an employee who has been relieving in higher positions is subsequently appointed to a similarly graded position, then the same principles as are set out at ["7-10.7.3 Increments"](#) and ["7-10.7.4 Broken periods of relief for incremental purposes"](#) apply when determining salary and allowances in the new position.

## 7-10.10 Claims for higher duties allowances

### 7-10.10.1 Initiation of claims

The supervisor is responsible for initiating the claim for the payment of higher duties allowance. Employees may initiate claims if the supervisor does not do so, or does not do so promptly. Employees initiating claims should submit them to their supervisor.

### 7-10.10.2 Assessment of allowance to be paid

The initial assessment of the level of payment is the responsibility of the supervisor.

### 7-10.10.3 Payment

For short periods of relief the payment should be calculated and claimed at the completion of relief. For longer periods, calculation and claims should be made at regular intervals such as fortnightly or monthly during the relief period.

## 7-10.11 Calculating higher duties allowances

### 7-10.11.1 Formula for calculating allowances

The following formula is to be used when calculating higher duties allowances:

$$A = \frac{R \times V}{S}$$

**R** represents the duties and responsibilities satisfactorily undertaken during the period of relief;

**S** represents the duties and responsibilities the substantive occupant (or former substantive occupant) would have undertaken during the same period;

**V** represents the difference between the salary or wage to which the employee undertaking the relief would be entitled, if appointed to the position, and the employee's own present salary or wage; and

**A** represents the allowance expressed as an annual rate.

### 7-10.11.2 Application of formula

The application of this formula means that if the employee providing the relief satisfactorily undertakes all the duties and responsibilities that the substantive occupant (or former substantive occupant) would have undertaken, then 100% allowance is payable.

This also applies when a proportion of the duties and responsibilities are satisfactorily undertaken, for example if an employee undertakes 50% of the duties and responsibilities of the substantive occupant during the relevant period a 50% allowance would be payable.

### 7-10.11.3 Calculating part time allowance

A variation of the formula cited above is used to calculate part time allowance:

$$A = \frac{R \times V \times H}{S \times F}$$

A, R, V and S represent the same items as in "7-10.11.1 Formula for calculating allowances";

H represents the hours worked each week in the higher graded position; and

F represents the hours that would be worked in the higher graded position by an employee appointed to that position, working full time.

**Example:** An employee is acting in a higher graded position for 2.5 days each week for three months. The formula is applied as if the employee were acting in the position on a full time basis. Once this full time allowance rate has been calculated, it is reduced in accordance with the proportion of hours actually worked. In this case 2.5 days out of five is actually worked and the allowance is then halved.

### 7-10.11.4 Calculating overtime

A higher duties allowance is to be included in salary for the purposes of calculating overtime only if the duties carried out during the overtime are those of the higher position.

## 7-10.12 Voluntary emergency service and payment of higher duties allowance during such periods

If employees have begun (or would have begun) relief in a higher graded position but are required to take special leave for voluntary duty with an approved NSW emergency service, then the special leave is recognised as part of the period of relief in the higher graded position, as long as all the following conditions apply.

- An emergency exists.
- The employee is trained in the particular emergency work.
- The employee is either the only employee available, or their services are considered essential for the particular emergency.
- The emergency is not confined to weekends or public holidays.
- No other employee is paid to relieve in the higher graded position during the same period.

The special leave is limited to a period of not more than two days during any period of relief of one week, plus an additional day's special leave for each additional week of continuous relief provided thereafter up to a maximum of five days special leave per annum. If special circumstances exist and the department head approves, the allowance may be continued beyond the five day maximum.

## 7-10.13 Temporary appointments

An employee who is appointed to act in a position under section 24 of the *PSEM Act 2002* is eligible to receive an allowance as set out in [clause 18](#) of the Regulation. This allowance is calculated on the same basis as that described in "7-10.4.1 Payment for whole of duties and responsibilities".

Leave taken during the appointment to act in a position is paid at the rate applicable to the position.

An employee may also be seconded to a position under [section 86](#) Temporary staff transfers (secondments between agencies) of the *PSEM Act 2002*. More information on these appointments can be found in Chapter 3.

## 7-11 Motor vehicle allowances

### 7-11.1 Sources of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 36](#) Allowance payable for Use of Private Motor Vehicle, [clause 37](#) Damage to Private Motor Vehicle used for Work and [clause 48](#) Garage and Car Port Allowance.

### 7-11.2 Eligibility

See [clause 36](#) of the *Award*.

### 7-11.3 Rates of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-11.4 Criteria for payment of allowances

#### 7-11.4.1 Official business rate

The Use of Private Motor Vehicle – Official Business rate is defined in [sub clause 36.3.2](#) of the *Award*.

#### 7-11.4.2 Casual rate

The use of Private Motor Vehicle – Casual Rate is defined in [sub clause 36.3.1](#) of the *Award*.

#### 7-11.4.3 Motor cycles and motor scooters

The allowance for motor cycles and motor scooters is paid regardless of the total number of kilometres travelled per annum, the engine capacity and whether the journey is official business or casual.

### 7-11.5 Limitations on and deductions from payment

See [sub clause 36.4](#) of the *Award* for full details of deductions and limitations on the payment of motor vehicle allowances.

### 7-11.6 Insurance requirements

See [sub clause 36.5](#) of the *Award*.

### 7-11.7 Private vehicles damaged on official business or other approved travel

#### 7-11.7.1 Reimbursement of insurance policy excess

See [sub clause 37.1](#) of the *Award*.

#### 7-11.7.2 Broken windscreens

See [sub clause 37.2](#) of the *Award*.

#### 7-11.7.3 Claims for reimbursement

Claims for reimbursement under clause 37 of the *Award* should be accompanied by sufficient detail for the department to assess the claim. A suggested claim format is at "[Appendix 7A: Sample - Claim form for motor insurance \(private vehicle damage on official business\)](#)" of this Chapter.

### 7-11.8 Tolls, charges and miscellaneous costs

See [sub clause 36.6](#) of the *Award*.

### 7-11.9 Towing a trailer or horse float

See [sub clause 36.7](#) of the *Award*.

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-11.10 Garage and carport allowances

See [clause 48](#) of the *Award*.

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-11.11 Use of private motor vehicle in conjunction with air travel

If an employee uses their private motor vehicle to travel to and from an airport for approved travel, the department head may approve an allowance being paid for the journey to and from the airport at the casual rate.

### 7-11.12 Use of private motor vehicles – temporary work locations

If approval is given by the department head for an employee to proceed to a temporary work location (TWL) for 2 or more days, approval may also be given for the employee to take their private car to the temporary work location.

If approval is given, motor vehicle allowances are to be paid in accordance with this table:

**Table 14** Vehicle allowances

Situation	Official business use	Rate Payable
First journey to and last journey from TWL	Required	Official Business
Other journeys between home and TWL	Required	Casual Rate
Official business use at TWL	Required	Official Business
All travel to and from TWL	Not required	Casual Rate

### 7-11.13 Refund of motor vehicle licence fees

Motor vehicle licence fees and expenses associated with obtaining the license (that is, charges paid to the Roads and Maritime Authority) should only be refunded

when an employee is not employed as a driver, and is directed by the employer to obtain or hold a licence for departmental purposes.

If the employee has a licence for private purposes and this is made use of occasionally, no refund is to be made.

## 7-12 On-call allowance

### 7-12.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 92 On-Call (Standby) and On-call Allowance.

### 7-12.2 Rate of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-12.3 General

See [clause 92](#) of the *Award*.

## 7-13 Overseas travelling allowances

### 7-13.1 Source of authority

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 41](#) Overseas Travel.
- [M2009-04, Official Travel – Within Australia and Overseas](#).
- [PSCC2012-08](#), Australian and Overseas Travelling Allowances for Official Travel by Senior Officials
- [C2003-05, Travelling Overseas on Official Business - Australian Department of Foreign Affairs and Trade Travel Advice](#).

## 7-13.2 Eligibility

Employees who in the course of their duty are required to travel overseas may be eligible for overseas travelling allowances. The policy on procedures relating to overseas travel by Government employees is detailed below.

### 7-13.2.1 Approval of Minister

The appropriate Minister must approve all official overseas travel, including to New Zealand and Papua New Guinea, by employees. Ministers decide what travel is essential for their administrations and if it can be funded within their budget allocations. All Ministers are required to maintain a close personal interest in this area of activity, and the date, purpose and cost of each overseas trip needs to be justified and recorded by departments for audit purposes.

### 7-13.2.2 What constitutes official overseas travel

Official overseas travel is travel out of Australia by a statutory appointee or by an employee of a department, sub department, board, commission or other authority coming within a Minister's administration when:

- the employee is on duty;
- the employee undertakes some official duty during the course of a private overseas visit;
- the employee is on special leave for any purpose;
- the employee undertakes official duty during absence overseas on leave granted for study purposes; or
- the employee proceeds overseas for a tour of duty (on exchange or otherwise) with another government or a body such as the United Nations or one of its agencies.

### 7-13.2.3 Strictest economy to be exercised in overseas visits

The strictest economy is to be exercised on overseas visits. Ministers are to be personally satisfied that procedures are in place which establish that a proposed visit is essential and that significant benefit will accrue to their administration or to the State. Sound reasons should be

advanced in support of any recommended proposals. The length of absence and costs must be kept to the minimum practicable.

### 7-13.2.4 Period of visit extended for private purposes

Ministers may approve employees taking leave while undertaking official overseas travel. Each application should be considered on its merits. Any associated leave approved by a Minister for an employee should be recorded.

### 7-13.2.5 Undertaking private visits and seeking to be on duty

See 6-18.14.6 Visits to other countries.

### 7-13.2.6 Requirements for applications to attend international conferences

The presentation of a paper should normally be regarded as the minimum requirement when considering applications for employees to attend international conferences.

### 7-13.2.7 Representation at overseas conferences

Official representation at overseas conferences should be kept to a minimum.

### 7-13.2.8 Study scholarships and study leave

Study overseas on scholarship is not considered official overseas travel even though the employee concerned may be on part or full salary for the period of the scholarship or study leave, or may receive financial support from the employing department during that time. See 6-20 Study, employee development and training activities.

The critical question in study leave cases is whether or not the employee is to be regarded as being on duty, conducting official business, or performing an official function during the absence overseas. If so, the procedures for official travel should be followed.

### 7-13.2.9 Protocol

Correct protocol should be observed in connection with official visits overseas and relations with foreign governments. From time to time the Commonwealth

Department of Foreign Affairs and Trade (DFAT) supplies the Department of Premier and Cabinet with policy on this subject. Contact: [dfat.nsw@dfat.gov.au](mailto:dfat.nsw@dfat.gov.au)

The current information as advised by DFAT is very useful in the planning of official overseas visits. Protocol and Business Operations, within the NSW Department of Premier and Cabinet can offer further advice and assistance together with any updates on changes made by DFAT.

### 7-13.2.10 Department of Foreign Affairs and Trade warnings about visits to other countries

If DFAT has issued a warning not to travel to another country, this direction overrides any approval given by a Minister.

All travellers are advised to visit the DFAT Smart Traveller website for travel advice about the countries they are planning to visit:

<http://www.smarttraveller.gov.au/zw-cgi/view/Advice/>

### 7-13.2.11 Foreign governments not to be approached

Foreign governments should not be approached directly by a State Minister or employee seeking any form of assistance with overseas visits. This applies even if an established liaison already exists with a representative of a foreign government or one of its departments. Such requests should be directed through the diplomatic or consular missions.

### 7-13.2.12 Health

Proper medical advice should be sought prior to undertaking any long distance or overseas travel. It is recommended that public officials familiarise themselves with the content of the Travel Health section of the DFAT website called Smart Traveller:

<http://www.smarttraveller.gov.au/tips/travelwell.html>



### 7-13.2.13 Other Matters

Officers travelling overseas should keep themselves aware of updated travel advice on the DFAT website: [www.dfat.gov.au](http://www.dfat.gov.au) and register their travel itinerary online at [DFAT Registration](#).

### 7-13.2.14 Records

Each department is to keep a central record of all its official overseas travel. This record may be in whatever form is appropriate for the department and full details of any overseas travel are to be included in the department's annual report.

## 7-13.3 Rates of allowance

The Public Service Commission annually issues a circular regarding the payment of a daily allowance to officers travelling overseas on official business. See [PSCC2011-04, Australian and Overseas Travelling Allowances for Official Travel by Senior Officials](#)

## 7-13.4 Salary and payment of allowances

During an official visit, salary continues to be paid in Australian currency, and allowances and expenses as follows.

The daily travelling allowances specified for each location as described in ["7-13.3 Rates of allowance"](#) are payable to employees while on duty in that country from the time of their arrival at the centre where the duties are to be performed until the time of departure from that centre on the return journey to Australia, or the journey to the next centre where duties are to be performed.

If the department head is satisfied that an employee has incurred an expense during the time spent in flight, the employee may be reimbursed for the amount of the expense.

## 7-13.5 Expenses to be met from allowances

As a general rule, the travelling allowance covers the cost of meals and incidental expenses but not accommodation. The cost of accommodation is paid on the basis of actual reasonable expenses incurred. Incidental expenses would include, for example, laundry and dry cleaning, taxi fares (other than for official business), newspapers and magazines, private telephone calls and gratuities. The following payments will be met separately by the department:

- cost of conveyance to and from the overseas locality, and cost of conveyance on official business to that locality;
- insurance premium not exceeding \$1,173.00 (Aus) on essential personal effects carried by the employee;
- charges for overseas business telephone calls made at the overseas locality;
- charges for necessary health examinations, inoculations and vaccinations;
- fees for necessary passports and visas;
- compulsory entry or exit fees, or imposts of overseas authorities or governments; and
- necessary payments incurred for the handling of official material and documents or a Minister's luggage.

If an employee's itinerary in Australia or overseas involves accommodation or activities such as conferences and seminars at which meals are included in the price, the department should consider whether it is appropriate that the employee's daily allowance be discounted for the included meals.

## 7-13.6 Variation of rates

### 7-13.6.1 Allowance considered insufficient

If it is demonstrated to the satisfaction of the department head that the travelling allowance payable to an employee is insufficient to cover actual expenses incurred, the department head may approve payment necessary to meet

those expenses. Justification for the expense must be in respect of the entire period of travel overseas and not only in respect of particular segments of the journey.

### 7-13.6.2 Employees accompanying Ministers and senior staff

If an employee is travelling with a Minister of the NSW Government or a very senior employee and has been directed by the Minister or senior person to travel by the same class of travel and to reside in the same accommodation, the department head must approve a travelling allowance at a higher than normal rate that would adequately cover expenses properly and reasonably incurred.

### 7-13.6.3 Employees accompanying department heads and delegations

If a delegation or party consists of employees in more than one of the categories of travelling allowances, the rate to be applied to each employee is to be the rate appropriate to the classification of the position occupied by the employee. However, cases in which special circumstances apply should be referred to the Director General of the Department of Premier and Cabinet.

## 7-13.7 Other overseas travelling allowance issues

### 7-13.7.1 Travel by other than the approved route

If an employee elects to travel by other than the approved method or route, travelling allowances are calculated on the basis of travel by the direct approved method and route.

### 7-13.7.2 Calculation of daily portion of allowance

In the calculation of the daily portion of the allowance:

- the time of day used for that purpose will be the time and date at the places of departure and destination respectively;
- only whole hours are counted : the period is rounded down to the nearest hour; and

- when the allowance is payable for less than a day the allowance is paid at an hourly rate of 1/24th part of the daily rate.

#### 7-13.7.3 Approval of special rates

A department head may ask the Director General of the Department of Premier and Cabinet to approve special rates to meet unusual circumstances.

#### 7-13.7.4 Travel bookings

Departments are advised to make travel arrangements for air and related travel services through the contractors appointed from time to time by NSW Procurement, within the Department of Finance and Services. Details on the current contract are set out in [C2005-46 Air Travel Bookings](#).

## 7-14 Remote areas – allowances and travelling on recreation leave

### 7-14.1 Sources of authority

*Crown Employees (Public Service Conditions of Employment) Award 2009*, [clause 39](#) Allowance for Living in a Remote Area and [clause 40](#) Assistance to staff members stationed in a remote area when travelling on recreation leave.

### 7-14.2 Remote areas – living allowance

#### 7-14.2.1 Definition

See [subclause 39.2](#) of the *Award*.

#### 7-14.2.2 Dependant

See [subclauses 39.3](#) and [39.4](#) of the *Award*.

#### 7-14.2.3 Eligibility

See [subclause 39.1](#) of the *Award*.

Departmental temporary employees, such as relief staff, who are employed for short periods are not eligible to receive a remote areas allowance. See [sub clause 39.5](#) of the *Award*.

An employee working continuously in a remote area but for reduced hours is eligible to receive the allowance pro rata. The allowance payable is calculated by multiplying the appropriate rate of allowance by the number of hours worked per week by the employee and dividing by the standard weekly hours for a full time employee in the same classification:

$$\text{P/T allowance} = \frac{\text{Rate as in 7-14.3 Rates of allowance} \times \text{Wkly hrs worked}}{\text{Weekly hours worked by full time employee}}$$

Employees who reside within the defined area and whose dependants reside east of the line will be paid the allowance at the non-dependant rate.

#### 7-14.2.4 Criteria for dependant allowance rate

See [subclause 39.3](#) of the *Award*.

### 7-14.3 Rates of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-14.4 Military leave and remote areas allowance

See [subclauses 39.6](#) and [39.7](#) of the *Award*.

### 7-14.5 Remote areas – travelling on recreation leave

#### 7-14.5.1 Definition

See [subclause 40.1](#) of the *Award*.

#### 7-14.5.2 Use of private vehicle – rates

Employees who travel on recreation leave by their own vehicles receive the casual rate for a maximum number of kilometres. See part B of Attachment to [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#).

### 7-14.5.3 Other transport – rates

#### 7-14.5.3a General

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

These expenses may include the cost of overnight accommodation for the employee and their dependants but is not to include payments for taxi fares or meals.

#### 7-14.5.3b Rail travel

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

#### 7-14.5.4 Accommodation costs

If an employee is obliged to obtain overnight accommodation when travelling to and from the recreation destination, an additional allowance is payable at the rate of \$2.50 for the employee, spouse and each dependent child with the following conditions;

- When the employee is travelling by their own vehicle, with departmental approval, the allowance is payable for only two nights on each of the forward and return journeys.
- When the employee is travelling by other means than their own vehicle the allowance is payable on one night only on each of the forward and return journeys.
- No payment is to be made for accommodation costs unless the employee travels at least 480 kilometres by the nearest practicable route from the place where the employee is indefinitely stationed.

The allowance for accommodation costs is payable as appropriate whether or not the employee actually expends any money on overnight accommodation. It is also payable if the employee camps or uses a caravan.

#### 7-14.5.5 Limitations

See [subclauses 40.1](#) and [40.3](#) of the *Award*.

## 7-15 Room at home as an office

### 7-15.1 Source of authority

- Crown Employees (Public Service Conditions of Employment) Award 2009, [clause 43](#) Room at Home Used as Office.

### 7-15.2 Rate of allowance

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-15.3 Eligibility

#### 7-15.3.1 If no departmental office is provided in a particular location

See [sub clause 43.1](#) of the Award.

#### 7-15.3.2 If an office exists in a particular location

See [sub clause 43.2](#) of the Award.

#### 7-15.3.3 Requirements

See [sub clause 43.3](#) of the Award.

## 7-16 Semi-official telephone subsidy

### 7-16.1 Source of authority

- Crown Employees (Public Service Conditions of Employment) Award 2009, [clause 44](#) Semi official Telephones.

## 7-17 Travel arrangements

### 7-17.1 Source of authority

- Crown Employees (Public Service Conditions of Employment) Award 2009, [clauses 26–33](#) outlining the provisions for travel arrangements.

## 7-17.2 Travelling compensation

See [clause 26](#) of the Award.

### 7-17.3 Excess travelling time

#### 7-17.3.1 Excess travelling time

See [clause 27](#) of the Award.

#### 7-17.3.2 Waiting time

See [clause 28](#) of the Award.

### 7-17.4 Meal allowances for one day journeys

See [clause 29](#) of the Award.

#### 7-17.4.1 Rates of meal allowances

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

### 7-17.5 Accommodation and related allowances

An employee who performs official duty at or from a temporary work location and, as a result, is required to obtain temporary accommodation is to be compensated in accordance with [clause 26](#) and [clause 32](#) of the Award for the expenses properly and reasonably incurred during the time spent away from their residence.

#### 7-17.5.1 Rates of allowances

Rates effective from 1 July 2012 are set out in [PSIR C2012-03 Review of Meal, Travelling and Other Allowances](#)

Where a staff member is required to work in the same temporary work location for more than 35 days but less than 6 months, the above allowances are reduced by 50% for all locations. See [sub clause 26.8](#) of the Award.

Different rates and conditions apply when staying in Government Accommodation. See [clause 26](#) of the Award.

#### 7-17.5.2 Claiming the allowance or actuals

See paragraph [26.8.2](#) of the Award.

## 7-17.6 Adjustment of allowances

A department head may adjust the amount of the allowance in the circumstances set out in [clause 31](#) of the Award.

If the department head is satisfied that owing to exceptional circumstances an employee is required to continue in temporary accommodation for longer than 6 months, the department head may extend the allowances payable beyond the 6 month period.

#### 7-17.6.1 Production of receipts

See [clause 32](#) of the Award.

#### 7-17.6.2 Travelling distance

The department head determines the need for overnight accommodation, in accordance with [clause 33](#) of the Award.

#### 7-17.6.3 Composite allowance

See also "[7-5 Composite allowance](#)".

## 7-18 Travelling and meal allowance for employees required to attend examinations

### 7-18.1 Source of authority

- Department of Premier and Cabinet Determination, Travel/M Meal Allowance – Examinations.

### 7-18.2 Eligibility

When an employee is required to attend an examination (under the *PSEM Act 2002* or the Regulation, or by an award, agreement or determination) and has to travel to another centre to do so, the department assists with expenses in the following manner:

- payment of the first class rail fare; or

- if the employee uses a private motor vehicle, a vehicle allowance is to be paid at the casual rate under clause 36 of the *Award*, up to the value of the rail fare.

The employee is also to be reimbursed for the actual costs incurred in obtaining any necessary and reasonable meals, and reasonable overnight accommodation if required, less \$16.00 provided that the accommodation and meals were actually bought and paid for.

#### **7-18.2.1 Nature of examinations**

This provision includes both medical examinations and tests of knowledge, skills and ability.

Department heads granting such leave may, if appropriate, approve payment of assistance under "7-18.2 Eligibility".

## **7-19 Uniforms, protective clothing and laundry allowance**

### **7-19.1 Source of authority**

- *Crown Employees (Public Service Conditions of Employment) Award 2009*, clause 46 Uniforms, Protective Clothing and Laundry Allowance.

### **7-19.2 Rate of allowance**

Rates effective from 1 July 2012 are set out in PSIR C2012-03 Review of Meal, Travelling and Other Allowances

## **7-20 Skills shortage allowances**

The power to review and pay this allowance was delegated to Department Heads from 3 November 2004 – Delegation 11. The allowance is payable to positions at or above Grade 12 but is not payable to Senior Officers.(Department of Premier and Cabinet C2004-37 - Manual of Delegations to Department Heads).

Any case for retention of the skills shortage or other allowance would need to be based on strong evidence of attraction and retention difficulties that are significantly disrupting the department's service delivery.

Retention of these allowances must be reviewed by the department head at least every 12 months or on the position becoming vacant, whichever occurs first.

The maximum allowance payable remains at \$13,000 per annum.



## Chapter 8 **Model Code of Conduct**

## 8-1 Introduction

### 8-1.1 Introduction

Public employment carries with it a particular obligation to act in the public interest. It requires standards of professional behaviour from employees that promote and maintain public confidence and trust in the work of government departments.

A code of conduct provides the employees of government departments with guidance on which to base their day to day decisions and actions in a variety of workplace contexts. A code of conduct also outlines the minimum standards of behaviour expected of employees in a range of specific situations.

In November 2011, the NSW Government introduced an Ethical Framework into the *Public Sector Employment and Management Act 2002 No 43* to ensure all NSW public servants are aware of the ethical responsibilities in their daily work - to exercise judgement and be accountable for the decisions they make – and to guarantee a merit-based, apolitical and professional public sector.

Simultaneously, the Government established a Public Service Commission, with an independent Commissioner, with functions that include promoting and maintaining the core public service values contained in the Ethical Framework.

The Public Service Commission (PSC) will work with agencies to progressively implement the Ethical Framework.

### 8-1.2 Associated documentation

#### 8-1.2.1 Legislation

The main legislation applying to employees is the *Public Sector Employment and Management Act 2002 (PSEM Act 2002)*. The *PSEM Act 2002* contains the Ethical Framework

Other pieces of legislation may also be relevant.

- [Anti-Discrimination Act 1977](#)

- [Crimes Act 1900](#)
- [Government Information \(Public Access Act\) 2009](#)
- [Independent Commission Against Corruption Act 1988](#)
- [Industrial Relations Act 1996](#)
- [Ombudsman Act 1974](#)
- [Public Interest Disclosures Act 1994](#)
- [Public Finance and Audit Act 1983](#).
- [M1997-10](#) Model Code of Conduct for NSW Public Agencies

#### 8-1.2.2 Public Service Commission documents

This model code of conduct was originally issued as a standalone document attached to the Model Code of Conduct for NSW Public Sector Agencies Memorandum ([B1997\\_002](#)). It was subsequently moved into its own chapter of the Personnel Handbook while the Guidelines for Developing and Implementing a Code of Conduct ([D1997\\_005](#)) remained as a separate document.

#### 8-1.2.3 Other related documents

- Use of Communication Devices Circular ([B1999\\_005](#))
- Policy And Guidelines For The Use By Staff Of Employer Communication Devices ([D1999\\_007](#))
- Protocol For Acceptable Use Of The Internet And Electronic Mail ([D1999\\_008](#))
- [Public Interest Disclosures Act 1994 No 92](#)
- [M2011-17](#) Public Interest Disclosures Policies and other Changes.

## 8-2 Applicability of this model code of conduct

- Departments should use the values and principles of the legislated Ethical Framework and the specific requirements in this model code as the basis for developing their own code. They should also include

additional topics and examples which reflect the specific needs or circumstances of their department as outlined in the guidelines.

- The provisions of this code apply only indirectly to employees insofar as this code will provide a model for each department to develop their own code of conduct.

## 8-3 Values and principles for all public employees

The *Public Sector Employment and Management Act 2002* sets out the following Ethical Framework for the public sector.

### 8-3.1 Objective

The Ethical Framework:

- (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.

### 8-3.2 Public sector core values

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

### 8-3.3 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.

### 8-3.4 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.

### 8-3.5 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.

### 8-3.6 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.

## 8-4 Guide to ethical decision making

To assist in fostering a climate of ethical awareness, conduct and decision-making in departments, employees may find it useful to refer to or consider, either by themselves or in consultation with others such as their peers or supervisor, the following five points:

1. Is the decision or conduct lawful?

2. Is the decision or conduct consistent with Government policy and in line with the department's objectives and code of conduct?
3. What will be the outcomes be for the employee; work colleagues; the department; and other parties?
4. Do these outcomes raise a conflict of interest or lead to private gain at public expense?
5. Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

### 8-4.1 Conflicts of interest

Conflicts of interest exist when it is likely that an employee could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty. Conflicts of interest that lead to partial decision-making may constitute corrupt conduct.

Some related interests that may give rise to a conflict of interest include:

- financial interests in a matter the department deals with or having friends or relatives with such an interest that the employee is aware of;
- personal beliefs or attitudes that influence the impartiality of advice given;
- personal relationships with the people the department is dealing with or investigating that go beyond the level of a professional working relationship;
- secondary employment that comprise the integrity of the employee and the department; and
- party political activities or making adverse political comments that relate to the department's work.

An individual employee may often be the only person aware of the potential for conflict. It is therefore their responsibility to avoid any financial or other interest that could compromise the impartial performance of their duties, and disclose any potential or actual conflicts of interest to their manager or other senior employee.

If employees are uncertain whether a conflict exists, they should discuss the related interest matter with their manager and attempt to resolve any conflicts of interest that may exist.

To resolve any conflicts of interest that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include:

- recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision;
- the employee relinquishing the personal interest; and
- the employee transferring (at no disadvantage in their terms and conditions of employment) from the area of work or particular task where the conflict arises.

Disputes over alleged conflicts of interests may be resolved through the department's normal grievance handling procedures.

### 8-4.2 Acceptance of gifts or benefits

Employees should not accept a gift or benefit that is intended to, or likely to, cause them to act in a partial manner in the course of their duties. Principal officers may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process.

Employees should advise an appropriate senior member of employees if they believe they have been offered a bribe or if they have been offered or received a favour or benefit. Employees dealing with or having access to sensitive investigations or commercially sensitive information should be particularly alert to inappropriate attempts to influence them.



## 8-5 Discrimination and harassment

Employees must not harass or discriminate against their colleagues or members of the public on the grounds of sex, marital status, race, colour, nationality, ethnic or national origin, ethno-religious identity, descent, age, disability, homosexuality, transexuality or carer's responsibilities. Such harassment or discrimination may constitute an offence under the *Anti-Discrimination Act 1977*. In addition, employees must not harass or discriminate on the grounds of political conviction.

Supervisors must make sure that the workplace is free from all forms of harassment and discrimination. They should understand and apply the principles of equal employment opportunity and ensure that employees they supervise are informed of these principles. Supervisors should also take all necessary steps, such as training and other active measures, to prevent and deal with harassment and discrimination in their work area.

### 8-5.1 Fairness and equity

Issues or cases being considered by employees should be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a non-discriminatory manner, and in conformity with natural justice.

When using any discretionary powers, employees should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

## 8-6 Public comment on the work of the department

Public comment by employees includes public speaking engagements, comments on radio and television or in letters to newspapers, and expressing views in books, journals or notices if it is expected that the comments will spread to the community at large.

Employees, as individual members of the community, have the right to make public comment and enter into public debate on political and social issues. However, there are some circumstances in which this is inappropriate. For example, situations when the public comment, although made in a private capacity, may appear to be an official comment on behalf of the employee's department. In such circumstances, employees should preface their remarks with a comment that they are made in a private or union capacity and do not represent the official view of the department concerned.

Employees should follow the procedures established by their department for making public comment on the work of their department. As a general rule, they can disclose official information that is normally given to members of the public seeking that information, but should only disclose other official information or documents when:

- in the course of their duties;
- when proper authority has been given;
- required to, or authorised, do so by law; or
- when called to give evidence in court.

In these cases, comments made by employees should be confined to factual information and should not, as far as possible, express an opinion on official policy or practice unless required to do so by the circumstances of the particular situation (for example, when asked to do so in court).

Comments made on matters pertaining to union business by members of unions in their capacity as a local delegate within the department or by union office holders employed by the department are permissible under this code.

## 8-7 Protecting confidential information

Departments must have clearly documented procedures regarding the storage, disclosure and distribution of confidential or sensitive personal, commercial or political information. Employees that handle such information should follow these procedures and must take special

precautions to make sure that it is not disclosed without clear authority. Official information must only be used for the work-related purpose intended and not for personal benefit.

Unless authorised to do so by legislation, employees must make sure that they do not disclose or use any confidential information without official approval. Unauthorised disclosures may cause harm to individuals or give an individual or a department an improper advantage. The integrity and credibility of the department may also be damaged if it appears unable to keep its information secure.

All employees must make sure that confidential information, in any form (such as computer files), cannot be accessed by unauthorised people and that sensitive information is only discussed with people, either within or outside the department, who are authorised to have access to it.

## 8-8 Use of official facilities and equipment

Employees are expected to be efficient and economical in their use and management of public resources, including their own work time. They should be scrupulous in their use of public property and services.

Official facilities and equipment should only be used for private purposes when official permission has been given. This may include short private local telephone calls and limited private use of facsimile equipment that does not disrupt official work.

Managers may also approve the use of facilities, such as meeting rooms and equipment, by non-profit professional and community organisations in which employees are volunteers as long as there is no significant cost to the department.

### 8-8.1 Telecommunications equipment

Departments and employees should be aware of the Use of Communication Devices Circular ([B1999\\_005](#)) and its associated directives the Policy And Guidelines For The Use By Staff Of Employer Communication Devices ([D1999\\_007](#)) and Protocol For Acceptable Use Of The Internet And Electronic Mail ([D1999\\_008](#)).

## 8-9 Secondary employment

Employees of departments covered by the *PSEM Act 2002* must have the approval of their department head before they engage in any form of paid employment outside their official duties. As far as practicable, public authorities should adopt this policy.

Employees must also carefully consider whether the organisation offering them secondary employment may adversely affect the performance of their Public Service duties and responsibilities or give rise to a conflict of interest. This applies whether they are working full time, part time or only temporarily employed.

See also [5-9 Private employment](#).

## 8-10 Political and community participation

Employees must make sure that any participation in party political activities does not conflict with their primary duty as a public employee to serve the government of the day in a politically neutral manner.

This is important because of the need to maintain Ministerial and public confidence in the impartiality of the actions taken and advice given by public employees. What is considered appropriate by a department head in any particular case will depend on the nature of the issue, the position held by the employee, the extent of the employee's participation, and their public prominence.

If employees become aware that a potential conflict of interest has arisen or might arise, they should inform their department head immediately and may have to stop the political activity or withdraw from the areas of their work where the conflict is occurring.

Special arrangements apply to employees who are contesting State or Federal elections. Details of these arrangements are in [5-10 Employee contesting Federal and State elections](#).

Within the context of the requirements of this model code, employees are free to fully participate in voluntary community organisations and charities and in professional associations.

## 8-11 Reporting corrupt conduct, maladministration and waste

Employees are urged to report suspected corrupt conduct, as well as maladministration and serious and substantial waste of public resources. The *Public Interest Disclosures Act 1994* provides certain protections against reprisals for employees who voluntarily report such matters (but not vexatious or malicious allegations), either to the principal officer of a public authority, or to one of the three investigative bodies; the Independent Commission Against Corruption, the Auditor-General or the Ombudsman.

Disclosures may also be made to other officers of a public authority under its internal reporting procedures. In addition, under circumstances specified in this *Act*, protected disclosures may be made to a Member of Parliament or a journalist.

If disclosures are made to an external investigating body, those concerning corrupt conduct should be made to the Independent Commission Against Corruption. Disclosures concerning maladministration should be made to the Ombudsman while disclosures concerning substantial waste of public money should be made to the Auditor-General.

Supervisors must ensure that all employees have information about the department's internal reporting procedures. The person dealing with the protected disclosure should notify the employee who made the disclosure of the action taken or proposed to be taken in relation to the disclosure and the outcome of such action.

More information about protected disclosures is available in the *Public Interest Disclosures Act 1994*. Also see [M2011-17 Public Interest Disclosures Policies and other Changes](#) and the Ombudsman's Protected Disclosures Guidelines. In addition, particular requirements to report suspected corrupt conduct are placed on principal officers by the *Independent Commission Against Corruption Act 1988*.

## 8-12 Post separation employment

Employees should not use their position to obtain opportunities for future employment. They should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the department. If they do, there is a conflict of interest and the integrity of the employee and their department is at risk.

Former employees should not use, or take advantage of, confidential information that may lead to gain or profit obtained in the course of their official duties until it has become publicly available.

All employees should be careful in their dealings with former employees of the department and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.

## 8-13 Lobbying

All persons employed, contracted or engaged in an agency must comply with the NSW Government Lobbyist Code of Conduct published on the Department of Premier and Cabinet's website [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au).

This provision applies only to an agency which is a Division of the government Service as defined in section 4A of the *Public Sector Employment and Management Act 2002*.

## Chapter 9 **Management of Conduct and Performance**

## Chapter 9- Management of Conduct and Performance

This Chapter was updated January 2010 and contains provisions applying from June 2003.

This Chapter contains general commentary.

- The **Procedural Guidelines** issued by the Public Service Commissioner pursuant to section 44 of the *Public Sector Employment and Management Act 2002* is at Appendix 9-A.
- Guidelines on dealing with unsatisfactory performance are in "[Appendix 9B: Unsatisfactory performance](#)" on [page 215](#)
- Guidelines on dealing with serious offences are in [Appendix 9-C](#)
- Reference materials are found in [Appendix 9-D](#).

### 9-1 Sources of Authority

- [Public Sector Employment and Management Act 2002](#) (the Act).
- Relevant provisions are contained in Chapter 2, Part 2.7 of the Act, sections 40 to 53.
- [Public Sector Employment and Management Regulation 2009](#) (the Regulation) - [Clause 27](#).
- All references to a section (s) of the Act refer to the *Public Sector Employment and Management Act 2002*, unless otherwise stated.

### 9-2 Application of Provisions

Part 2.7 of the Act applies to persons employed in staff positions and senior executive positions, including officers on probation, unless otherwise stated. The Part does not apply to chief executive officers, Departmental temporary and casual employees. The Guidelines in the Appendices have the same application.

In this document, where any issues or obligations refer to a Department Head, they will also refer to officers with appropriate delegated authority.

## 9-3 Purpose and Operation

### Policy Statement

The objects of the legislative scheme on management of conduct and performance are:

- To maintain appropriate standards of conduct and work-related performance in the Public Service
- To protect and enhance the integrity and reputation of the Public Service and
- Ensure the public interest is protected (s41).

Public Service Departments must consider the above objectives in the management of conduct and work-related performance. These objectives together with the legislative scheme and Guidelines demonstrate the management of conduct and performance in the NSW Public Service is not just about a bureaucratic process, but recognises the need for procedural fairness.

The framework in this Chapter is to provide concepts and guidance for NSW Public Service Departments so as to effectively manage the conduct and performance of officers in Departments.

The legislative scheme on conduct and performance is supported by this framework to promote a streamlined, transparent and fair approach to managing employee conduct and performance issues. The scheme and framework also address employees convicted of serious offences.

A dual approach is taken to the management of conduct and performance issues.

Performance issues, in particular, can be dealt within a remedial framework, with disciplinary action being taken where there has not been satisfactory improvement.

The option to take remedial action, instead of disciplinary action, is also available in cases of misconduct and conviction of a serious offence at the discretion of the Department Head. It is important to apply a risk-based approach to managing issues of conduct and performance.

The approach taken in each case will depend on the nature and seriousness of the issue. Looking behind the issue, within the framework and scope of the allegation, can assist in deciding which approach to take. Each allegation of misconduct should be assessed and a considered decision should be made in deciding whether to take disciplinary or remedial action. Just as some cases will always warrant a disciplinary approach, it is not warranted in others. In some cases a remedial approach would be the best option.

Importantly, if having decided that a disciplinary approach should be taken, and the facts of the matter later support a remedial approach, remedial action may be taken. Similarly, if having decided to take remedial action, further allegations of misconduct arise, then the matter may be dealt with as a disciplinary matter.

Flexible options which incorporate support and assistance, provide officers with the opportunity to improve to an agreed performance standard. Where appropriate, remedial action may provide a better outcome for both the officer and the Department.

Discipline or review processes must be applied consistently without bias and each case should be considered upon its merits. Appropriate remedial or disciplinary action must be determined and implemented. The Act provides a prescribed range of penalties in relation to disciplinary action and an indicative range of options for remedial action (s42).

Managers are responsible for managing conduct and performance issues of employees under their control in a fair, timely, expeditious and transparent manner. The obligation to manage issues in a timely and expeditious fashion arises when a manager first becomes aware of the incident or conduct. See Clause 4 of the Procedural Guidelines on misconduct in Appendix 9-A.

This obligation also applies to any known or suspected misconduct, serious criminal offence or performance issues. These matters are discussed further in this Chapter.

Understanding and implementing fair and reasonable employment policy will ensure the best employment outcomes. This Chapter provides guidance on effective management of conduct and performance issues. Guidelines, including the Procedural Guidelines for dealing with Misconduct as a disciplinary matter, and sample documents and letters are provided in the Appendices.

## 9-4 Application and effect of Guidelines

Misconduct - Procedural Guidelines, issued by the Public Service Commissioner for the purpose of dealing with allegations of misconduct by officers as a disciplinary matter, and the taking of subsequent disciplinary action related to misconduct, are issued in accordance with s44 of Division 2 of Part 2.7 of the Act. The Procedural Guidelines are consistent with the rules of procedural fairness (s45).

The Act allows regulations to be made that may deal with the same issues as the Procedural Guidelines. If this were the case, the regulation would prevail over the Procedural Guidelines to the extent of any inconsistency. No regulations apply at this time.

General guidelines and advisory material contained in Chapter 9 of the Personnel Handbook are issued by the DPE for the purpose of providing guidance on the application of Part 2.7, Management of Conduct and Performance, including unsatisfactory performance and conviction for a serious offence.

The Procedural Guidelines and sample documents and letters applicable to dealing with issues of misconduct as a disciplinary matter and implementing disciplinary action are found at Appendix 9-A.

The guidelines and sample documents and letters for dealing with unsatisfactory performance are found at Appendix 9-B.

The guidelines and sample documents and letters on dealing with an officer charged or convicted of a criminal offence, including a serious offence are found at Appendix 9-C.

## 9-5 Terminology

### 9-5.1 Disciplinary action

**Disciplinary action** means the penalty options available and defined at s42(1) of the Act.

### 9-5.2 Disciplinary process

**Disciplinary process** means the process by which allegations of misconduct are dealt with as a disciplinary matter.

### 9-5.3 Remedial action

**Remedial action** means the options that are available and defined at s42(1) of the Act to deal with allegations of misconduct, unsatisfactory performance and conviction for a serious offence as a remedial matter.

### 9-5.4 Remedial process

**Remedial process** means the process by which allegations are dealt with as a remedial matter.

### 9-5.5 Appropriate Department Head

The Act (s3(1)) defines this term to mean:

- When used in connection with a Division, the Head of the Division; or
- When used in connection with a member of staff of a Division, the Head of the Division to which the staff member belongs.

Section 6 provides that the Divisions of the Government Service specified in Part 1 of Schedule 1 of the Act comprise the Public Service. These Divisions may be

referred to as a Department and the person exercising the function of Division Head may be referred to as a Department Head.

Thus, the Department Head to which the officer belongs must deal with issues of conduct and performance.

However, often a cooperative approach will be required between Departments or Departments and agencies to enable allegations to be effectively managed. This will be the case where the incident or matter alleged occurred in another Department than that to which the employee has his/her permanent appointment.

*Section 4F* of the Act allows a Department Head to delegate any functions of the Department Head under the Act to a member of staff of that Department or any other Division of the Government Service. Generally the function in relation to Part 2.7 of the Act would be delegated to an officer within the same Department who understands the process and has available to him/her the resources necessary to carry out the delegated function.

### 9-5.6 Disciplinary Action

*The Act (s42)* prescribes disciplinary action, which can be taken in relation to an officer to mean one or more of the following:

- Dismissal from the Public Service
- Directing the officer to resign, or to be allowed to resign, from the Public Service within a specified time
- If the officer is on probation, annulment of the officer's appointment
- Except in the case of a senior executive officer, reduction of the officer's salary or demotion to a lower position in the Public Service
- The imposition of a fine
- A caution or reprimand.

### 9-5.7 Remedial action

These arrangements allow an alternative to disciplinary action, where relevant and appropriate in the circumstances of the case, and particularly as a first intervention when dealing with unsatisfactory performance.

be taken in relation to an officer to mean one or more of the following:

- counselling – informal and formal
- training and development
- monitoring the officer's conduct or performance
- implementing a Performance Improvement Plan
- issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory
- transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position; and
- any other action of a similar nature.

Other similar actions that may be considered include:

- mentoring
- staff rotation
- supervision
- referral to relevant policies.

### 9-6 Using remedial and disciplinary actions

Taking remedial action is relevant in the following situations:

- managing unsatisfactory performance, pursuant to Division 3 of Part 2.7 of the *Act*
- dealing with misconduct including when the Department Head is of the opinion that the officer has engaged in misconduct, where the imposition of remedial action is appropriate

- in cases of an officer charged or convicted of a serious offence, where it is appropriate.

Similarly, taking disciplinary action (imposing one or more of the penalty options in s42(1)) is relevant in the following circumstances:

- when the Department Head is of the opinion that the officer has engaged in misconduct, and it is appropriate
- in dealing with unsatisfactory performance, where the performance is still unsatisfactory after remedial action has been taken and the officer has been given a reasonable opportunity to improve his or her performance
- cases where an officer has been convicted of a serious offence, where it is appropriate.

## 9-7 Use of Disciplinary Options

The disciplinary action options are as follows.

### 9-7.1 Dismissal from the Public Service

Dismissal should be regarded as the most serious option that is available.

### 9-7.2 Directing the officer to resign, or to be allowed to resign, from the Public Service within a specified time

This option should only be considered where a decision has been made that the officer should no longer be employed by the Department. This means that should the officer not resign, termination is the only alternative.

### 9-7.3 Probation – annulment of appointment

See 2-17.1 of this Personnel Handbook, Appointment on Probation.

It is important to be clear in the letter of offer of appointment to specify any probationary period and advise that at the end of the period, subject to performance and conduct, the appointment may be confirmed, annulled or the probationary period extended.

It is also important to ensure that obligations towards probationary officers are met and regular review and feedback are provided and recorded throughout the probation period.

In most cases conduct and performance issues concerning probationary employees will be dealt with under s23 of the *Act* and not Part 2.7 – see 2-17.5 of this Handbook, Annulment of Appointment.

### 9-7.4 Reduction of the officer's salary or demotion to a lower position in the Public Service

This may be relevant in some disciplinary cases, including those that arise from continued unsatisfactory performance, where remedial action has not resulted in improved performance. Such action must be done in consultation with all affected parties, including the manager of the area that may be affected by the action. A demotion may be permanent or for a particular period.

This option does not apply to Senior Executive Service officers.

### 9-7.5 The imposition of a fine

The *Act* provides that where a fine is imposed, the amount of the fine will be deducted from the officer's salary in a manner directed by the Department Head.

### 9-7.6 A caution or reprimand

All cautions and reprimands should where practicable be given face to face and at that meeting be confirmed in writing in the presence of an appropriate witness. The caution or reprimand should clearly state:

- the standard of performance/conduct that is required within a given timeframe
- the possible consequences of a repetition of the conduct or behaviour.

## 9-8 Implementing of Remedial Action

### 9-8.1 Counselling – informal and formal

**Performance:** Informal counselling should be part of the daily supervision and enables an early response to unsatisfactory performance. Informal counselling, as a feedback mechanism, provides an opportunity for a manager and an officer to discuss and resolve performance and conduct issues.

Formal counselling would normally be required in situations where unsatisfactory performance continues or where it is beyond the scope of informal counselling.

**Conduct:** Counselling may also be used in relation to conduct matters where considered not appropriate to deal with as a disciplinary matter.

### 9-8.2 Training and development

Training and development should be a usual part of managing employees to enable them to perform their work to the required standard. Where it is used in a remedial context, it should be relevant to the area of performance targeted, may be competency based, have agreed performance related outcomes, and enable an opportunity to practice the skills and knowledge before performance is assessed.

### 9-8.3 Monitoring the officer's conduct or performance

This process enables on-going monitoring and feedback to the officer as part of a performance improvement strategy. The process should be transparent with feedback being a key aspect to the process. Monitoring performance may highlight areas requiring development or training.

### 9-8.4 Implementing a Performance Improvement Plan

The plan must be tailored to meet the needs of the officer and the Department. Where a Performance Improvement Plan is proposed, there should be discussion between the relevant parties with joint agreement being reached where possible. The officer may identify their needs at any time and/or the Department Head may indicate those areas that require improvement.

### 9-8.5 Issuing a warning

Any warning needs to be specific about the conduct or performance that is not satisfactory and be clear as to what expectations there are in relation to ongoing conduct and performance. It should also indicate what assistance could be provided to the officer to enable him/her to meet the proper standard.

### 9-8.6 Transferring at current pay rate

This is particularly relevant when there are reasons to believe that the issue is related to the officer's present work environment or that the work is outside the officer's capability and that training and development will not be sufficient to remedy the problem. Transfer can offer the officer a fresh start and removes the officer from the particular environment. The officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters

should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of this Handbook.

### 9-8.7 Induction

Induction is a particularly useful tool when new material and/or processes are introduced.

### 9-8.8 Mentoring

Mentoring can enable peer assistance and support to be provided. It is important that the mentor understands the nature of the issue to be addressed and should be a role model in relation to the areas of concern.

### 9-8.9 Staff rotation

This option may assist the officer to better understand the nature of the work undertaken by a Department and expose the officer to different processes. It may assist in improving performance by developing such understanding or by enabling the officer to learn from other employees in the same Department.

### 9-8.10 Referral to relevant policies

Sometimes unsatisfactory performance can be due to unfamiliarity with relevant policy. In such a case referral to the correct policies and procedures and an explanation of their relevance and effect, may assist the officer to reach the expected standard of performance.



## 9-9 External notification requirements

### 9-9.1 Commission for Children and Young People

The *Commission for Children and Young People Act 1998* imposes certain duties on employers with respect to 'completed relevant employment proceedings'. The NSW Ombudsman's *Guidelines for Child Protection in the Workplace 2004* at 1.4.3 on page 4 states:

'Employers are required to notify the Commission for Children and Young People (CCYP) when employment proceedings against an employee involving reportable conduct or an act of violence committed in the course of employment and in the presence of a child, are completed. These are matters where an employer (or professional or other body that supervises the professional conduct of the employee, the subject of the allegation), has found:

- reportable conduct (see definition under the section titled 'NSW Ombudsman' at "9-9.3 NSW Ombudsman" below) or
- that an act of violence committed by the employee in the course of employment and in the presence of a child has occurred, or there is some evidence it occurred, however the finding is inconclusive.

Completed employment proceedings also include processes which have been completed through the actions of the employee, i.e. where an employee voluntarily terminates their employment before an employer finalises the disciplinary process.

Relevant employment proceedings do not include those where a finding is made that reportable conduct or an act of violence did not occur (false), or where the allegations have been found to be vexatious or misconceived.'

Allegations are considered:

**False** – if the investigation has concluded that the alleged conduct did not occur

**Vexatious** – if the investigation has concluded that the allegation was made without substance and with the intent of being malicious or to cause distress to the person against whom the allegation was made

**Misconceived** – if investigation has concluded that, whilst the allegation was made in good faith, a misunderstanding occurred on behalf of the person making the allegation.

For more information on relevant employment proceedings, see the Working With Children Check Guidelines at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au) or by contacting the Commission on 9286 7219.

*Section 39* of the *Commission for Children and Young People Act* states:

1. It is the duty of an employer to notify the Commission of the name and other identifying particulars of any employee against whom relevant employment proceedings have been completed by the employer, other than proceedings:
  - in which a finding is made that the alleged reportable conduct, or the alleged commission of an act of violence, did not occur; or
  - in which a finding is made that the allegations in respect of which the proceedings were brought were vexatious or misconceived.
2. Employment proceedings are taken to be completed by an employer if the employer has determined the proceedings, whether or not any right of appeal or review has been exercised or exhausted.
3. The employer who notified the Commission of any such information may notify, on request, sufficient details of the proceedings concerned to another employer (or employer-related body), or to the Commission, for the purposes of employment screening by the other employer (or body) or the Commission. The employer is under a duty to notify those details if the regulations so provide.

4. Notification under this section extends to disciplinary proceedings completed within the period of 5 years immediately before the commencement of this section.
5. Notification under this section is to be in such form as the regulations provide or, subject to the regulations, as the Commission directs and consistent with the guidelines published under this Part.
6. It is the duty of an employer to retain records of information that the employer is required to notify under this section. That duty applies despite any requirement for disposal of the record (for example, any regulation applying to records of information of disciplinary proceedings with respect to public sector employees).

### 9-9.2 Police

Where a Department Head reasonably believes that an officer has committed a criminal offence, the matter should be referred to the Police. In such cases the Department should advise the Police if the matter is also subject to an internal investigation. Unless there will be an impact on the Police investigation, there is usually no need to suspend the internal investigation. If appropriate all stages of dealing with the matter as a disciplinary matter may be taken. If all stages are not completed and the officer is charged criminally it is usually appropriate to await the outcome of the court proceedings.

If the Police indicate that an internal investigation should be suspended, the grounds and reasons should be noted. Contact should be maintained with the Police, to ensure internal issues can be dealt with as quickly as possible. In cases where the internal investigation has to be suspended, a decision will have to be made about whether the officer should be suspended or other action taken, such as a transfer where appropriate. Fraud matters may be referred to the assessment section of the Fraud Investigation Agency on telephone 9384 6850. It is an offence to conceal a serious offence from the Police.

### 9-9.3 NSW Ombudsman

Department Heads are required by section 25C of the Ombudsman Act 1974 to notify the Ombudsman of any 'reportable allegation' and any 'reportable conviction' of an employee of the Department of which the Department Head becomes aware. The Department Head must also notify the Ombudsman whether or not the Department intends to take any disciplinary or other action in relation to the employee. The notification must be made as soon as practicable and within 30 days of the Department Head becoming aware of the allegation or conviction.

The key terms are defined in section 25A of the Ombudsman Act as follows:

**reportable allegation** means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct. (Note that misconduct is not defined in the Act: for further information on that reportable conduct and misconduct see the Ombudsman's Guidelines on Child Protection in the Workplace 2004 Section 3.5 on page 34. The guidelines are available in hard copy from the Ombudsman and on the Ombudsman website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).)

**reportable conduct** means:

- any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (defined in the Act as a person under the age of 18 years) (including a child pornography offence); or
- any assault, ill-treatment or neglect of a child; or
- any behaviour that causes psychological harm to a child,

whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

- conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or

- the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
- conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.

[Note: Sexual offences include sexual intercourse, acts of indecency and indecent assault.]

**reportable allegation** means an allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct.

**reportable conviction** means a conviction (including a finding of guilt without the court proceeding to a conviction), in this State or elsewhere, of an offence involving reportable conduct.

To ensure compliance with the *Ombudsman Act 1974* employees are required to notify the Department Head of any reportable allegation or reportable conviction of which they become aware. (Employees are also required to notify the Department Head if they are charged with or convicted of a serious offence under clause 27 of the Public Sector Employment and Management Regulation 2009.)

The Department Head is required to assess any allegation of which he/she becomes aware on its face i.e. without investigating the allegation, in order to determine whether the allegation must be notified to the Ombudsman. The Department Head may seek clarification of the nature of the alleged behaviour from the person making/advising him/her of the allegation, in order to assist him/her to clarify if the allegation is notifiable.

For further information, refer to the NSW Ombudsman's Guidelines for Child Protection in the Workplace 2004.

The NSW Ombudsman has issued a fact sheet (Child Protection Fact Sheet Number 5) entitled Child Protection: Responsibilities of head of agencies. The document provides details of notification and other requirements in cases of reportable conduct and reportable convictions. It

is available on the Ombudsman's website. The procedures should be read in conjunction with the NSW Ombudsman's Guidelines for Child Protection in the Workplace 2004.

Where the Ombudsman has been notified, the Department may be required to cease its investigations or disciplinary process pending an investigation by the Ombudsman.

### 9-9.4 Community Services Department of Human Services

Where there is a reasonable suspicion that a child has experienced or is at risk of abuse, the Community Services, Department of Human Services should be notified. The Department has established the Child Protection Helpline, a centralised State-wide intake service for all child protection reports across NSW. The number 132 111 is available 24 hours a day, seven days a week, at the price of a local call from anywhere in Australia, for all child abuse and neglect matters.

Community Services will advise the Police

### 9-9.5 Independent Commission Against Corruption

If the matter may also constitute corrupt conduct under the Independent Commission Against Corruption Act 1988, it should be reported to the Independent Commission Against Corruption (ICAC). A Department Head is required to report any matter that they suspect on reasonable grounds concerns or may concern corruption (s11(1)(c) of the ICAC Act). Generally if the matter has been referred to the Police, the ICAC will leave the matter to the police for investigation.

Where the ICAC has been notified of a matter, the particular circumstances will determine whether the disciplinary process continues or awaits a response from ICAC. In possible criminal matters that have also been referred to the Police, the discipline procedures may be put on hold pending completion of any police action.

## 9-10 General principles

### 9-10.1 Timeliness

A disciplinary or remedial process should be taken without delay. It is in the interests of management and the officer concerned to have the matter resolved in a timely and expeditious fashion.

As discussed in “9-9.2 Police” above, in some cases where criminal charges may be pending against an officer, internal disciplinary and review processes can continue. However, reasonable delay would occur where another external investigating body, such as the Police or Ombudsman, has requested that the Department’s process be deferred whilst it carries out an investigation.

Timeliness has regard to matters such as:

- The complexity of the issues
- The need to seek external or internal expert advice
- The impact of delay on the fairness of the process; or matters arising from the process such as suspension of the officer.

Issues are to be managed in a timely and expeditious fashion see Clause 4 of the Procedural Guidelines on Misconduct at “Appendix 9A: Misconduct”.

### 9-10.2 Procedural fairness

Essentially, procedural fairness is a legal safeguard applying to an individual whose rights or interests are or could be affected.

Procedural fairness serves an important function in the investigation of complaints by:

- Providing a means of checking facts and identifying major issues;
- Exposing weaknesses in the investigation; and
- Informing the basis and direction of investigation.

A fundamental rule of procedural fairness is that a person be advised of the allegations against them and have an opportunity to reply to them. This rule in relation to allegations of misconduct is reflected in s45 and s46 that the procedural guidelines are to ensure that:

- An officer must be advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action;
- The officer must be given an opportunity to respond to the allegation; and
- Must be provided with a subsequent opportunity to make submissions in relation to disciplinary action that the Department Head is considering taking.

Further the guidelines give an opportunity for the officer to also request a meeting with the Department Head prior to a final decision on the action to be taken.

Procedural fairness also encompasses matters such as:

- Making reasonable inquiries or investigations prior to making a decision; and
- Ensuring that the decision maker has no direct interest and is unbiased in the matter.

The Act specifically states that taking disciplinary action subsequent to an allegation of misconduct is not to entail a formal hearing with legal representation and the calling and cross-examination of witnesses. (s45)

## 9-11 Alternative Duties or Suspension of officers from Duty

Section 49 allows for suspension from duty with or without pay if:

- an allegation that an officer has engaged in misconduct is being dealt with as a disciplinary matter; or
- an officer is charged with having committed a serious offence (see s48).

See Clause 11.5 of the Procedural Guidelines at “Appendix 9A: Misconduct” and Clause 6 of the guidelines at “Appendix 9C: Criminal offences - guidelines for dealing with a serious offence” for commentary on alternative duties or suspension. The relevant memo and circular are at “Appendix 9D: Reference materials, legislation, memoranda and circulars”.

## 9-12 Deciding each case on merit

Whilst disciplinary and remedial processes must be applied in a consistent manner, each case must be treated on its individual merits and the form of action taken tailored to the individual case. Only relevant factors must be taken into account and any irrelevant considerations must be disregarded.

This means that the same misconduct, unsatisfactory performance or serious offence conviction will not necessarily lead to the same disciplinary or remedial action being imposed. The circumstances of each case may be different. The relevance of the matter to the officer’s position and duties may differ.

## 9-13 Determining what action is to be taken

Disciplinary or remedial action taken must be relevant and proportional to the misconduct, unsatisfactory performance or serious offence conviction.

A Department Head must exercise discretion in selecting appropriate remedies and not adopt a policy that a particular conduct issue or incident will always attract the same penalty. In exercising the discretion, the Department Head must have regard to relevant factors of the case.

The Department Head, exercising his/her discretion, may decide to:

- take remedial action
- take disciplinary action
- dismiss the matter
- take no further action in relation to the matter

The decision-maker is to select an outcome that will best satisfy the objectives of the disciplinary process, having regard to all of the relevant circumstances.

## Appendix 9A: Misconduct

### **Procedural Guidelines for Dealing with Misconduct as a Disciplinary Matter and the Taking of Disciplinary Action pursuant to Part 2.7, Division 2 of the *Public Sector Employment and Management Act 2002 (NSW)***

#### **9A-1 Purpose**

These Procedural Guidelines are issued for the purpose of dealing with allegations of misconduct as a disciplinary matter and the taking of disciplinary action against an officer for misconduct under Division 2 of Chapter 2, Part 2.7 of the *Public Sector Employment and Management Act 2002* (the *Act*).

The Guidelines also set out the process related to taking remedial action instead of disciplinary action where appropriate and reasonable to do so.

#### **9A-2 Application and Effect**

The Procedural Guidelines apply to officers who are defined to mean, for the purpose of the Division, persons employed in staff or senior executive positions, including those on probation. The Guidelines do not apply to chief executive officers, temporary employees or casual employees.

If a Public Service Department (that is one of the Departments specified in Part 1 of Schedule 1 of the *Act*) decides to deal with an allegation of misconduct as a disciplinary matter, it must do so in accordance with the Procedural Guidelines. The Procedural Guidelines in relation to Misconduct are mandatory and legally enforceable.

#### **9A-3 Delegation - Department Head**

The Department Head is to deal with alleged misconduct by an officer.

The Department Head may delegate any of his/her functions under the *Act*, other than the power of delegation to a member of staff of that Division or in another Division in the Government Service. This delegation is usually

to a member of staff within the same Public Service Department or to another Department in the Public Service. (s4F) Department,

Generally, if the functions in relation to Part 2.7 of the *Act* are delegated by a Department Head, the functions would be delegated to an officer within that Department who understands the disciplinary process and who has available to him/her the resources necessary to carry out the delegated function. In exceptional circumstances it may be necessary to delegate the functions to a temporary employee, or to a member of staff of another Public Service Department.

If delegating to a temporary employee or member of staff care must be taken to ensure the person is employed on the date the delegation is signed, otherwise it is possible the delegation could be considered invalid.

In delegating the authority to deal with a disciplinary matter, the entire function including the tasks of determining whether the officer has engaged in misconduct and that of imposing the relevant disciplinary action or otherwise, should be delegated to the same person.

In these guidelines, a reference to the 'Department Head' is to be read as to include a delegate in accordance with the *Act*.

(See Sample Document 1 for delegation of function and Sample Document 2 for general delegation of functions under Part 2.7 where relevant).

#### **9A-4 Timeframes**

The requirements of these Guidelines as to the disciplinary process are to be complied in a timely and expeditious fashion.

As a guide only, uncomplicated matters should generally be concluded after 10 to 12 weeks from when the Department Head receives the initial allegation.

Irrespective of the complexity of the matter, after 12 weeks from the receipt of the allegation, the Department Head is to advise the officer the subject of the allegation/s in writing, (see Sample letter 10) of the anticipated time for the current stage (there are four stages as listed in Clause 9 below) to conclude and outline the reasons for any delays to date or anticipated delays. Reasons for a delay may include complexity of the matter, exceptional circumstances, a request for delay by an external investigating authority, or availability of the officer. Similar advice is to be sent each subsequent 6 weeks after the first advice (see Sample letter 11).

Either party if not satisfied with the reasons for delay, may seek to notify the issue of delay and the claimed reason/s as an industrial dispute to the NSW Industrial Relations Commission.

#### **9A-5 Terminology**

- **Disciplinary action** means the penalty options available and defined at s42(1) of the *Act*.
- **Disciplinary process** means the process by which allegations of misconduct are dealt with as a disciplinary matter.
- **Remedial action** means the options that are available and defined at s42(1) of the *Act* to deal with an allegation of misconduct as a remedial matter.
- **Remedial process** means the process by which allegations are dealt with as a remedial matter.

#### **9A-6 Misconduct**

**Misconduct** is specifically defined in the *Act* to include, but not be limited to the following:

- A contravention of any provision of the *Act* or regulations
- Performance of duties in a manner justifying taking disciplinary action

- Taking detrimental action against a person which is substantially a reprisal for the person making a protected disclosure within the meaning of the Public Interest Disclosures Act 1994 (NSW)
- Taking any action against another person that is substantially a reprisal for an internal disclosure made by that officer (s43).

The term 'misconduct' applies to many different factual situations, but usually involves deliberate acts.

#### **9A-6.1 Misconduct – officer not on duty or prior to appointment as officer**

Misconduct may relate to an incident or conduct that happened while the officer was not on duty, or before the officer was appointed to his or her position(s43).

In determining whether such conduct should be dealt with as a disciplinary matter the Department Head should have regard to the objects of Part 2.7 of the Act, that is:

- To maintain appropriate standards of conduct and work-related performance in the Public Service
- To protect and enhance the integrity and reputation of the Public Service and
- Ensure the public interest is protected (s41).

The Department Head should consider:

- Whether there is a relevant connection between the conduct and the officer's position and duties
- the context of the incident
- the 'age' of the incident or offence
- whether the incident was considered fundamental to the decision to employ/promote the officer
- the officer's employment record and history
- whether remedial action is more appropriate
- whether there are other options which might be applied such as referral to Employee Assistance Providers, alcohol and drug rehabilitation and anger management counselling.

#### **9A-6.2 Misconduct – officer resigns or retires prior to action being taken**

Disciplinary action arising from misconduct can still be taken, even though the officer has retired or resigned prior to the action being taken (s53).

Whether to pursue action after an officer has resigned or retired depends on a number of factors such as:

- the seriousness of the allegation or incident
- the practicality of access to the former employee and
- the cost/benefit to the Department of pursuing the matter.

Normally taking disciplinary action would be to take the investigation to a finding of whether or not the officer engaged in misconduct.

With the exception of when a fine is imposed, taking disciplinary action does not affect the former officer's retirement or resignation or the relevant benefits and liabilities. If a fine is imposed, it may be recovered from the former officer as a debt due to the Crown in any Court of competent jurisdiction.

#### **9A-6.3 Protected Disclosure**

A protected disclosure is a disclosure made within the meaning of the Public Interest Disclosures Act 1994.

The object of the Public Interest Disclosures Act 1994 is to encourage and facilitate a disclosure, made in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. In this regard, s20(1) of that Act makes it a criminal offence to take "detrimental" action against another person that is substantially in reprisal for the other person making a protected disclosure. An offence against s20(1) of the Public Interest Disclosures Act 1994 constitutes misconduct and is specifically provided for at s45 of the Act.

Detrimental action means action causing, comprising or involving any of the following:

- Injury, damage or loss
- Intimidation or harassment

- Discrimination, disadvantage or adverse treatment in relation to employment
- Dismissal from, or prejudice in, employment and
- Disciplinary proceedings (s20(2)).

It is important to understand that the onus of proof in relation to any proceedings for an offence against s20 requires the defendant to prove that detrimental action taken against a person was not substantially in reprisal for the person making a protected disclosure. This is a reversal of the usual standard, which requires the prosecution to prove the case.

#### **9A-6.4 Internal disclosure**

An internal disclosure means a disclosure made by an officer regarding an alleged breach of misconduct by another officer where both officers belong to the same Department (s43(3)). It is a specific ground of misconduct dealt with at s43 of the Act for anyone to take any action against another officer that is substantially in reprisal for that officer making an internal disclosure.

#### **9A-7 Procedural Fairness**

The Procedural Guidelines are subject to the rules of procedural fairness. Throughout the disciplinary process, the principles of procedural fairness must be followed.

The officer must be advised in writing of the alleged misconduct. This requires specific details to be put to the officer. The officer must also be advised that the allegation, if treated as a disciplinary matter may, if proven, result in disciplinary action with a range of penalty options from a caution or reprimand to dismissal (s45(2)(a)).

The officer must have the opportunity to respond to the allegation (s45(2)(b)).

An officer found to have engaged in misconduct shall be given a separate opportunity to make representations in relation to any proposed disciplinary action to be taken (s46(3)).

All steps in the process are to be completed in a timely and expeditious fashion.

### 9A-8 External notification requirements

The Department Head is to notify specified external agencies and Departments of allegations made, and disciplinary processes taken, in relation to certain behaviour, incidents and conduct.

In general, external notification needs to be made when any action is taken to investigate matters that have been the subject of allegations involving any of the following matters:

- Child abuse
- Sexual misconduct which involves children, is directed at children, or takes place in the presence of children
- Acts of violence committed by the employee in the course of employment which involves children, is directed at children, or takes place in the presence of children
- Certain criminal offences, including fraud
- Corrupt conduct.

### 9A-9 Stages in the process

The process may comprise 4 stages:

1. Initial Determination of an appropriate course of action regarding an allegation of Misconduct;
2. Investigation;
3. Initial decision; and
4. Implementation of final decision.

### 9A-10 Initial Determination of an appropriate course of action regarding an allegation of Misconduct

When an allegation of misconduct is made to the appropriate Department Head, or he/she is made aware, or becomes aware, by any means, that an officer may have engaged in misconduct, that Department Head may decide:

- to deal with the allegation as a disciplinary matter, in which case these Procedural Guidelines must be complied with ;
- it is appropriate to take remedial action;
- to take no further action in relation to the allegation or incident;
- to dismiss the allegation; or
- to both dismiss the allegation and decide to take no further action against the individual but take general management action.

Despite a decision by the Department Head to deal with an allegation of misconduct as a disciplinary matter, the Department Head may at any stage of the process decide:

- to take remedial action
- to dismiss the allegation
- that no further action is to be taken in relation to the matter
- to both dismiss the allegation and determine no further action is to be taken.

Notwithstanding that the Department Head had decided to take remedial action initially, if it appears that the officer engaged in other additional misconduct during that period, the Department Head may deal with the alleged misconduct as a disciplinary matter.

In deciding whether to deal with an allegation in terms of remedial action or as a disciplinary matter, the Department Head should assess the matter and have regard to the facts, seriousness and nature of the particular incident. This may be able to be done solely on the paperwork. Alternatively it may involve a preliminary investigation. This is not to become the main investigation and, if undertaken, should be limited to obtaining sufficient information to allow the Department Head to determine what course of action to take. It is not mandatory to have a preliminary investigation. If at this stage it is decided to take remedial action, the officer may elect to place his or her comments in relation to the facts and/or the remedial action on their personnel file. Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that

would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90 – see Chapter 3 of the Personnel Handbook. (see Sample letter 12).

If the officer the subject of the allegation is to be interviewed, the requirements under Clauses 11.7, 11.8.1 and 11.8.2 are to apply. The officer is also to be advised that the allegation if treated as a disciplinary matter may, if proven, result in disciplinary action with the severest penalty being dismissal. The officer is also advised anything said at the interview may be taken into consideration if the matter is subject to a formal investigation, and also by the Department Head if required to decide if the officer has engaged in misconduct.

Consideration should be given to matters such as:

- whether it is an isolated incident
- the seriousness of the incident
- the circumstances surrounding the incident
- the employment history of the officer
- the status of and position held by the officer
- the reputation of the Department and the public sector
- the impact on the organisation and other employees.

The officer should be advised if it is decided to take remedial action in relation to the matter. If it is decided to treat the allegation as a disciplinary matter, refer to Clause 11.5 below on advising the officer.

### 9A-11 Investigation Stage

The Department Head shall appoint a suitably experienced and qualified person to prepare an investigation report in relation to the allegations (see Sample letter 2). The conduct of an investigation will vary depending upon the particular case and its circumstances and the complexity or

otherwise of the issues, incidents and facts of the matter. This step, like all in the process, should be completed in a timely and expeditious fashion.

Any delays in the process should be appropriately recorded and monitored by the Department.

Where, a Departmental investigation needs to be deferred as the result of an investigation by external authorities, such as the ICAC, NSW Ombudsman, or the Police, the officer may continue working, be moved to another job or suspended with or without pay. The action taken, if any, will depend upon the particular circumstances. For suspension refer to 11.1 below.

All stages of dealing with the allegation as a disciplinary matter should continue unless requested by the external authority to not proceed. If all stages are not completed and the officer is charged criminally it is usually appropriate to await the outcome of the court proceedings.

This stage enables the issues to be fully explored before any final decision is made in relation to the allegation/s. It also includes continuation of an internal investigation where external authorities have completed any relevant investigation.

The Act (s45 (3)) provides that an investigation of the allegation shall not involve the following:

- A formal hearing, involving legal representation of the parties; and
- Calling witnesses for examination or cross examination.

Any investigation conducted into alleged misconduct shall, where relevant, include:

- A review of documentary material
- Inspection of the workplace or site of incident
- Interviewing all relevant persons, including the officer, connected with the allegation or incident
- Taking statements from the officer or other relevant person.

#### **9A-11.1 Alternative Duties or Suspension of officers from Duty**

Decisions in relation to this issue are to be based on the facts, nature and seriousness of the matter in the context of the officer's position. In the circumstances covered by s49, the first consideration should be, is it appropriate for the officer to continue in their usual duties. If the decision is that it is inappropriate, the first option is to place the employee on alternative duties or duties at another location (see Sample letter 1).

Section 49 allows for suspension from duty with or without pay if:

- an allegation that an officer has engaged in misconduct is being dealt with as a disciplinary matter; or
- an officer is charged with having committed a serious offence (see s48).

Where it is inappropriate for the officer to be given alternative duties, Premier's Memorandum 94-35 (see Appendix 9-D) sets out the circumstances in which suspension with pay or without pay is appropriate. A decision to suspend without pay should only be made in exceptional circumstances.

Suspension is not one of the penalty options available as a disciplinary action where the Department Head is of the opinion the officer has engaged in misconduct. It is a protective measure whilst the disciplinary process is being undertaken.

All decisions in relation to suspension should be reviewed at least every 30 days.

It should be noted that an officer suspended without pay will accrue salary during the period of suspension. If it is decided to take disciplinary action or the person is convicted of the offence concerned, the withheld salary is, unless any law provides otherwise, forfeited to the State unless the Department Head otherwise directs.

The position of a suspended officer shall not be permanently filled while they are on suspension.

If no disciplinary action is taken against the officer or the officer is found not guilty in relation to the criminal matter, the officer will be paid the salary that had been withheld. If the officer is a shift worker, then any shift penalties withheld whilst on suspension or transfer to alternative duties will also be paid if the person is found not to have engaged in misconduct or is found not guilty in relation to the criminal matter – See Circular P1996-35, Payment of Shift Penalties Disciplinary Matters at Appendix 9-D.

#### **9A-11.2 Persons conducting the investigation**

The investigation shall be conducted by persons who:

- Understand the investigation process
- Have no direct involvement with the matter subject to investigation – that is, are free from actual or perceived bias
- Are not or perceived to be biased because of some personal interest in the matter by reason of personal involvement or friendship with the officer
- Are objective and do not prejudge the matter
- Are suitably experienced and qualified.

The Department Head or his/her delegate should not have any role in the disciplinary process including the conduct of investigation if they are the source of the initial allegation against the officer.

The person who is the source of the allegation should not have any involvement in the disciplinary process as either an investigator or as exercising the functions of the Department Head.

The following publications are of assistance to persons undertaking internal investigations:

- Internal Investigations – an ICAC publication that is available on the Commission's web-site at www.icac.nsw.gov.au
- Investigation of Complaints - Public sector agencies fact sheet No 09 – a publication of the NSW Ombudsman.

### 9A-11.3 Absence of officer does not preclude investigation

The Investigation may only be conducted in the absence of the officer if:

- the officer fails to attend an interview; and
- there are no reasonable circumstances mitigating the failure of the employee to attend an interview; and/or
- efforts are made to ascertain why the officer did not or does not want to attend an interview and are documented.

### 9A-11.4 Non-disclosure

Confidential information obtained during the investigation shall not be disclosed except for the purpose of the investigation or any action arising from the investigation, or for the purpose of obtaining advice from the union and/or a legal representative. This is to protect the integrity of the process and the privacy rights of the persons concerned.

Similarly, all witnesses, including the officer the subject of the investigation and his/her representative, should be advised that they should not discuss the matter with any person other than the investigator or their legal representative or a union representing the interests of the officer.

### 9A-11.5 Advising Officer Allegation Being Dealt with as a Disciplinary Matter

Generally, once the Department Head decides that the alleged misconduct is to be dealt with as a disciplinary matter, the officer will be advised, in writing, of the allegation/s (details as known at that point in time subject to concerns as outlined below) as soon as practicable, having regard to the nature and circumstances of the matter. Such advice should generally be done within a few days of an investigator being appointed (see Sample letter 4).

It is to be made very clear to the officer the allegation/s are being treated as a disciplinary matter that may result in disciplinary action being taken with the severest penalty being dismissal.

Where the Department Head is reasonably concerned that the nature of the allegation or circumstances surrounding the matter may lead to the destruction of evidence, harassment or victimisation of suspected complainants it may be appropriate that the allegation/s is not provided at first instance.

### 9A-11.6 Conduct of Interviews for the purpose of preparing an Investigation Report

Interviews are an essential part of preparing an Investigation Report.

The following publications are of assistance to persons undertaking internal investigations and are particularly helpful in relation to collecting material and conducting interviews:

- Internal Investigations – an ICAC publication that is available on the Commission's web-site at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)
- Investigation of Complaints - Public sector agencies fact sheet No 09 – a publication of the NSW Ombudsman.

#### 9A-11.6.1 Officer the subject of allegation

Prior to the allegations being formally put to the officer under investigation as required by s45 (2) (see Clause 11.6.3 below); an interview may be conducted with the officer against whom there is a possibility of disciplinary action being taken. If the officer is to be interviewed, the requirements under Clauses 11.7, 11.8.1 and 11.8.2 are to apply. The officer is also to be advised that the allegation if proven, may result in disciplinary action with the severest penalty being dismissal. It is at the discretion of the investigator whether such interviews are necessary (see Sample letter 4b).

### 9A-11.6.2 Other interviews

Other people may also have to be interviewed as part of the investigation process (see Sample letter 3). A person who has merely been a witness to part or all of an alleged misconduct (and not a participant) may need to be interviewed as part of the investigation process. The persons should be advised that the information they provide may be disclosed to the person the subject of the investigation. The interview may be sound recorded with the knowledge of the interviewee.

#### 9A-11.6.3 Opportunity to respond to the allegations as required by section 45(2) (b)

During the Investigation Stage the officer is to be given an opportunity to respond to the allegations (s45 (2) (b)).

The officer is provided with a letter from the investigating officer detailing the nature of the allegations and advising the time and place of the proposed interview (usually at least 7 days – notice period will depend upon complexity and details of matter). The letter (see Sample letter 5) must:

- specify in detail the issue/s alleged – this requires clarity with sufficient detail to enable an accurate response.
- give such relevant information that will fairly enable the officer to respond – this might include the date, time, location, and details of the alleged incident.

The officer is to be advised that he/she may also bring any written submissions to the interview and is to be given 7 days (or longer in complex matters) from the interview to provide any further written submissions. The officer is also advised that he/she may bring an observer.

Where the officer requests an extension of time, the investigator may agree to any extension of time which is reasonable, having regard to the overall circumstances of the case and the need to ensure procedural fairness.

#### 9A-11.7 Notification and advice

An officer facing an allegation of misconduct, called to an interview as part of the investigation must be provided with:

- At least 24 hours notice of the interview



- Notification of the time, date, location, nature and purpose of the interview and the names and titles of the officers conducting the interview
- A copy of the Procedural Guidelines
- The allegations it is intended to canvass at the interview. Provide the details of the allegation/s as best known at this point in time. If the matter concerns a Protected Disclosure the identity of the person who made the disclosure is only to be disclosed if it is essential having regard to the principles of procedural fairness – that is, essential for the person to be able to respond to the allegations
- The opportunity to make comment on any relevant issue, and to give his or her version of the relevant event/s
- Advice that an observer (who may be a union representative but usually not a practicing legal practitioner) may be present. It is not appropriate to have a representative or observer who has been involved in the matter, or whose availability would mean an unreasonable delay in the matter proceeding
- Advice that the role of an observer is as a witness or adviser and not as an advocate. The observer should be told the name of a Departmental officer to whom any complaint of unfairness may be made
- Advice that the officer may nominate a person to speak on his or her behalf. This applies if the investigating officer/s is in any doubt as to the capacity of the officer to speak effectively or to adequately understand the implications and full meaning of the matters involved, or if the officer requests. Such persons will normally be another officer or union representative but shall not be a practicing solicitor or barrister
- A signing or language interpreter, if the officer has a hearing impairment, or English as a second language and the officer's communication difficulties warrant this consideration
- Advice that a copy of the record of interview/statement will be provided for signature and an indication of when it will be made available.

## **9A-11.8 Procedure for interviews**

### **9A-11.8.1 General**

- Interviews with the officer the subject of allegation/s may be sound recorded but only with the knowledge of the person being interviewed. If the interview is recorded it must be transcribed and a copy is to be given to the officer. The interviews will be conducted by the officers (investigators) appointed to conduct the investigation. Where possible a copy of the tape or disc should be provided to the officer interviewed
- The interviews will be conducted in private
- The investigators have the responsibility to be fair, courteous and impartial.

### **9A-11.8.2 Commencing the interview**

The investigator must:

- Advise the officer that the interview will be recorded and the method that will be used. Sound recording may be suspended temporarily and replaced by note taking if particular circumstances warrant such and it has been requested by the officer.
- Advise the officer of the purpose of the interview
- Advise the officer/observer that if they have chosen to have an observer present, that the role is that of witness or adviser and not of advocate, and that their presence is a safeguard against unfair practices
- Advise the officer/observer that if they wish to have a private discussion they should request a halt to proceedings
- Advise the officer that he/she will have an opportunity to fully respond to the questions asked and to provide comments with respect to relevant issues, which includes giving their version of the events in question
- Advise the officer that it is in their best interest to answer questions and have their version of events recorded.

### **9A-11.8.3 During the Interview**

The investigator must:

- Put each allegation/incident to the officer and invite him/her to respond
- Interview the person in relation to his/her response or other matters in relation to the allegation
- Avoid accusatory or intimidatory language or tone of voice
- Avoid making comments about the answer given
- Not indicate personal views or opinions or those of other people
- Ask the officer if there is anything else they wish to say.

### **9A-11.8.4 Concluding the interview**

Investigators should not indicate that any view has been formed.

Investigators must advise the officer:

- That following the completion of the investigation that an Investigation Report will be provided to the Department Head
- A decision will be made by the Department Head based on the facts and available information contained in the Investigation Report
- That the officer will be notified in writing of the outcome and where misconduct is established, the proposed action to be taken. The officer will receive a full copy of the Investigation Report if disciplinary action is being considered subject to any legislative or confidentiality requirements precluding disclosure. If the matter concerns a Protected Disclosure or confidentiality the identity of the person who made the disclosure is only to be disclosed if it is essential having regard to the principles of procedural fairness – that is, essential for the person to be able to respond to the allegations
- That he/she will be given an opportunity to make submissions to the Department Head in relation to any proposed action before it is implemented – the submission may also include comments on the Investigation Report and if applicable on the opinion of the Department Head that the officer has engaged

- in misconduct. Also if desired the officer may, prior to a decision on penalty, request an interview with the Department Head accompanied by a representative
- When a copy of the record of interview/statement will be available for signature.

#### **9A-11.9 Obligations post interview**

Following interview, the investigator/s must:

- Prepare the record of interview/statements as soon as possible
- Provide the officer and other witnesses with a copy of his/her record of interview and invite him/her to read and sign all copies
- Any issues about the content of the record of interview/statement should be discussed and resolved between the parties. The record of interview/statement should be altered to reflect the agreed changes
- If the record of interview/statement is not agreed to and if the issues cannot be resolved, the officer or witness should be asked to submit a statement outlining their reasons for not signing the record of interview/statement. The investigators should also record their reasons for not agreeing to requested changes. These reports must be included in the Investigation Report.

#### **9A-11.10 Victimisation or harassment**

If a witness informs the investigator that he/she is being victimised or harassed by the officer who is the subject of a misconduct investigation, the investigator should:

- inform the witness that they are not required to speak to the officer and that the alleged victimisation/harassment should be reported to the Department Head;
- not attempt to inquire into any such allegation because it is a separate allegation and requires independent consideration; and
- report the allegation in writing to the Department Head, or other senior officer delegated to such a role, so that the complaint can be dealt with.

#### **9A-11.11 The Investigation Report**

The Investigation Report shall:

- consolidate all the material gathered during the investigation process
- detail the allegation/s involving the officer
- outline the investigation process followed
- in relation to each allegation, set out the investigator's view on the relevant facts as to whether, on the balance of probabilities the person has engaged in the alleged conduct, referring to material upon which the view is based
- if appropriate, set out the investigator's view on the whether matter should not continue to be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed
- include all relevant attachments, such as correspondence with the officer, disciplinary and other interviews, witness statements
- be signed by the investigators.

The Department Head will be provided with a copy of the Investigation Report within the time specified. The Department Head has the discretion to extend the time required; having regard to the nature of the investigation, but it must be provided in a timely manner.

#### **9A-11.12 Further inquiries following receipt of the Investigation Report**

The Department Head may, for any reason including matters raised by either the officer the subject of the allegation or the Investigator in the Investigation Report, decide to have a further inquiry.

However, if any further inquiry results in further allegations of misconduct, and the Department Head decides these allegations are to be treated as a disciplinary matter, the steps outlined above are to apply – see Clause 10 onwards.

### **9A-12 Initial Decision Stage**

#### **9A-12.1 Opinion of whether misconduct**

In forming an opinion of whether the officer has engaged in misconduct, the Department Head may only take into account those matters disclosed in the Investigation Report.

The Department Head may seek specialist advice (including Departmental and legal) prior to forming an opinion but any final opinion must be the responsibility of the Department Head. If the Department Head is of the opinion that the person has engaged in misconduct, then consideration needs to be given to an appropriate disciplinary action or alternative actions.

Matters outside the Investigation Report such as employment records, previous warnings and disciplinary matters may be taken into account in relation to deciding whether disciplinary action is appropriate and if so what action should be taken.

The officer is to be advised in writing of the opinion of the Department Head as to what disciplinary action, if any, is being considered. The officer will also be advised that he/she has 14 days to make a submission in relation to the disciplinary action the Department Head is considering.

Where the officer requests an extension of time, the Department Head may agree to any extension of time which is reasonable, having regard to the overall circumstances of the case and the need to ensure procedural fairness.

#### **9A-12.2 Misconduct allegation/s not made out or no misconduct**

If the Department Head has determined that the allegation/s of misconduct is not made out or that misconduct has not occurred, given the facts of the particular case, the officer must be notified in writing of that opinion (see Sample letter 6). The materials in relation to the matter including the Investigation Report, are to be

removed from any records or files held as to the individual officer (personnel files) but such records should be kept elsewhere. They should not be destroyed.

### **9A-12.3 Exercise of discretion in determining disciplinary action or otherwise when of opinion officer engaged in misconduct**

A Department Head, when of the opinion the officer has engaged in misconduct, must exercise discretion in making a determination. In determining whether the officer is to be subject to disciplinary action, remedial action, or no action, the Department Head should not adopt a policy that a particular conduct will always attract the same punishment. Advice may be sought from specialists (Departmental and legal) prior to making a determination.

A Department Head is not obliged to impose a disciplinary action penalty on an officer who has been found to have engaged in misconduct.

### **9A-12.4 Engaged in Misconduct – remedial action**

If the Department Head is of the opinion the officer has engaged in misconduct but that remedial action is appropriate given the facts of the particular case, the officer must be notified in writing of that opinion with details of the misconduct and the remedial action to be taken (see Sample letter 7). Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook.

### **9A-12.5 Misconduct proven – no further action**

If the Department Head is of the opinion the officer has engaged in misconduct but that no further action is to be taken given the facts of the particular case, the officer must

be notified in writing of that opinion with details of the misconduct and the decision to take no further action (see Sample letter 7).

### **9A-13 Officer engaged in misconduct - disciplinary action being considered**

If the Department Head is of the opinion that an officer has engaged in misconduct and disciplinary action is being considered, the Department Head shall, prior to notifying the officer of this fact, give consideration as to what is the most severe in the range of penalties that might conceivably apply to such Misconduct ('the severest penalty').

In deciding what the severest penalty is, the Department Head shall have regard to the objects of Part 2.7 of the Act, that is:

- To maintain appropriate standards of conduct and work related performance in the Public Service
- To protect and enhance the integrity and reputation of the Public Service and
- Ensure the public interest is protected (s41).

It is essential that the Department Head's consideration of the severest penalty must not involve any pre judgment as to what penalty, if any, is ultimately to be applied to the officer. Consideration of the actual penalty, if any, to be applied is not to occur until the steps outlined below in Clause 13.1 have been carried out.

The Department Head shall consider the following:

- The facts of the case
- The impact of the conduct on the objectives of Part 2.7 of the Act
- The degree of relevance of the conduct matter to the officer's position and duties
- Skill, experience, and position of the officer
- The nature and seriousness of the matter, including the effect and circumstance of the incident

- Mitigating or extenuating circumstances if available at this stage
- The employment history and general conduct history of the officer
- Whether the conduct or substantially similar conduct has previously been the subject of counselling or previous remedial or disciplinary action
- Whether policy and guidelines applicable to the conduct were in place, were known, were being followed or required to be followed
- The effect of the proposed action on the employee.

### **9A-13.1 Engaged in Misconduct – disciplinary action**

If the Department Head is of the opinion an officer has engaged in misconduct AND that disciplinary action may be appropriate, the officer must be notified in writing of that opinion and of the disciplinary action being considered, including the severest penalty (see Sample letter 8). Section 45(3) requires that before any disciplinary action is taken the officer is to have an opportunity to make a submission in relation to the disciplinary action being considered.

The written notification must state:

- The details of the misconduct that the Department Head is of the opinion the officer has engaged in
- The full Investigation Report with all attachments should be included subject to any legislative or confidentiality requirements precluding disclosure
- If the matter concerns a Protected Disclosure or confidentiality the identity of the person who made the disclosure is only to be disclosed in the Investigation Report if it is essential having regard to the principles of procedural fairness – that is, essential for the person to be able to respond to the allegation
- The disciplinary action penalty/s being considered. Need to advice of the severest penalty that is being considered for the particular matter. In particular the

officer should be advised if dismissal, a direction to resign, or annulment for an officer on probation is being considered

- Outline the previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) to be taken into account
- That the officer has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered before a final decision is made. The officer's submission may address such matters including the opinion of the Department Head that the officer has engaged in misconduct, the Investigation Report or any extenuating and mitigating circumstances
- The Department Head has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension
- That he/she will be given an opportunity to have an interview with the Department Head, accompanied by a union or other representative (not a legal practitioner) before a final decision is made. The request for an interview should be made within 5 days of receipt of the written response. The representative may speak on behalf of the officer at the interview but not attempt to cross examine the Department Head
- That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step in the disciplinary process must be taken and documented before the Department Head may make a final decision.

### **9A-13.2 Further inquiries**

The Department Head may, for any reason including matters raised by either the officer or the union or other representative (not a legal practitioner) in making a submission in relation to the disciplinary action, decide to have a further inquiry.

However, if any further inquiry results in further allegations of misconduct, and the Department Head decides these allegations are to be treated as a disciplinary matter, the steps outlined above are to apply – see Clause 10 onwards.

### **9A-14 Implementation of Final Decision Stage**

All stages including the final decision stage must be made in a timely and expeditious fashion. The Department Head, having considered any submission made by the officer in respect to the disciplinary action being considered and having had an interview if requested, shall make a final decision. A final decision may consist of disciplinary action, remedial action or no further action. The officer shall then be advised in writing of the final decision and its date of effect (see Sample letter 9). In making a decision as to the appropriate disciplinary action, the Department Head must exercise his/her discretion and not adopt a policy that a particular conduct will always attract the same disciplinary penalty. All the issues outlined in Clause 13.1 above are to be considered along with any submission made by the officer. The officer's submission may have addressed such matters as the conduct, the Investigation Report or any extenuating and mitigating circumstances. If made, the Department Head shall also consider any submission made on behalf of the officer by the union. With the exception of when a fine is imposed, taking disciplinary action does not affect the former officer's retirement or resignation or the relevant benefits and liabilities. If a fine is imposed, it may be recovered from the former officer as a debt due to the Crown in any Court of competent jurisdiction.

## 9A-15 Steps for Dealing with Allegations of Misconduct

### STAGE ONE

1. Allegation of Misconduct - Department Head decides whether to treat as a disciplinary matter or otherwise - (see s46 (1) Clause 10)

If decide to treat as a disciplinary matter then Guidelines apply

### STAGE TWO

2. Person appointed to prepare an investigation report in relation to the allegations - (see Clause 11)

3. During course of investigation officer given an opportunity to respond to the allegations - (see Clause 11.6.3)

4. Investigation Report given to the Department Head includes investigator's view on whether person has engaged in the alleged conduct - (see Clause 11.11)

### STAGE THREE

5. Department Head considers if in his/her opinion the officer has engaged in misconduct - (see s45 (2) Clause 12)

If of opinion officer has engaged in misconduct

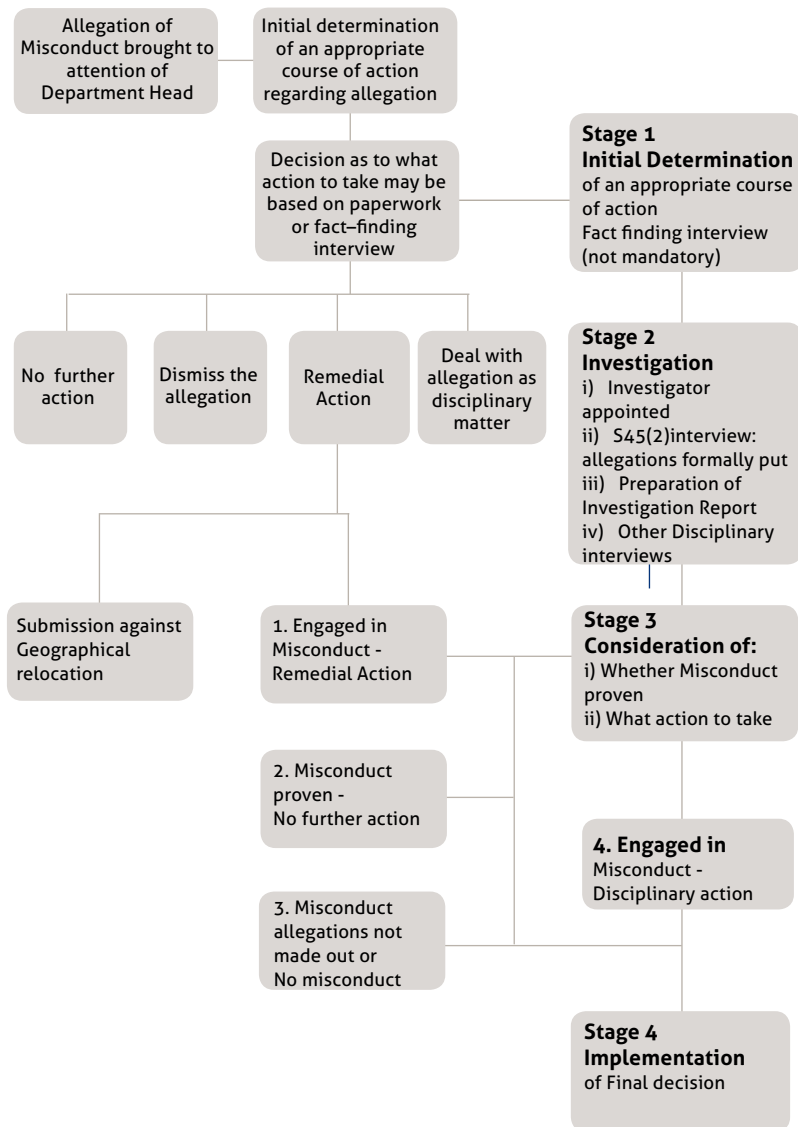
6. Department Head determines whether to take disciplinary action or otherwise - (see Clause 13)

7. Officer advised of that opinion and of the disciplinary action being considered and given an opportunity to make a submission in relation to the disciplinary action being considered - (see s46 (3) Clause 13.1)

### STAGE FOUR

8. Department Head makes a final decision. Final decision may be disciplinary action, remedial action or no action - (see s46 (2) Clause 14)

## 9A-16 Schematic



## 9A-17 Sample Documents

### MISCONDUCT

#### Sample Document 1

*Instrument of Delegation (Allegations of misconduct – where no general delegation made) Clause 3 Procedural Guidelines.*

Under section 4F of the *Public Sector Employment and Management Act 2002* (the Act), I, ..... the Department Head of ..... delegate to ..... an officer of the Department\*, all of my functions under Part 2.7 of the Act to deal with an allegation that ..... an officer employed in the ..... Division / Branch of the Department may have engaged in misconduct.

*Outline of alleged misconduct and/or attached report.*

(LIST HERE ALLEGED MISCONDUCT)

(Signed) .....

(Title) .....

(Date) .....

\* In exceptional circumstances it may be necessary to delegate the functions to investigate an allegation of misconduct under Part 2.7 to a temporary employee or to a member of staff of another Public Service Department. (See Clause 3 of the Procedural Guidelines)

#### Sample Document 2

*Instrument of Delegation (Allegations of misconduct – where no general delegation made) Clause 3 Procedural Guidelines.*

Under section 4F of the *Public Sector Employment and Management Act 2002* (the Act), I, ..... the Department Head of ..... delegate to ..... an officer of the Department, all of my functions under Part 2.7 of the Act in respect to officers

(SPECIFY BRANCH(ES)/DIVISION(S) OF DEPARTMENT THE OFFICER IS TO HAVE RESPONSIBILITY FOR).

(Signed) .....

(Title) .....

(Date) .....

### Sample Document3

#### Cover sheet for the Procedural Guidelines outlining the major features – to be given to officer subject to allegation of Misconduct

No	Clause	Provides for
2	Application & Effect	applies to officers (excluding CEOs) of the public service
4	Timeframes	<ul style="list-style-type: none"> <li>▪ Guidelines must be complied in a timely and expeditious fashion</li> <li>▪ If delay, officer receives a letter after 12 weeks then every 6 weeks thereafter</li> <li>▪ Unreasonable delay may constitute an industrial matter and either party may dispute delay before the NSW Industrial Relations Commission - uncomplicated matters should take 10-12 weeks from when allegation raised</li> </ul>
6	Misconduct	<ul style="list-style-type: none"> <li>▪ Definition</li> <li>▪ Context in which Misconduct occurs – at work, prior to appointment, not on duty</li> </ul>
7	Procedural & Fairness	<p>Procedural guidelines subject to rules of procedural fairness. The Guidelines reflect the requirements of s45(2) of the Act:</p> <ul style="list-style-type: none"> <li>▪ Officer must be advised in writing of alleged Misconduct - specific details must be put to the officer</li> <li>▪ Officer must be advised of consequences of proven Misconduct ie disciplinary action up to dismissal from the service (s46(3))</li> <li>▪ Officer given an opportunity to respond to allegation (s45(2)(b))</li> </ul>

#### Stages of the process

1. Initial Determination of an appropriate course of action regarding an allegation of Misconduct – Clause 10
2. Investigation – Clause 11
3. Initial decision – Clause 12
4. Implementation of final decision – Clause 13

10	Initial Determination Of An Appropriate Course Of Action Regarding An Allegation Of Misconduct	<ul style="list-style-type: none"> <li>▪ Deal with allegation as a disciplinary matter in accordance with Procedural Guidelines</li> <li>▪ Take Remedial action</li> <li>▪ Dismiss the allegation</li> <li>▪ Take No further action</li> </ul> <p>Any of the above options can be taken at any stage of the disciplinary process and officer must be notified in writing as to which action is to be taken</p>
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#### Opportunities to respond to allegations: Interviews, notification requirements & procedures applying

10	Initial Determination Of An Appropriate Course Of Action Regarding An Allegation Of Misconduct	<p>A preliminary fact-finding investigation, may conduct interview</p> <ul style="list-style-type: none"> <li>▪ not mandatory</li> <li>▪ 11.7, 11.8.1, 11.8.2 apply</li> </ul>
11	Investigation Stage	<p>Department Head appoints an investigator to</p> <ul style="list-style-type: none"> <li>▪ prepare an Investigation Report</li> <li>▪ conduct an investigation including interviews of officer subject to the allegation(s) and witnesses</li> </ul>

No	Clause	Provides for
11.5	Advising officer allegation being dealt with as a disciplinary matter	Officer advised in writing of allegation as soon as practicable
11.6	Conduct of Interviews for the purpose of preparing an Investigation Report	
11.6.1	Officer the subject of allegation	Prior to formally putting the allegation to the officer under investigation (as required by s45(2)) an interview may be conducted with the officer against whom there is a possibility of disciplinary action being taken: 11.7, 11.8.1, 11.8.2 apply
11.6.3	Opportunity to respond to the allegations as required by section 45(2)(b)  [At interview MUST be given copy of Guidelines]	Formally putting the allegation - Officer provided with a letter which: <ul style="list-style-type: none"> <li>▪ Specifies the detail of the allegation</li> <li>▪ Advises of time and place of interview – at least 7 days notice</li> <li>▪ Advice re bringing written submissions to interview, and</li> <li>▪ Given 7 days or longer from interview to provide further written submissions</li> <li>▪ Notification and interview procedures in 11.7, 11.8.1, 11.8.2 and 11.8.3 apply</li> </ul>
11.11	The Investigation Report	<ul style="list-style-type: none"> <li>▪ Outlines WHAT the Investigation Report contains</li> <li>▪ Investigation Report goes to Department Head for deliberation</li> </ul>
<b>What decision will be made</b>		
12	Initial Decision Stage	Outlines the matters the Department Head must take into account in reaching a decision as to whether Misconduct was engaged in
12.1	Opinion of whether Misconduct	Department Head forms an opinion as to Misconduct and takes appropriate action IF finds Misconduct AND considers disciplinary action appropriate, the following provisions at 13 apply:
13	Disciplinary action being considered	Officer notified in writing as to decision concerning Misconduct and disciplinary action being considered and provided with: <ul style="list-style-type: none"> <li>▪ Details of Misconduct</li> <li>▪ A copy of the investigation Report with attachments</li> <li>▪ Told of disciplinary action being considered</li> </ul>
13.1	Engaged in Misconduct – disciplinary action	Officer has 14 days from receipt of written notice to respond to: <ul style="list-style-type: none"> <li>▪ Opinion as to Misconduct</li> <li>▪ Investigation Report</li> <li>▪ Mitigating circumstances</li> </ul> Officer is advised of opportunity to meet with Department Head and has 5 days to request interview
14	Implementation of Final Decision	Department Head considers officer’s submissions and interview if requested and representations by union if made. Department Head makes final decision



## 9A-18 Sample Letters

### Sample Letter 1

#### Letter to officer confirming transfer to alternate duties/ location OR suspension (s49(1)(a))

Dear

FULL NAME, OFFICER'S TITLE, POSITION AND GRADE

NOTIFICATION OF TRANSFER TO ALTERNATE DUTIES OR SUSPENSION FROM DUTIES – SECTION 49(1)(a) OF THE PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT 2002

Refer to any previous letters if applicable.

I have decided it is inappropriate for you to continue with your usual duties. Pending the outcome of the investigation I place you on alternate duties (specify duties and / or location).

OR

I have decided, in accordance with section 49(1)(a) of the *Public Sector Employment and Management Act 2002*, to suspend you from duty with full pay/ without pay\* effective from ..... (date) until the allegation of misconduct has been dealt with.

The decision to suspend you will be reviewed in 30 days time.\*\*

Any enquiries in relation to this matter should be referred to ..... (name) on .....(telephone)

(Signed) .....

(Title) .....

(Date) .....

Note: Departments should refer to Clause 11.1 of the Procedural Guidelines for discussion on alternative duties or suspension from duty.

\* If exceptional circumstances of the matter have lead to a decision to suspend without pay consideration should be given to approving the officer undertaking other paid work pursuant to section 59 of the Act.

\*\* The review of the decision to suspend from duty every thirty days must be done by the person who made the decision to suspend and should be confirmed in writing to the officer.

### Sample Letter 2

#### Letter to Investigator/s to undertake investigation into allegation of misconduct (Clause 11 Procedural Guidelines)

Dear

I confirm I wish you to undertake an investigation and prepare an Investigation Report for me in relation to an allegation of misconduct made against ....., an officer of this Department.

The details of the allegation of misconduct are:

Specify details of alleged misconduct as known at this time:

The investigation is to be conducted in accordance with the Procedural Guidelines for Dealing with Misconduct as a Disciplinary Matter (copy attached).

The Investigation Report you prepare shall:

consolidate all the material gathered during the investigation process.

detail the allegation involving the officer.

outline the investigation process followed.

in relation to the allegation, set out your view on the relevant facts as to whether, on the balance of probabilities the person has engaged in the alleged conduct, referring to material upon which the view is based.

if appropriate, express a view on whether the matter should not continue to be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed.

include all relevant attachments, such as correspondence with the officer, disciplinary and other interviews, witness statements.

be signed by the investigator/s.

You should be aware that the Procedural Guidelines require the disciplinary process to be completed in a timely and expeditious fashion. This includes the investigation and preparation of the Investigation Report.

You are to provide me with this report by ..... (specify date).

If you expect your investigation into this matter to take longer than ..... (date as specified above), you need to advise me on ..... (4 weeks from date of this letter) of your progress to date, any anticipated delays which may affect completion of the investigation, and the date you expect to complete the investigation.

(Signed) .....

(Title) .....

(Date) .....

**Sample Letter 3**

**Letter from investigator calling people for interview (other than officer subject of the allegation of misconduct)**

Dear

I have been asked by..... (name and title of Department Head) of the ..... (Department) to investigate and prepare an Investigation Report into an allegation that ..... (name of officer) may have engaged in misconduct.

I would like to interview you as a part of this investigation process. The interview will be at ..... (time) on ..... (date) at ..... (venue).

*If the investigator chooses to sound record the interview then letter should also include:*

I propose to sound record the interview and a copy of your interview will be provided to you.

If you have any enquiries in relation to this matter, please contact me on .....

(Signed) .....

(Date) .....

Note: At beginning of interview investigator is to inform officer that information provided during the interview may be disclosed to the person the subject of the investigation. See Clause 11.6.2 of the Procedural Guidelines

**Sample Letter 4**

**Letter to officer the subject of the allegation of misconduct - advice re allegation and that treated as a disciplinary matter (s45(2)(a))**

Dear

I have received an allegation that you may have engaged in misconduct.

The alleged misconduct is as follows:

*Specify the details of the allegation as known at the time*

I have decided to deal with this allegation as a disciplinary matter under section 46(1)(a) of the *Public Sector Employment and Management Act 2002* (the Act).

I have requested ..... (name of the investigator) to undertake an investigation into the allegation and prepare an Investigation Report for me on these matters (attach copy of letter).

..... (name of investigator) will interview you as part of the investigation process and give you an opportunity to respond to the allegations.

..... (name of investigator) will contact you separately to make arrangements.

You should be aware that by treating this allegation as a disciplinary matter, once I have received and considered the Investigation Report, if I form the opinion that you have engaged in misconduct I may take disciplinary action against you. Below is a list of the possible disciplinary actions under section 42(1) of the Act that range from caution or reprimand to dismissal.

- Caution
- Reprimand
- Fine
- Reduction in salary
- Demotion to a lower graded position
- To be allowed to resign
- Direction to resign
- Dismissal, or in the case of an officer on probation - annulment

Any enquiries in relation to this matter should be referred to me on ..... (telephone)

(Signed) .....

(Title) .....

(Date) .....

Note: It may not be appropriate to provide the allegation at first instance where the Department Head is reasonably concerned that the nature of the allegation or circumstances surrounding the matter may lead to the destruction of evidence, harassment or victimisation of suspected complainants. See Clause 11.5 of the Procedural Guidelines

**Sample letter 4b**

**Letter to officer subject of allegation calling for interview (not s45(2) letter)**

Dear

I have been asked by..... (name and title of Department Head) of the ..... (Department) to investigate and prepare an Investigation Report into an allegation that you may have engaged in misconduct within the meaning of section 43 of the *Public Sector Employment and Management Act 2002*.

I would like to interview you as a part of this investigation process. The interview will be at ..... (time) on ..... (date) at ..... (venue). I propose to sound record the interview and a copy of your interview will be provided to you.

*If the officer is to be interviewed, the investigator must comply with the requirements of Clauses 11.7, 11.8.1, and 11.8.2 of the Procedural Guidelines*

You will have a separate opportunity to respond to the allegation as required under section 45(2).

If you have any enquiries in relation to this matter, please contact me on .....

(Signed) .....

(Date) .....

Note: It is the discretion of the Investigator whether this interview is necessary - See Clause 11.6.1 of the Procedural Guidelines - and also whether to send this letter – the Investigator may choose instead to telephone the officer and make arrangements for interview.

If the officer is to be interviewed the requirements of Clauses 11.7, 11.8.1, and 11.8.2 are to be complied with.

**Sample letter 5**

**Letter to officer subject of allegation calling for interview (s45(2)(b))  
Clause 11.6.3 Procedural Guidelines**

Dear

As advised on ..... I have been asked by..... (name and title of Department Head) of ..... (Department) to investigate and prepare an Investigation Report into an allegation that you may have engaged in misconduct.

The alleged misconduct is as follows:

*Specify in detail the allegation including date time, location and details of incident (names of other parties) where relevant – may and often would be more detail than provided in earlier correspondence*

*Examples of descriptions of acts of misconduct:*

**Fighting:**

*You did on ..... (date and time) at..... (location) hit..... (name of person) ..... by..... (kicking/ hitting etc number of times how – with fist etc, where on body if known etc)*

**Misuse of the Internet**

*You did on ..... (date) at..... (location) ..... using the Department's computer resources by entering the following search terms .....and/ or accessed the following webpages/ websites/ downloaded the following images .....which is considered (obscene, pornographic, offensive, child pornography etc) .....*

**Stealing**

*You did on ..... (date and time) at..... (location) take Departmental property..... (items and value) for your own personal use*

Section 45(2) of the *Act* requires that you be given an opportunity to respond to the allegation, and I propose to interview you as part of my investigation. The interview will be at ..... (time) on ..... (date) at ..... (venue). **Note: must give at least 7 days notice.**

At this interview you will be provided with the opportunity to respond to questions asked in relation to the allegation/incident/s or make comments on these matters. You may also wish to bring an observer to the interview. The role of this observer is as a witness or adviser but not an advocate. The interview will be sound recorded (if other method, specify which method) and a copy of the record of interview statement will be provided to you for signature by..... (when available).

You may also wish to bring any written submissions to this interview, and you will be given an opportunity following the interview to provide any further written submissions by..... (date - 7 days from interview – longer for complex matters).

If you have any enquiries in relation to this matter, please contact me on .....

(Signed) ..... (Date) .....

Note: If the investigator is in any doubt as to capacity of officer to speak effectively or adequately understand should invite officer to nominate a person to speak on his/ her behalf this may also be a signing or language interpreter. Where the officer has requested an extension of time, the investigator may agree to any extension of time which is reasonable, having regard to the overall circumstances of the case and the need to ensure procedural fairness.

**Sample letter 6**

**Letter to officer – no misconduct or misconduct not made out  
Clause 12.2 Procedural Guidelines**

Dear

The investigation into the allegation you may have engaged in misconduct has now been completed.

Then choose either:

I have considered the Investigation Report and determined that the allegation of misconduct has not been made out and no further action will be taken in regard to these matters.

The materials in relation to these matters including the Investigation Report will not be placed or recorded on any of your Personnel records or files.

OR

I have considered the Investigation Report and determined that though the facts of the allegation have been made out, you have not engaged in misconduct and no further action will be taken in regard to these matters.\*

*The facts of an event may be proven but it would not be misconduct (an example may be where an accident occurred which involved a physical connection between two officers)*

The materials in relation to these matters including the Investigation Report will not be placed or recorded on any of your Personnel records or files.

(Signed) .....

(Title) .....

(Date) .....

Note: \* The reasons for taking no further action where the facts of the allegation have been made out should be recorded in a submission, but are not necessary to include in the letter to the officer. Reasons for such a decision must be recorded.

**Sample letter 7**

**Letter - engaged in misconduct but no further action or remedial action s46(4) Clause 12.4,  
Clause 12.5 Procedural Guidelines**

Dear

The investigation into the allegation you may have engaged in misconduct has now been completed.

I have considered the Investigation Report and am of the opinion that you have engaged in misconduct as follows:

*Specify the details of misconduct that the Department Head is of the opinion the officer has engaged in – would be no more than details outlined in Sample Letter 5, although could be less*

Then choose either:

I have decided, to take no further action in regard to the above misconduct.\*

OR

I have decided, that remedial action is appropriate. The remedial action I propose is:

*Specify remedial action to be taken\*\*.* S42(1)specifies remedial action, to mean one or more of the following:

- counselling – informal and formal
- training and development
- monitoring the officer's conduct or performance
- implementing a Performance Improvement Plan
- issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory
- transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position, and
- any other action of a similar nature.

Other similar actions that may be considered include mentoring, staff rotation, supervision, and referral to relevant policies

(Signed) .....

(Title) .....

(Date) .....

Note: The reasons for taking no further action should be recorded in a submission, but are not necessary to include in the letter to the officer. Reasons for such a decision must be recorded.

Note: Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90 – see Chapter 3 of the Personnel Handbook. See Clause 12.4 Procedural Guidelines

**Sample letter 8**

**Letter engaged in misconduct – considering disciplinary action s46(3)  
Clause 13 Procedural Guidelines**

Dear

The investigation into the allegation you may have engaged in misconduct has now been completed.

*Specify details of allegations*

I have considered the Investigation Report, a full copy including attachments is provided to you with this letter (see Clause 13.1 Procedural Guidelines for guidance on information not to be disclosed), and I have formed the opinion that you have engaged in misconduct as follows:

*Specify the details of misconduct that the Department Head is of the opinion the officer has engaged in - would be no more than details outlined in Sample Letter 5, although could be less*

I am now considering imposing disciplinary action. As previously advised on..... (Sample letter 4) there are 8 possible disciplinary actions ranging from a caution or reprimand to dismissal. In relation to this matter the severest penalty I would conceivably impose is:

*Need to advise severest penalty being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment in the case of an officer on probation is being considered. If the choice is for a direction to resign, the officer should be advised of the consequences of not resigning within the time allowed – that is termination*

You have 14 days from the receipt of the this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the disciplinary action being considered before I make a final decision.

Your submission may address such matters including my opinion that you have engaged in misconduct, the Investigation Report, or any extenuating and mitigating circumstances.

Before making a final decision on the appropriate action, I will consider the following:

- 1.
2. the Investigation Report
3. the objectives of Part 2.7 of the *Public Sector Employment and Management Act 2002* as stated in section 41 (copy attached)
4. the following matters:  
Outline the previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) to be taken into account.
5. your submission if made.

You also have an opportunity to have an interview with me (Department Head), accompanied by a union or other representative (not a legal practitioner) before a final decision is made. Your representative may speak on your behalf at the interview but may not attempt to cross examine me.

Should you wish to have an interview the request should be made within 5 days of receipt of this letter. Please contact ..... who will make arrangements for this interview.

(Signed) .....

(Title) .....

(Date) .....

Note: The Department Head has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension.

**Sample letter 9**

**Letter - final decision as to action (s46(2))**

Dear

I refer to my letter of ..... (date) where I advised you I had formed the opinion you had engaged in misconduct and I was considering imposing disciplinary action.

I have now considered the submissions and additional information provided by you and I have decided, with effect from ..... (date) to take disciplinary action as follows: ..... (specify action).

OR

I have now considered the submissions and additional information provided by you and I have decided, to take no further action. \*

OR

I have now considered the submissions and additional information provided by you and I have decided, with effect from.....(date) to take remedial action as follows:

*Specify remedial action to be taken\*\*.* S42(1)specifies remedial action, to mean one or more of the following:

counselling – informal and formal

training and development

monitoring the officer’s conduct or performance

implementing a Performance Improvement Plan

issuing of a warning to the officer that certain conduct is unacceptable or that the officer’s performance is not satisfactory

transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position, and

any other action of a similar nature.

Other similar actions that may be considered include mentoring, staff rotation, supervision, and referral to relevant policies

(Signed) .....

(Title) .....

(Date) .....

Note: The reasons for taking no further action should be recorded in a submission, but are not necessary to include in the letter to the officer. Reasons for such a decision must be recorded.

Note: Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook. See Clause 12.4 Procedural Guidelines

Note: Section 23(1) of the *Government and Related Employees Appeal Tribunal Act 1980* requires notice in writing of the decision as soon as practicable after the decision is made. Section 57 of the same Act provides for personal delivery to an agent or by pre-paid post to a place of employment or residence.

**NOTICE OF SERVICE**

On ..... (date)

I served the decision of which the within is a duplicate upon the person to whom it is addressed by:

1. Of residence being (specify the full address)

OR

2. Sending by pre-paid post at the following place of employment / residence (specify the full address)

OR

3. Delivering to him/ her personally at the following place of employment (specify the full address)

(Signed) .....

(Date) .....

**Sample letter 10**

**Letter – to officer on timeframes (to be sent after 12 weeks)**

Dear

I refer to my previous letter of ..... (date) where I advised you I had received an allegation you may have engaged in misconduct.

As you are aware I have decided to deal with the allegation as a disciplinary matter under section 46(1)(a) of the *Public Sector Employment and Management Act 2002*.

The process of considering the allegation as a disciplinary matter involves four stages:

Stage 1 – Initial Determination of an appropriate course of action regarding an allegation of Misconduct

Stage 2 – Investigation

Stage 3 – Initial decision

Stage 4 – Implementation of final decision

I wish to advise you that the disciplinary process in regard to the above allegation is at Stage..... (specify exactly where up to), and I anticipate this stage will conclude by ..... (date).

*If at Stage 4 indicate when matter will conclude by..... (date)*

*Would not include the following paragraph if it is expected the matter will conclude in less than 4 weeks from date of letter. In other circumstances must include the following:*

The reason/s the disciplinary process has not progressed beyond the above stage is/are:

Need to specify reasons not concluding – may include complexity of matter, exceptional circumstances, external investigating authority requesting delay or availability of officer, must also include any anticipated future delays

I will keep you informed on the progress of the disciplinary process.

If you have any enquiries please contact me on ..... (telephone number).

(Signed) .....

(Title) .....

(Date) .....

\*Note: Letter is to be sent 12 weeks after receipt of allegation. See Clause 4 of the Procedural Guidelines

Every 6 weeks thereafter officer is to be advised in writing on progress of the matter. See Sample letter 11

**Sample letter 11**

**Letter – to officer on timeframes (advice to officer on progress of disciplinary process - to be sent after 18 weeks)**

Dear

I refer to my previous letter of ..... (date) advising you of the progress in the disciplinary process in considering the allegation you may have engaged in misconduct.

The four stages of the disciplinary process are:

Stage 1 – Initial determination of an appropriate course of action regarding an allegation of Misconduct

Stage 2 – Investigation

Stage 3 – Initial decision

Stage 4 – Implementation of final decision

I wish to advise you that the disciplinary process is now at stage..... (specify exactly where up to), and I anticipate this stage will conclude by ..... (date).

The reason/s the disciplinary process has not progressed beyond the above stage is/are:

*Need to specify reasons not concluding – may include complexity of matter, exceptional circumstances, external investigating authority requesting delay or availability of officer, indicate also whether there will be any further anticipated future delays.*

I will keep you informed on the progress of the disciplinary process.

If you have any enquiries please contact me on ..... (telephone number).

(Signed) .....

(Title) .....

(Date) .....

Note: Officer is to be advised in writing on progress of the matter every 6 weeks following sending of Sample letter 10

**Sample letter 12**

**Letter to officer the subject of the allegation of misconduct - advice re allegation and that treated as a remedial matter (s46(1)(b))**

**Clause 10 Guidelines**

Dear

I have received an allegation that you may have engaged in misconduct. The alleged misconduct is as follows: Specify the details of the allegation as known at the time I have decided it is appropriate to take remedial action under section 46(1)(b) of the *Public Sector Employment and Management Act 2002* (the Act). I have decided, with effect from..... (date) to take remedial action as follows:

*Specify remedial action to be taken\*. S42(1) specifies remedial action, to mean one or more of the following:*

counselling – informal and formal

training and development

monitoring the officer's conduct or performance

implementing a Performance Improvement Plan

issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory

transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position, and

any other action of a similar nature.

Other similar actions that may be considered include mentoring, staff rotation, supervision, and referral to relevant policies

(Signed) .....

(Title) .....

(Date) .....

Note: Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90 – see Chapter 3 of the Personnel Handbook. See Clause 10 Procedural Guidelines.



## Appendix 9B: Unsatisfactory performance

### Guidelines for dealing with unsatisfactory performance

These guidelines are issued for the purpose of dealing with unsatisfactory performance and the taking of remedial or disciplinary action against an officer for unsatisfactory performance under Division 3 of Chapter 2, Part 2.7 of the *Public Sector Employment and Management Act 2002* (the *Act*). All references to a section (s) of the *Act* refer to the *Public Sector Employment and Management Act 2002* unless otherwise stated.

Unsatisfactory performance when there is no reasonable or satisfactory reason for the unsatisfactory performance, includes, but is not limited to:

- agreed goals and targets consistent with any relevant written documentation, including work plans, position descriptions or duty statements, and are not achieved within a reasonable or agreed time
- set tasks consistent with any relevant written documentation including work plans, position descriptions or duty statements, which are not performed, or not performed within a reasonable or agreed time, or not performed to the required standard
- identified skills required are not demonstrated within a reasonable or agreed time.

### 9B-1 Application and Effect

The guidelines apply to officers who are defined to mean, for the purpose of the Division, persons employed in staff or senior executive positions, including those on probation. The arrangements do not apply to chief executive officers, temporary employees or casual employees.

#### 9B-1.1 Transitional arrangements

For matters where unsatisfactory performance has been identified and a performance management process was in place prior to the commencement of Part 2.7 of the *Act*, the Department will still need to apply these guidelines, including all requisite notifications.

### 9B-2 Delegation - Department Head

The Department Head is to deal with the unsatisfactory performance of an officer.

The Department Head may delegate any of his/her functions under the *Act* to deal with unsatisfactory performance to a staff member of that Division or in another Division in the Government Service. This delegation is usually to a member of staff within the same Public Service Department or to another Department in the Public Service. (s4F)

Generally if the functions in relation to Part 2.7 of the *Act* dealing with unsatisfactory performance are delegated by a Department Head, the functions would be delegated to an officer within the Department who understands the process of dealing with unsatisfactory performance and would have available to him/her the resources necessary to carry out the delegated function.

In delegating the authority to deal with unsatisfactory performance, the entire function including the tasks of determining whether the officer's performance is unsatisfactory, and that of determining the relevant action, should be delegated to the same person.

In these guidelines a reference to the Department Head is to be read as to include a reference to a delegate in accordance with s4F of the *Act*.

(See Appendix 9-D, Sample Document 1 for delegation of function and Sample Document 2 for general delegation under Part 2.7 where relevant).

#### 9B-2.1 Terminology

**Remedial action**, in relation to an officer, means what is contained in s42 (1) of the *Act*.

**Disciplinary action** means the penalty options available and defined in s42 (1) of the *Act*.

**Manager/supervisor** means the person responsible for the day to day supervisory function in relation to the officer.

**Documentation** in relation to agreed goals, targets, and tasks means all relevant written documentation including work plans; position descriptions or duty statements; and any other documentation.

### 9B-3 Responding to Unsatisfactory Performance

Managers are responsible for ensuring that officers under their control meet required work standards. It is important that officers who are not meeting the required standards have those issues addressed as soon as performance difficulties are identified.

Generally, unsatisfactory performance means not meeting agreed tasks, or timeframes or standards of work. The agreed standards can be in a work plan or in any other documentation. Any standard that is applied must be relevant to the officer's position description or duty statement.

#### 9B-3.1 Performance Management

These Guidelines for Dealing with Unsatisfactory Performance replace Appendix 9 C Procedures for responding to poor performance of the Department of Premier and Cabinet Performance Management Policy and Guidelines issued in December 1998 – Department of Premier and Cabinet C1998-103.

The following strategies in performance management should be implemented and established by the Department and referred to in dealing with instances of unsatisfactory performance:

- Provide and adhere to induction and probation programs
- Ensure there are clearly articulated work standards and performance requirements which are reasonable and attainable
- Provide development plans to assist the officer to reach expected work standards

- Ensure that there is a clear understanding of the work to be performed
- Ensure training and development opportunities, both on and off the job, are provided which:
  - are accessible and are relevant
  - provide relevant training in all elements of the job
  - focus on any new job requirements which emerge
  - provide opportunities to practice acquired skills and knowledge
  - provide regular feedback to employees about their performance with advice and assistance to remedy any deficiencies
  - recognise and reward good work performance
- Remove barriers to effective performance which includes:
  - ensuring employees have all the necessary resources to perform the job, including equipment, information and staff
  - not placing conflicting demands on time
  - reviewing policies or practices which should be changed
  - dealing with external interference which precludes performance to a satisfactory standard.

### 9B-3.2 Equal Employment Opportunity

In dealing with any instance of unsatisfactory performance the manager should examine whether the following standard EEO measures have been implemented with respect to the officer in question:

- Ensuring equitable allocation of work, acting in higher grade opportunities and training opportunities
- Appointing officers on their ability to perform the job
- Ensuring fair and equitable distribution of overtime, leave and shift work (where relevant)
- Ensuring fair performance assessment and development.

### 9B-3.3 Consideration of organisational and non work related factors

The manager/supervisor must consider factors which may contribute to the unsatisfactory performance.

**Poor work performance** occurs where an employee consistently fails to meet agreed, documented, work objectives that are fair and reasonable. The consequences of this can impact on the individual employee, the work group and the organisation.

Factors contributing to poor performance include:

- organisational factors (eg poorly managed restructuring; poor work and job design with subsequent lack of challenge in work; ineffective recruitment and selection resulting in a “mismatch” of people and jobs; inappropriate planning, resourcing and competing deadlines)
- management practices (eg inappropriate or unacceptable management approach; inconsistent application of performance standards; biases, changes in opinion or lack of care or commitment on the manager’s part)
- training and development needs (eg inadequate induction and explanation of job role/responsibilities; insufficient skills, training, or experience to perform the duties and responsibilities of the position; unsupported introduction of new technology)
- poor communication between management and employees (eg inadequate performance evaluation and feedback)
- social factors (eg disruptive personality clashes within the work environment)
- inappropriate work environment (eg occupational health and safety standards not being met; direct or indirect discrimination or workplace harassment) and
- personal issues (eg lack of motivation or commitment; health or other family problems; drug and alcohol misuse).

Performance difficulties that are not work-related may require intervention or assistance by management, employee associations, an employee assistance provider, or external individuals or organisations. The cause of performance difficulties needs to be identified and appropriate strategies developed, including training, to assist the employee deal with identified poor work performance.

Agencies are also referred to Department of Premier and Cabinet documents '**Alcohol and Other Drugs: Policy and Guidelines**' and '**Assistance Services for Employees: Policy and Guidelines**' for guidance in relation to managing some of these issues.

Unsatisfactory performance should be dealt with by the manager/supervisor as soon as performance difficulties are identified. The nature of the unsatisfactory performance should be clearly articulated, with reference to examples. This enables the officer and the manager to be clear about the issues.

(Note Source of above - 3.9.1 p12 Department of Premier and Cabinet Performance Management Policy and Guidelines December 1998).

### 9B-3.4 Remedial vs Disciplinary Action

Before utilising the procedures to manage unsatisfactory performance, the manager must be satisfied that reasonable assistance has been provided to the officer to enable him/her to perform at the required standard.

The action taken in instances of unsatisfactory performance will be determined by what is reasonable in the circumstances.

Disciplinary action is not the first choice in managing unsatisfactory performance, but may become necessary when remedial action has not been effective. Disciplinary action is only appropriate where performance remains unsatisfactory after the officer has been given a reasonable opportunity to improve his or her performance.

In determining what action is appropriate in the circumstances all relevant factors should be taken into account including whether:

- the officer has key accountabilities or objectives that include performance criteria, standards and targets, and training and development plans
- equal employment opportunities are available to the officer
- organisational and non-work related reasons for unsatisfactory performance have reasonably been considered

If a Department Head is of the opinion that an officer is not performing in a satisfactory manner or to a satisfactory level he/she may decide to take remedial action. (s47(1))

### 9B-4 Procedural Fairness

The guidelines are subject to the rules of procedural fairness as required by s47 of the Act.

The officer must have:

- the opportunity to respond to the opinion of the Department Head that the officer's performance is still unsatisfactory after remedial action has been taken and given a reasonable opportunity to improve – s47(2).
  - a separate opportunity to make representations in relation to any disciplinary action being considered.

An officer the subject of these guidelines should be provided with a copy of these Guidelines for Dealing with Unsatisfactory Performance.

### 9B-5 Assistance in Applying the Guidelines

The Department Head may seek advice from relevant 'experts' to assist in forming a view as to how the matter might proceed. For example, the manager of training and development may assist in determining the most appropriate training for an officer.

Managers/supervisors with responsibility for performance management should have the necessary training, skills and experience. Competency areas for training may include:

#### For managers

- giving and receiving constructive feedback
- cross-cultural awareness and communication
- effective performance standards
- setting realistic objectives
- training needs analysis
- transparency in performance management and
- managing under-performance and rewarding superior performance.

#### For employees

- negotiation skills
- cross-cultural awareness and communication
- appropriate assertiveness
- individual performance and organisational achievement
- setting work goals
- self-assessment and
- giving and accepting feedback.

(Note: Source of above - 3.12 Training p16 Department of Premier and Cabinet Performance Management Policy and Guidelines December 1998)

### 9B-6 Dealing with Unsatisfactory Performance

Dealing with unsatisfactory performance requires a stepped process, which is transparent, consistently applied, and has regard to the particular circumstances of the case. The Act requires that a reasonable opportunity for improvement must be given. This has to have regard to matters such as, the complexity of the matter/s to be addressed and whether training forms part of the remedial action considered.

Improvement of performance and job satisfaction is the primary goal. Whilst remedial action will usually provide the desired results, it may be necessary to proceed with

disciplinary action if the agreed goals are not met and performance is still unsatisfactory. The process should also have regard to work plans or other relevant written documentation that may be in place.

#### 9B-6.1 Steps for Dealing with Unsatisfactory Performance

There are six steps for dealing with unsatisfactory performance:

5. Early Intervention and Informal Counselling
6. Formal Counselling
7. Taking Remedial Action and Review
8. Consideration of Disciplinary Action or further Remedial Action
9. Preliminary decision on action being considered
10. Implementation of final decision.

### 9B-7 Early Intervention and Informal Counselling (Step 1)

The primary responsibility for performance management is the officer's manager/supervisor. Early and effective informal counselling in most cases should address an unsatisfactory performance problem. It is only if action under this step, has failed to rectify the unsatisfactory performance, that consideration need be given to involving the Department Head and the processes under s47 – Dealing with unsatisfactory performance.

The officer should be given reasonable verbal or written notice of the time, place and purpose of the proposed informal counselling session.

At the outset of the session the manager will:

- Outline the purpose of the discussion
- Clarify expectations.

The manager will also:

- Confirm the appropriate work standards and explain how the officer's performance has differed from those standards, by reference to the employee's work plan or other relevant documentation
- Outline what he/she considers to be the applicable work standard/s and explain how the officer's performance has departed from that standard with reference to the officer's work plan or other relevant documentation
- Provide an opportunity for the officer to respond to the manager's performance concerns
- If unresolved, confirm verbally and in writing the work performance issues requiring improvement, the targets to be achieved and the timeframe
- Confirm understanding of the expectations and advise the officer of the next steps that would be followed if the agreed performance standards were not met within the required timeframe
- Advise the officer of his/her right to use the Department's grievance procedure if there is a disagreement.

The outcome of informal counselling should be agreed by the officer and their manager/supervisor. If the officer disagrees with the manager/supervisor's views on their work performance, and/or proposals to improve work performance, they are to be informed of their right to use the Department's grievance and dispute resolution procedures. Any process for the management of performance would continue whilst the officer's grievance is considered and resolved.

In considering the officer's work plan consideration should be given to the:

- work issues to be addressed
- targets to be achieved
- timeframe for reviewing the officer's performance.

In addition the manager will:

- Note and address any relevant organisational factors which impact on the officer's performance

- Note personal or external factors which impact on the officer's performance and provide assistance to the extent possible such as referral to the Department's Employee Assistance Provider
- Advise the officer that a copy of the work plan that is developed, will be placed on his/her personnel file.

Where there is no written correspondence following informal counselling, a diary note shall be made. The manager will advise his/her superior when informal counselling is being taken.

Early and effective informal counselling in most cases will address a work performance problem, and inform the employee that their poor work performance is unacceptable.

## 9B-8 Formal Counselling (Step 2)

Formal counselling will be required when:

- Performance remains unsatisfactory after informal supervisory counselling; or
- The unsatisfactory performance is beyond the scope of informal supervisory counselling.

The officer's line manager/supervisor will normally perform formal counselling.

### 9B-8.1 Formal Notification by Department Head

To ensure the actions taken under formal counselling are remedial action for the purpose of s47 (1) it will be necessary to involve the Department Head before commencing this step. If formal counselling is undertaken without approval of the Department Head, then it may be necessary to undertake further remedial action if at the end of the process the officer's performance is still unsatisfactory.

A submission shall be prepared for the Department Head to enable him or her to consider if in the opinion of the Department Head the officer is not performing his/her duties in a satisfactory manner and that remedial

action should be taken. The submission should detail the unsatisfactory performance, the informal counselling to date and proposed options for remedial action.

Options for remedial action shall be discussed with the officer at the formal counselling session and appropriately amended after consideration of all relevant matters. Attached for approval of the Department Head should be a letter to the officer advising of the Department Head's opinion that the officer has not been performing his/her duties in a satisfactory manner and of the proposed remedial action (see Sample letter 1).

In any case where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook.

This requirement also applies to any further remedial action which is proposed to be taken under Clause 8.2.

The officer must be given a reasonable opportunity to improve following formal notification from the Department Head.

### Advice from Manager/Supervisor

The aim of the formal counselling process is to ensure that at the end of the session the officer and manager/supervisor are fully aware of the future management of the officer's work performance. The information is summarised in a Performance Improvement Plan, discussed below.

Reasonable written notice will be given to the officer from the manager indicating:

- Attaching the letter from the Department Head (see Sample letter 1)
- The time and location of the session
- The purpose
- Who will be attending the counselling session

- The unsatisfactory performance issues to be discussed
- Possible strategies to address poor performance
- The purpose of a performance improvement plan
- That the officer may have a support person (such as a union delegate or colleague) in attendance if required.

Organisational, personal or external factors or deficiencies that may impact on the officer's performance should be considered.

At the outset of the session the manager will:

- Outline the purpose of the session
- Clarify expectations.

The manager will also:

- Confirm the areas of unsatisfactory performance
- Provide an opportunity for the officer to respond to the manager's performance concerns
- Advise the officer that continued unsatisfactory performance might result in other remedial action or possible disciplinary action
- Refer the officer to these Guidelines for Dealing with Unsatisfactory Performance.

An agreed documented Performance Improvement Plan shall be developed by the manager/supervisor and officer unless it is determined the poor work performance is solely due to identified organisational, personal or external factors or deficiencies. If it is determined the poor work performance is solely due to personal factors the officer will be referred to the Department's Employee Assistance Provider. The officer should sign the Performance Improvement Plan. The officer may indicate if there are any issues of disagreement.

#### **9B-8.2 Performance Improvement Plan**

The Performance Improvement Plan will:

- Outline the work performance issues to be addressed
- Indicate goals and targets to be achieved
- Indicate any other relevant remedial action to be taken as part of the Performance Improvement Plan –for example training
- Note agreed dates for progress reviews

- Note the timeframe for reviewing the officer's performance
- Be signed by the officer and the manager. Timeframes must be appropriate and relevant to the nature and complexity of the performance issues and the availability of training where this is required. The timeframes should be reached by agreement.

In addition the manager/supervisor will:

- Note and address any relevant organisational factors which impact on the officer's performance
- Note personal or external factors which impact on the officer's performance and provide assistance where possible such as referral to the Department's Employee Assistance Provider.
- Advise the officer that a copy of the Performance Improvement Plan that is jointly developed with the officer will be placed on his/her personnel file.

The officer is to be provided with a copy of the Performance Improvement Plan.

#### **9B-9 Taking of Remedial Action and Review (Step 3)**

The officer and the relevant manager/supervisor will review the Performance Improvement Plan on the agreed review date/s. The review will consider progress, including whether agreed remedial action, such as training was implemented.

Reasonable written notice (see Sample letter 2) will be given to the officer indicating:

- The time and location of the review
- The purpose
- Who will be attending the counselling session
- That the officer may have a support person in attendance.

Where there is to be more than one follow-up review in the agreed period, if performance is satisfactory, the improvement should be documented. Any continuing performance issues should also be documented.

#### **9B-10 Outcomes of Review**

At the end of the review period/s as agreed, the officer shall be advised in writing by the Department Head either that:

##### **9B-10.1 Performance is satisfactory and the process is finalised**

On-going feedback and performance monitoring will occur through the normal feedback cycle of the performance management system.

OR

##### **9B-10.2 Performance still unsatisfactory and that further remedial action under s.47 (1) is proposed (Step 4)**

The advice should indicate:

- The remedial action proposed
- The reasons for the decision
- A summary of the process taken to date
- The consequences of the decision
- That continuing unsatisfactory performance may lead to disciplinary action
- Advice on how to access further assistance if required.

Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook.

OR

##### **9B-10.3 Performance still unsatisfactory and may lead to disciplinary action (Step 4)**

Remedial action has been taken, and a reasonable opportunity has been given to the officer to improve performance and the performance of that officer is still unsatisfactory (see Sample letter 3).

The Department Head will advise the officer in writing that his/her performance remains unsatisfactory and that the officer's performance may lead to disciplinary action (s47(2)) (see Sample letter 4).

The notification should indicate:

- That the Department Head is of the opinion that performance is still unsatisfactory – detail the unsatisfactory performance
- That the unsatisfactory performance may lead to disciplinary action and what that means
- A summary of the process taken to date, including the reasonable opportunity the officer has had to respond to the opinion about his/her performance
- The consequences of the decision
- The officer will be given an opportunity to respond to the Department Head's opinion about the officer's performance – s47(2) – Time for response will be 14 days
- The officer's response will be taken into consideration in deciding whether to take disciplinary action with respect to the officer.

### **9B-11 Preliminary decision on action being considered (Step 5)**

Having considered the officer's response, the Department Head may then give consideration to:

- disciplinary action
- further remedial action or
- no further action.

The officer is to be advised accordingly.

In making a decision about disciplinary action the Department Head shall, prior to notifying the officer of this fact, give consideration as to what is the most severe in the range of penalties that might conceivably apply to such unsatisfactory performance ('the severest penalty').

In deciding what the severest penalty is, the Department Head shall have regard to the objects of Part 2.7 of the Act, that is:

- To maintain appropriate standards of conduct and work-related performance in the Public Service;
- To protect and enhance the integrity and reputation of the Public Service; and
- Ensure the public interest is protected. (s41)

It is essential that the Department Head's consideration of the severest penalty must not involve any pre judgement as to what penalty, if any, is ultimately to be applied to the officer. In consideration of the actual penalty, if any, to be applied is not to occur until the steps outlined below have been carried out.

The Department Head shall consider the following:

- The facts of the case
- The impact of the unsatisfactory performance on the objectives of Part 2.7 of the Act.
- Skill, experience, position of the officer
- The nature and seriousness of the unsatisfactory performance
- Mitigating or extenuating circumstances if available at this stage
- The employment history and general conduct history of the officer
- Whether the unsatisfactory performance has previously been the subject of counselling or previous remedial or disciplinary action
- The effect of the proposed action on the employee.

If the decision is to take disciplinary action the written notification (see Sample letter 4) must state:

- The fact that the officer's response has been taken into account.
- The disciplinary action penalty/s being considered. Need to advice of the severest penalty that is being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment for an officer on probation is being considered.

- Outline the previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) to be taken into account.
- That the officer has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered before a final decision is made. The Department Head has discretion to extend the period for response if the officer applies for additional time within the fourteen day period and provides reasonable grounds for seeking the extension.
- That he/she may request an opportunity to have an interview with the Department Head, accompanied by a union or other representative (not a legal practitioner) before a final decision is made. The request for an interview should be made within 5 days of receipt of the written notice. Generally the Department Head should arrange to have the interview held within a few days of receipt of the written response. The representative may speak on behalf of the officer at the interview but not attempt to cross examine the Department Head.
- That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the Department Head may make a final decision.

### **9B-12 Implementation of final decision (Step 6)**

The Department Head, having considered any submission made by the officer in respect to the disciplinary action being considered and having had an interview, if requested, shall make a final decision promptly and expeditiously. A final decision may consist of disciplinary action, remedial action or no action. The officer shall then be advised in writing of the final decision and its date of effect. (See Sample letter 5).

In making a decision as to the appropriate disciplinary action, the Department Head must exercise his/her discretion and not adopt a policy that unsatisfactory performance will always attract the same disciplinary penalty.

All the issues outlined above in Clause 11 are to be considered along with any submission made by the officer. The officer's submission may have addressed such matters as the unsatisfactory performance, or any extenuating and mitigating circumstances. If made, the Department Head shall also consider any submission made on behalf of the officer by the union.

The officer will be advised of the final decision as to the actual disciplinary action being taken (see Sample Letter 5).

### 9B-13 Steps for Dealing with Unsatisfactory Performance

11. Early Intervention and Informal Counselling  
(see Clause 7)

**If performance still unsatisfactory after Step 1 then:**

1. Formal Counselling and Involvement of Department Head (see Clause 8, s47 (1))
2. Taking of Remedial Action and Review  
(see Clause 9, s47 (2))

**If performance still unsatisfactory after Step 3 then:**

1. Consideration of Disciplinary Action or Further Remedial Action (see Clause 10, s47 (2)) – if disciplinary action officer to have opportunity to respond on opinion re. performance. Time for response 14 days

**If after considering officer's response Department Head decides to take disciplinary action**

1. Preliminary decision on disciplinary action being considered - Officer must be given an opportunity to make a submission in relation to the disciplinary action being considered (Clause 11 s47(4)) Time for submission 14 days
2. Implementation of final decision (Clause 12, s47(3)). Time for final decision – promptly and expeditiously.

## 9B-14 Sample Documents and Letters

### UNSATISFACTORY PERFORMANCE

#### Sample Document 1

#### Instrument of Delegation (Individual unsatisfactory performance)

Under section 4F of the *Public Sector Employment and Management Act 2002* (the Act), I, ..... the Department Head of ..... delegate to ..... an officer of the Department\*, all of my functions under Part 2.7 of the Act with respect to dealing with unsatisfactory performance of ..... an officer employed in the..... Division/ Branch of the Department is not performing in a satisfactory manner.

**The nature of the unsatisfactory performance is/are (outlined below/ in the attached report).**

(LIST HERE UNSATISFACTORY PERFORMANCE)

(Signed) .....

(Title) .....

(Date) .....

Note: Usually there would be a general delegation as per Sample Document 2 rather than a delegation to deal with unsatisfactory performance by a specific individual See Clause 2 of the Guidelines

**Sample Document 2**

**Instrument of Delegation (general delegation of functions of Department Head)  
Clause 2 Guidelines**

Under section 4F of the *Public Sector Employment and Management Act 2002* (the Act), I, .....  
....., the Department Head of ....., delegate to ..... an officer of the  
Department, all of my functions under Part 2.7 of the Act in respect to officers.

(SPECIFY BRANCH(ES) / DIVISION(S) OF DEPARTMENT THE OFFICER IS TO HAVE RESPONSIBILITY  
FOR ).

(Signed) .....

(Title) .....

(Date) .....

**Sample letter 1**

**Letter to officer notification not performing duties in a satisfactory manner (s47(1)) Clause  
8.1 Guidelines**

Dear

*FULL NAME, OFFICER'S TITLE, POSITION AND GRADE*

NOTIFICATION OF NOT PERFORMING DUTIES IN A SATISFACTORY MANNER – TAKING OF REMEDIAL  
ACTION – SECTION 47(1) OF THE *PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT 2002*

I wish to advise that I am of the opinion that you have not been performing your duties in a  
satisfactory manner. The details of your unsatisfactory performance are as follows:

*Details of performance issues – would be contained in submission from manager/supervisor to  
Department Head*

I have decided that the following remedial action is to be taken to give you the opportunity to  
improve your performance and achieve a satisfactory level of performance:

*Outline the remedial action to be taken - would be in submission from manager/supervisor  
to Department Head - not the detail as to be done by manager/supervisor (a Performance  
Improvement Plan would only be developed by the manager/supervisor and the officer following  
the formal counselling meeting)*

The details of the remedial action will be discussed and outlined at a formal counselling meeting  
that will be held with you and your ..... (name of manager/supervisor).

You should be aware that if your performance is still unsatisfactory, after you have been given a  
reasonable opportunity to improve, that disciplinary action may be taken. Below is a list of the 8  
possible disciplinary actions under section 42(1) of the Act that range from caution or reprimand  
to dismissal.

- Caution
- Reprimand
- Fine
- Reduction in salary
- Demotion to a lower graded position
- To be allowed to resign
- Direction to resign
- Dismissal, or in the case of an officer on probation - annulment

I hope you take the opportunity being offered to you and that such action will not be necessary.

(Signed) .....

(Title) .....

(Date) .....



**Sample Letter 2**

**Letter to officer taking of remedial action and review (s47(1)) Clause 9 Guidelines**

Dear

I refer to the formal counselling meeting held on ..... (date) and the agreed Performance Improvement Plan we developed (copy attached).

We agreed to review the Performance Improvement Plan on ..... (Date/s).

I would like to review the Plan at a formal counselling meeting at ..... (Time) on ..... (Date) at ..... (Venue).

At this meeting I intend to consider the progress on the following:

The work performance issues to be addressed

Goals and targets to be achieved

Whether any other agreed remedial action that was to be taken as part of the Plan have been implemented – for example training

The meeting will be attended by..... (names of persons including the officer). You may also wish to bring a support person to this meeting.

(Signed) .....

(Title) .....

(Date) .....

**Sample letter 3**

**Letter to officer - opportunity to respond (s47 (2))**

Dear

I refer to my earlier notification of ..... (Date) concerning your unsatisfactory performance.

To date the following actions have been taken to improve your performance:

Details of the process to date and the steps taken to improve the officer's performance\*

I am of the opinion that despite the above, your performance is still unsatisfactory. The details of your still unsatisfactory performance are as follows:

**Details of performance issues**

The Act in section 47(2) requires that you be given an opportunity to respond to my opinion about your performance still being unsatisfactory, after you have been given a reasonable opportunity to improve your performance.

Any written response to my opinion, that you wish me to consider should be provided to me by 4.00pm on (time for reply should be 14 days – maybe longer if a complex matter or officer requests a reasonable extension)

After considering any response you may make, I will decide whether to take any disciplinary action against you. Alternatively I may decide to take further remedial action or no action.

Should I make a decision to take disciplinary action, you will be given an opportunity to make a submission in relation to the disciplinary action being considered.

Yours sincerely

(Signed) .....

(Title) .....

(Date) .....

Note: The submission should outline how the steps taken to improve the officer's performance are a reasonable opportunity to improve

Sample letter 4

Letter performance still unsatisfactory – considering disciplinary action (s47(4))

Dear

I refer to earlier notifications about your unsatisfactory performance and the response you have provided to me.

I am now considering imposing disciplinary action. As previously advised on..... (Sample letter 1) there are 8 possible disciplinary action penalties ranging from a caution or reprimand to dismissal. In relation to this matter the severest penalty I would conceivably impose is:

***Need to advise severest penalty being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment for an officer on probation is being considered. If the choice is for a direction to resign the officer should be advised of the consequences of not resigning within the time allowed – that is termination***

You have 14 days from the receipt of this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the disciplinary action being considered before I make a final decision.

Your submission may address such matters including my opinion that your performance is still unsatisfactory, or any extenuating and mitigating circumstances.

Before making a final decision on the appropriate action, I will consider the following:

1. the nature and seriousness of the unsatisfactory performance
2. the objectives of Part 2.7 of the Public Sector Employment and Management Act 2002 as stated in section 41 (copy attached)
3. the following matters:

***Outline the previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) to be taken into account.***

4. your submission if made.

You also have an opportunity to have an interview with me (Department Head), accompanied by a union or other representative (not a legal practitioner) before a final decision is made. Your representative may speak on your behalf at the interview but may not attempt to cross examine me.

Should you wish to have an interview the request should be made within 5 days of receipt of this letter. Please contact ..... who will make arrangements for this interview.

(Signed) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

***Note: The Department Head has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension.***

Sample letter 5

Letter - final decision as to action (s47)

Dear

I refer to my letter of ..... (date) where I advised you I had formed the opinion your performance continued to be unsatisfactory despite be given a reasonable opportunity to improve and I was considering imposing disciplinary action.

I have now considered the submissions and additional information provided by you and I have decided, with effect from ..... (date) to take disciplinary action as follows: ..... (specify action).

OR

I have now considered the submissions and additional information provided by you and I have decided, to take no further action.\*

OR

I have now considered the submissions and additional information provided by you and I have decided, with effect from ..... (date) to take further remedial action as follows:

*Specify remedial action to be taken\*: S42 (1) specifies remedial action, to mean one or more of the following:*

- counselling – informal and formal
- training and development
- monitoring the officer's conduct or performance
- implementing a Performance Improvement Plan
- issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory
- transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position, and
- any other action of a similar nature.

Other similar actions that may be considered include mentoring, staff rotation, supervision, and referral to relevant policies

(Signed) .....

(Title) .....

(Date) .....

\* Note: The reasons for taking no further action should be recorded in a submission, but are not necessary to include in the letter to the officer. Reasons for such a decision must be recorded.

\*\* Note: Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90 – see Chapter 3 of the Personnel Handbook.

Note: Section 23(1) of the *Government and Related Employees Appeal Tribunal Act 1980* requires notice in writing of the decision as soon as practicable after the decision is made. Section 57 of the same *Act* provides for personal delivery to an agent or by pre-paid post to a place of employment or residence.

#### NOTICE OF SERVICE

On ..... (Date)

I served the decision of which the within is a duplicate upon the person to whom it is addressed by:

Of residence being (specify the full address)

OR

Sending by pre-paid post at the following place of employment/residence (specify the full address)

OR

Delivering to him/ her personally at the following place of employment (specify the full address)

(Signed) .....

(Date) .....

## Appendix 9C: Criminal offences - guidelines for dealing with a serious offence

### 9C-1 Purpose

These Guidelines are issued for the purpose of dealing with an officer who is:

- charged (issued with a court attendance notice) with a serious offence
- convicted of a serious offence in NSW.

A serious offence is an offence punishable by imprisonment for 12 months or more. The prison term refers to the period that the offence may carry not the actual prison term that is imposed.

A **serious offence** includes:

- convicted elsewhere of an offence that, had it been committed in NSW, would have been punishable by imprisonment of 12 months or more (s48(1)); or
- found guilty of a serious offence, **conviction not recorded** (Division 3, Non-custodial alternative, *Crime (Sentencing Procedures) Act 1999*).

### 9C-2 Application and Effect

The Guidelines apply to officers who are defined to mean, persons employed in staff or senior executive positions, including those on probation. The arrangements do not apply to chief executive officers, temporary employees or casual employees.

The Guidelines apply to a decision to take either disciplinary action or remedial action under s48 (1) of the *Public Sector Employment and Management Act 2002* (the Act). The section enables the appropriate Department Head to decide to take remedial action or disciplinary action in respect to an officer convicted of a serious offence.

### 9C-3 Delegation - Department Head

The Department Head is responsible for taking action in respect to an officer convicted of a serious offence.

The Department Head may delegate any of his/her functions under the Act, other than the power of delegation to member of staff of that Division or in another Division in the Government Service. This delegation is usually to a member of staff within the same Public Service Department or to another Department in the Public Service. (s4F)

Generally if the functions in relation to Part 2.7 of the Act are delegated by a Department Head, the functions would be delegated to an officer within the Department who understands the process of dealing with a criminal offence and who has available to him/her the resources necessary to carry out the delegated function. In exceptional circumstances it may be necessary to delegate the function to a temporary employee or to a member of staff of another Public Service Department.

In these Guidelines a reference to the Department Head is to be read as to include a delegate in accordance with s4F of the Act.

(See Sample Document 1 for delegation of function and Sample Document 2 for general delegation of functions under part 2.7 where relevant)

### 9C-4 Procedural Fairness

Prior to taking any disciplinary action the officer must have the opportunity to make representations in relation to any proposed disciplinary action. (s48 (2))

### 9C-5 Internal notification obligations

An officer who is charged with having committed, or is convicted of a serious offence is required to immediately report the fact to the Department Head. (Clause 27 of the Public Sector Employment and Management Regulation 2009)

The 'senior officer' in the branch or section in which the officer is employed, is required to immediately report to the Department Head if he/she has reason to believe that

the officer has been charged with having committed, or has been convicted of a serious offence but has not reported that fact as required.

The Department Head must notify specified external agencies and Departments of allegations, and disciplinary processes taken in relation to certain behaviour, incidents and conduct. These are discussed and dealt with in full at 9.9 of the Personnel Handbook - **External Notification Requirements**.

In general, external notification needs to be made when any action is taken to investigate matters that have been the subject of allegations involving any of the following matters:

- Child abuse
- Sexual misconduct which involves children, is directed at children, or take place in the presence of children
- Acts of violence committed by the employee in the course of employment which involves children, is directed at children, or take place in the presence of children
- Certain other criminal offences, including fraud
- Corrupt conduct.

### 9C-6 Alternative duties or suspension of officers from duty

Decisions in relation to this issue are to be based on the facts as they are known at the time, and the nature and seriousness of the criminal charge in the context of the officer's position. In the circumstances covered by s49, the first consideration should be, is it appropriate for the officer to continue in their usual duties. If the decision is that it is inappropriate, the first option is to place the employee on alternative duties or duties at another location (see Sample letter 1).

Section 49 allows for suspension from duty with or without pay if an officer is charged with having committed a serious offence (see s48).

Where it is inappropriate for the officer to be given alternative duties, [M1994-35](#) (see Appendix 9-D) sets out the circumstances in which suspension with pay or without pay is appropriate.

When an officer has been charged with a serious offence the Department Head may suspend the officer from duty until the criminal charge or any action the Department Head is considering taking under section 48 has been dealt with. (s49(1)(b))

Suspension is not one of the penalty options available as a disciplinary action. It is a protective measure whilst the criminal charge is being considered.

All decisions in relation to suspension should be reviewed at least every 30 days.

It should be noted that an officer suspended without pay will accrue salary during the period of suspension. If the person is convicted of the offence concerned, the withheld salary is forfeited to the State unless a law provides otherwise or the Department Head otherwise directs.

The position of the officer shall not be permanently filled while the officer is suspended from duty.

If no disciplinary action is taken against the officer or the officer is found not guilty in relation to the criminal matter, the officer will be paid the salary that had been withheld. If the officer is a shift worker, then any shift penalties withheld whilst on suspension or transfer to alternative duties will also be paid if the person is found not to have engaged in misconduct or is found not guilty in relation to the criminal matter – See [P1996-35](#), Payment of Shift Penalties Disciplinary Matters at Appendix 9-D.

### **9C-7 Criminal Proceedings – Matter has a Direct Connection with Work**

Where the matter directly relates to the officer's work, unless there will be an impact on the police investigation, there is usually no need unless requested by the Police to suspend the internal investigation concerning an allegation of misconduct under the Procedural Guidelines (see Clause 11 of Appendix 9-A). All stages of dealing with the allegation as a disciplinary matter should continue unless requested by the external authority to not proceed. If all stages are not completed and the officer is charged criminally it is usually appropriate to await the outcome of the court proceedings.

Departments should ensure that at all times they are aware of the progress of a matter and act promptly upon the conclusion of the criminal proceedings. It may be necessary to regularly liaise with the Police. It is often prudent to attend any final hearing where a sentence is to be imposed.

### **9C-8 Officer Convicted of a Serious Offence**

When an officer has been convicted or has been found guilty (conviction not recorded) of a serious offence, the Department Head may decide to:

- take disciplinary action
- take remedial action
- take no further action (see Sample letter 5).

A Department Head must exercise discretion in selecting the appropriate action and not adopt a policy that a particular serious offence will always attract the same punishment. It should not be assumed that all convictions will result in either disciplinary or remedial action. For either to occur one or more of the issues in Clause 9 below need to apply to the conviction and the criminal matter.

### **9C-9 Issues to be considered in deciding the appropriate action**

In determining the appropriate action, the Department Head shall have regard to the objects of Part 2.7 of the Act, that is:

- To maintain appropriate standards of conduct and work-related performance in the Public Service;
- To protect and enhance the integrity and reputation of the Public Service; and
- Ensure the public interest is protected. (s41)

The Department Head shall consider the following:

- Whether there is a direct connection with the officer's employment – this will usually be the case where the conduct occurs whilst the officer is on duty
- Whether there is a relevant connection between the criminal matter and the officer's position and duties
- The impact of the conviction on the objectives of Part 2.7 of the Act
- The employment history and general conduct of the officer
- The effect of the conviction on the officer's ability to undertake all or any of their range of duties
- Whether orders of the Court prevents the officer attending for work
- Issues taken into account in the judgement regarding mitigation or culpability which might be relevant to the officer's position and duties
- The effect of the proposed action on the employee
- Mitigating or extenuating circumstances.

### **9C-10 Relevant information required to inform decisions**

The following material, as appropriate, will form part of the usual decision making process in cases where an officer has been convicted or found guilty and the conviction is not recorded:

- The certificate of conviction

- The Court's decision, which will outline findings made
- Where possible, a transcript of the Judge's/Magistrate's remarks in sentencing.

## 9C-11 Decision Process

### 9C-11.1 Remedial Action

If the Department Head decides that remedial action is to be taken, the officer must be advised in writing of the details of the remedial action to be taken (see Sample letter 2). Where the proposed remedial action is the transfer to another position pursuant to s42(1)(f) that officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook.

### 9C-11.2 Disciplinary action proposed

If the Department Head decides disciplinary action is appropriate, the officer must be notified in writing of that opinion and of the disciplinary action being considered, including the severest penalty. Section 48(2) requires that before any disciplinary action is taken, the officer has an opportunity to make a submission in relation to the disciplinary action being considered.

If the decision is to take disciplinary action the written notification (see Sample letter 3) must state:

- The fact that the officer's response will be taken into account
- The disciplinary action penalty/s being considered. Need to advice of the severest penalty that is being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment for an officer on probation is being considered
- Outline the previous employment matters, if any, to be taken into account

- Other materials to be taken into account (eg certificate of conviction (if available), transcripts from criminal proceedings, other criminal convictions)
- That the officer has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered before a final decision is made. The Department Head has discretion to extend the period for response if the officer applies for additional time within the fourteen day period and provides reasonable grounds for seeking the extension
- That he/she may request an opportunity to have an interview with the Department Head, accompanied by a union or other representative (not a legal practitioner) before a final decision is made. The request for an interview should be made within 5 days of receipt of the written notice. Generally the Department Head should arrange to have the interview held within a few days of receipt of the written response. The union or other representative may speak on behalf of the officer at the interview but not attempt to cross examine the Department Head
- That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the Department Head may make a final decision.

## 9C-12 Implementation of Final Decision

The Department Head, having considered any submission made by the officer in respect of the disciplinary action being considered and having had an interview, if requested shall make a final decision promptly and expeditiously. Generally the Department Head should take no more than 14 days to make the final decision. A final decision may consist of disciplinary action, remedial action or no further action. Where the proposed remedial action is the transfer

to another position pursuant to s42(1)(f) that would require the officer to change residence, then the officer must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The Department Head should be satisfied the employee has no valid reason for refusing the transfer. The same matters should be considered as in relation to a s87 transfer dealt with in accordance with s90– see Chapter 3 of the Personnel Handbook.

The officer shall then be advised in writing of the final decision and its date of effect. (See Sample letter 4).

In making a decision as to the appropriate disciplinary action, the Department Head must exercise his/her discretion and not adopt a policy that a particular criminal offence will always attract the same disciplinary penalty.

All the issues outlined in Clause 9 above are to be considered along with any submission made by the officer. The officer's submission may have addressed such matters as the criminal offence or any extenuating or mitigating circumstances. If made, the Department Head shall also consider any submission made on behalf of the officer by the union.

The officer is then advised in writing of the final decision and its date of effect.

## 9C-13 Officer Found Not Guilty of a Serious Charge

A "not" guilty finding or dismissal of the charge does not necessarily mean that the officer may not have engaged in misconduct. A criminal offence must be proved beyond reasonable doubt. The lesser civil standard of the balance of probabilities applies to misconduct matters.

In particular if the criminal matter concerned conduct whilst on duty, consideration would need to be given to whether there is sufficient reason to deal with the matter as an allegation of misconduct. If it is decided to deal with the matter as an allegation of misconduct, the matter should be dealt with promptly as usually considerable time would have lapsed for the criminal procedures.

Similar considerations apply where a criminal charge does not proceed to a hearing or the police decide not to lay any charges.

If it is decided to deal with the matter as an allegation of misconduct the Procedural Guidelines at Appendix 9-A will apply and should be followed.

### 9C-14 Steps for Dealing with a Serious Offence

3. If advised of a criminal charge (Clause 100A of Regulation), confirm if a serious offence and monitor case proceedings (see matters for consideration Clauses 5 to 7).

#### If officer

4. Convicted (includes a guilty finding where no conviction) Department Head to consider whether to take disciplinary action, remedial action or no action (see s48, Clauses 7 to 10).
5. If Department Head decides disciplinary action is appropriate, the officer must be notified of that opinion and given an opportunity to make a submission in relation to the disciplinary action being considered (see s48(2), Clause 11.2).
6. Department Head makes final decision. Final decision may be disciplinary action, remedial action or no action (see Clause 12).

#### Or if officer found not guilty

7. Department Head may decide to deal with matter as allegation of misconduct (see Clause 13).

## 9C-15 Sample Documents and Letters

### CRIMINAL OFFENCES

#### Sample Document 1

#### Instrument of Delegation (Criminal Offence – where no general delegation is made)

Under section 4F of the *Public Sector Employment and Management Act 2002* (the Act), I, ..... the Department Head of ....., delegate to ....., an officer of the Department\*, all of my functions under Part 2.7 of the Act to deal with the conviction of ....., an officer employed in the ..... Division / Branch of the Department, for an offence that is punishable by imprisonment for 12 months or more.

(LIST HERE OFFENCE/S)

(Signed) .....

(Title) .....

(Date) .....

\* In exceptional circumstances it may be necessary to delegate the functions under Part 2.7 to a temporary employee or a member of staff of another Public Service Department. (See Clause 3 of the Guidelines)

Sample Document 2

**Instrument of Delegation (general delegation of functions of Department Head) Clause 3 Guidelines**

Under section 4 of the *Public Sector Employment and Management Act 2002* (the Act), I, ....., the Department Head of ....., delegate to ..... an officer of the Department, all of my functions under Part 2.7 of the Act in respect to officers

(SPECIFY BRANCH(ES) / DIVISION(S) OF DEPARTMENT THE OFFICER IS TO HAVE RESPONSIBILITY FOR).

(Signed) .....

(Title) .....

(Date) .....

Sample letter 1

**Letter to officer notification not performing duties in a satisfactory manner (s47(1)) Clause 8.1 Guidelines**

Dear

*FULL NAME, OFFICER'S TITLE, POSITION AND GRADE*

NOTIFICATION OF NOT PERFORMING DUTIES IN A SATISFACTORY MANNER – TAKING OF REMEDIAL ACTION – SECTION 47(1) OF THE *PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT 2002*

I wish to advise that I am of the opinion that you have not been performing your duties in a satisfactory manner. The details of your unsatisfactory performance are as follows:

*Details of performance issues – would be contained in submission from manager/supervisor to Department Head*

I have decided that the following remedial action is to be taken to give you the opportunity to improve your performance and achieve a satisfactory level of performance:

*Outline the remedial action to be taken - would be in submission from manager/supervisor to Department Head - not the detail as to be done by manager/supervisor (a Performance Improvement Plan would only be developed by the manager/supervisor and the officer following the formal counselling meeting)*

The details of the remedial action will be discussed and outlined at a formal counselling meeting that will be held with you and your ..... (name of manager/supervisor).

You should be aware that if your performance is still unsatisfactory, after you have been given a reasonable opportunity to improve, that disciplinary action may be taken. Below is a list of the 8 possible disciplinary actions under section 42(1) of the Act that range from caution or reprimand to dismissal.

- Caution
- Reprimand
- Fine
- Reduction in salary
- Demotion to a lower graded position
- To be allowed to resign
- Direction to resign
- Dismissal, or in the case of an officer on probation - annulment

I hope you take the opportunity being offered to you and that such action will not be necessary.

(Signed) .....

(Title) .....

(Date) .....



**Sample Letter 2**

**Letter to officer taking of remedial action and review (s47(1)) Clause 9 Guidelines**

Dear

I refer to the formal counselling meeting held on ..... (date) and the agreed Performance Improvement Plan we developed (copy attached).

We agreed to review the Performance Improvement Plan on ..... (Date/s).

I would like to review the Plan at a formal counselling meeting at ..... (Time) on ..... (Date) at ..... (Venue).

At this meeting I intend to consider the progress on the following:

The work performance issues to be addressed

Goals and targets to be achieved

Whether any other agreed remedial action that was to be taken as part of the Plan have been implemented – for example training

The meeting will be attended by..... (names of persons including the officer). You may also wish to bring a support person to this meeting.

(Signed) .....

(Title) .....

(Date) .....

**Sample letter 3**

**Letter convicted or found guilty of serious offence – considering disciplinary action (s48 (2)) Clause 11.2 Guidelines**

Dear

I have been advised you have been convicted/found guilty of an offence/s that is punishable by imprisonment for 12 months or more:

*Specify offence/s*

I have received and considered the following materials:

*Specify materials being taken into account – eg certificate of conviction if available, transcripts from the criminal proceedings, other criminal convictions*

Section 48 of the Public Sector Employment and Management Act 2002 (copy attached) applies to the offence and I am now considering imposing disciplinary action.

Below is a list of the 8 possible disciplinary actions under section 42(1) of the Act that range from a caution or reprimand to a dismissal:

*Caution*

*Reprimand*

*Fine*

*Reduction in salary*

*Demotion to a lower graded position*

*To be allowed to resign*

*Direction to resign*

*Dismissal, or in the case of an officer on probation - annulment*

In relation to this matter, the severest penalty I would conceivably impose is:

*Need to advise severest penalty being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment for an officer on probation is being considered. If the choice is for a direction to resign the officer should be advised of the consequences of not resigning within the time allowed – that is termination*

You have 14 days from the receipt of the this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the disciplinary action being considered before I make a final decision.

Your submission may address any matters you wish me to consider including the conviction and its circumstances or any extenuating and mitigating circumstances.

Before making a final decision on the appropriate action, I will consider the following:

1. the conviction
2. the objectives of Part 2.7 of the Public Sector Employment and Management Act 2002 as stated in section 41 (copy attached)
3. the following matters:  
*Outline the matters including the transcript of offence/proceedings, exhibits in the offence proceedings, other offences and previous employment matters*
4. your submission if made.

You also have an opportunity to have an interview with me (Department Head), accompanied by a union or other representative (not a legal practitioner) before a final decision is made. Your representative may speak on your behalf at the interview but may not attempt to cross examine me.

Should you wish to have an interview the request should be made within 5 days of receipt of this letter. Please contact ..... who will make arrangements for this interview.

These further submissions and/or additional information provided by you will be considered before a final decision is made to implement the disciplinary action under consideration.

(Signed) .....

(Title) .....

(Date) .....

Note: The Department Head has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension.

#### Sample letter 4

##### Letter - final decision as to action (s48 (1)) Clause 12 Guidelines

Dear

I refer to my letter of ..... (date) where I advised you I was considering imposing disciplinary action following advice you were convicted/ found guilty of an offence/s punishable by 12 imprisonment or more.

I have now considered the submissions and additional information provided by you and I have decided, with effect from..... (Date) to take disciplinary action as follows: ..... (Specify action).

OR

I have now considered the submissions and additional information provided by you and I have decided, to take no further action. \*

OR

I have now considered the submissions and additional information provided by you and I have decided, with effect from ..... (date) to take remedial action as follows:

*Specify remedial action to be taken\*\*:* S42(1)specifies remedial action, to mean one or more of the following:

- counselling – informal and formal
- training and development
- monitoring the officer's conduct or performance
- implementing a Performance Improvement Plan
- issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory
- transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position, and
- any other action of a similar nature.

Other similar actions that may be considered include mentoring, staff rotation, supervision, and referral to relevant policies

(Signed) .....

(Title) .....

(Date) .....

**Sample letter 5**

**Letter – convicted or found guilty of serious offence – no further action Clause 8 Guidelines**

Dear

I have been advised you have been convicted/ found guilty of a serious offence/s as follows

*Specify details of serious offence/s*

I have received and considered the following materials:

*Specify materials being taken into account – eg certificate of conviction if available, transcripts from the criminal proceedings, other criminal convictions*

I have decided, given the facts of this matter, to take no further action\*.

(Signed) .....

(Title) .....

(Date) .....

\* Note: The reasons for taking no further action should be recorded in a submission, but are not necessary to include in the letter to the officer. Reasons for such a decision must be recorded.

## Appendix 9D: Reference materials, legislation, memoranda and circulars

Reference Materials Legislation, Memoranda and Circulars

### 9D-1 Public Sector Employment and Management Act 2002

#### Part 2.7 Management of conduct and performance

##### Division 1 – Preliminary

#### 40. Part applies to officers (except chief executive officers) (1988 Act, s 65A)

This Part applies to officers in the Public Service but (unless otherwise expressly provided by this Act) does not apply to chief executive officers in the Public Service.

#### 41. Objects of Part

The objects of this Part are as follows:

- to maintain appropriate standards of conduct and work-related performance in the Public Service,
- to protect and enhance the integrity and reputation of the Public Service,
- to ensure that the public interest is protected.

#### 42. Definitions

- In this Part:

**disciplinary action**, in relation to an officer, means any one or more of the following:

- dismissal from the Public Service,
- directing the officer to resign, or to be allowed to resign, from the Public Service within a specified time,
- if the officer is on probation – annulment of the officer’s appointment,
- except in the case of a senior executive officer – reduction of the officer’s salary or demotion to a lower position in the Public Service,
- the imposition of a fine,
- a caution or reprimand.

**misconduct** – see section 43.

**procedural guidelines** mean the guidelines in force from time to time under section 44.

**remedial action**, in relation to an officer, means any one or more of the following:

- counselling,
  - training and development,
  - monitoring the officer’s conduct or performance,
  - implementing a performance improvement plan,
  - the issuing of a warning to the officer that certain conduct is unacceptable or that the officer’s performance is not satisfactory,
  - transferring the officer to another position in the Public Service that does not involve a reduction of salary or demotion to a lower position,
  - any other action of a similar nature.
- In this Part, a reference to an allegation that an officer may have engaged in misconduct includes a reference to the appropriate Department Head being made aware, or becoming aware, by any means that the officer may have engaged in misconduct.

#### 43. Meaning of ‘misconduct’ (1988 Act, s 66)

- For the purposes of this Part, misconduct includes, but is not limited to, any of the following:
- a contravention of any provision of this Act or the regulations,
- performance of duties in such a manner as to justify the taking of disciplinary action,
- taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act,
- taking any action against another officer that is substantially in reprisal for an internal disclosure made by that officer.

- For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
  - while the officer concerned was not on duty, or
  - before the officer was appointed to his or her position.
- In this section, internal disclosure means a disclosure made by an officer regarding the alleged misconduct of another officer belonging to the same Department as that to which the officer belongs.

##### Division 2 – Dealing with misconduct

#### 44. Issuing of procedural guidelines

- The Public Sector Workforce branch may, from time to time, issue guidelines for the purposes of:
  - dealing with allegations of misconduct as a disciplinary matter; and
  - the taking of disciplinary action with respect to officers under this Division.
- The Public Sector Workforce branch may from time to time amend, revoke or replace the procedural guidelines.
- The procedural guidelines as in force from time to time must be made publicly available in such manner as the Public Sector Workforce branch thinks appropriate.
- The regulations may make provision for or with respect to any matter for which the procedural guidelines can provide. In the event of any inconsistency between a provision contained in the procedural guidelines and a provision in the regulations, the latter is to prevail.

#### 45. Requirements relating to procedural guidelines

- The procedural guidelines must be consistent with the rules for procedural fairness.
- Without limiting subsection (1), the procedural guidelines are to ensure that:
  - the officer to whom an allegation of misconduct relates is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to the officer; and

- the officer is given an opportunity to respond to the allegation.
- A formal hearing involving the legal representation of parties and the calling and cross-examination of witness is not to be held in relation to an allegation of misconduct and the taking of disciplinary action with respect to an officer.
- However, subsection (3) does not prevent the appropriate Department Head from:
  - conducting such investigations into an allegation of misconduct as the Department Head considers necessary; or
  - conducting interviews with the officer to whom the allegation relates or with any other person in connection with the matter concerned; or
  - taking signed statements from the officer or any such person.

#### **46. Dealing with allegations of misconduct**

- If an allegation is made to the appropriate Department Head that an officer may have engaged in any misconduct, the appropriate Department Head may:
  - decide to deal with the allegation as a disciplinary matter in accordance with the procedural guidelines; or
  - decide that it is appropriate to take remedial action with respect to the officer.
- After dealing with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the appropriate Department Head may, if the Department Head is of the opinion that the officer has engaged in any misconduct, decide to take disciplinary action with respect to the officer.
- Before any disciplinary action is taken with respect to an officer under this section, the officer must be given an opportunity to make a submission in relation to the disciplinary action that the Department Head is considering taking.

- Even though the appropriate Department Head decides to deal with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Department Head may, at any stage of the process:
  - decide to take remedial action with respect to the officer concerned; or
  - decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter; or both.
- A decision under this section by the appropriate Department Head to take remedial action with respect to an officer does not, if it appears to the Department Head that the officer may have engaged in any misconduct while the remedial action is being taken, prevent the Department Head from dealing with the alleged misconduct as a disciplinary matter under this section.

#### **Division 3 – Dealing with unsatisfactory performance and other matters**

##### **47. Dealing with unsatisfactory performance**

- If the appropriate Department Head is of the opinion that an officer is not performing the officer's duties in a satisfactory manner, the Department Head may decide to take remedial action with respect to the officer.
  - If:
    - remedial action is taken with respect to an officer; and
    - the appropriate Department Head is, after the officer has been given a reasonable opportunity in which to improve his or her performance, of the opinion that the officer's performance is still unsatisfactory.
- The Department Head may notify the officer in writing that the officer's performance is still unsatisfactory and that the officer's performance may lead to disciplinary action being taken with respect to the officer. The officer must be given an opportunity to respond to the Department Head's opinion about the officer's performance.
- The Department Head may, after considering any response by the officer, decide to take disciplinary action with respect to the officer.

- Before any disciplinary action is taken with respect to an officer under this section, the officer must be given an opportunity to make a submission in relation to the disciplinary action that the Department Head is considering taking.

##### **48. Disciplinary action may be taken if officer is convicted of serious offence (1988 Act, s 76)**

- If an officer 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 it were committed in New South Wales, would be an offence so punishable, the appropriate Department Head may:
  - decide to take disciplinary action with respect to the officer; or
  - decide to take remedial action with respect to the officer.
- Before any disciplinary action is taken with respect to an officer under this section, the officer must be given an opportunity to make a submission in relation to the disciplinary action that the Department Head is considering taking.
- A reference in subsection (1) to the conviction of an officer for an offence punishable by imprisonment for 12 months or more includes a reference to the officer having been found guilty by a court of such an offence but where no conviction is recorded.

#### **Division 4 – Miscellaneous provisions**

##### **49. Suspension of officers from duty pending decision in relation to misconduct or criminal conviction (1988 Act, s 77)**

- If:
  - an allegation that an officer has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines; or
  - an officer is charged with having committed an offence referred to in section 48, the appropriate Department Head may suspend the officer from duty until the

allegation of misconduct or the criminal charge (or any action that the Department Head is considering taking under section 48) has been dealt with.

- Any salary payable to a person as an officer while the person is suspended from duty under this section is (if the appropriate Department Head so directs) to be withheld.
- If:
  - it is decided to take disciplinary action with respect to the person for the misconduct; or
  - the person is convicted of the offence concerned,
  - the salary withheld under subsection (2) is forfeited to the State unless the appropriate Department Head otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.
- If the appropriate Department Head has suspended an officer from duty under this section that Department Head may at any time remove the suspension.

#### **50 Implementation of decisions under this Part**

A decision of the appropriate Department Head to take disciplinary action or remedial action under this Part with respect to an officer may be carried into effect at any time.

#### **51. Effect of dismissal of senior executive officers (1988 Act, s 77A)**

If a senior executive officer is dismissed from the Public Service under this Part:

- the term for which the officer was appointed is to be regarded as having come to an end, and
- no compensation is payable in respect of the dismissal.

#### **52. Provisions relating to certain forms of disciplinary action (1988 Act, s 75 (7), (8))**

- Any appointment required as the result of the taking of disciplinary action comprising demotion to a lower position in a Department is to be made by the appropriate Department Head.

- If a fine is imposed under this Part on an officer, the person responsible for paying the officer's salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary payable to the officer in such manner as the appropriate Department Head directs.

#### **53. Officers retiring or resigning before disciplinary action is taken (1988 Act, s 81)**

- An allegation that an officer has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the officer, even though the officer has retired or resigned.
- The taking of disciplinary action (other than a fine) with respect to the former officer does not affect the former officer's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- A fine imposed under any such disciplinary action may be recovered from the former officer as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former officer by the Crown; or both.
- Nothing in this section affects any power under this Act to refuse to accept the resignation of an officer.

### **9D-2 Public Sector Employment and Management Regulation 2009**

#### **Report of charges and convictions for serious offences**

- A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the appropriate Department Head.
- If the senior officer has reason to believe that a member of staff:
  - has been charged with having committed, or has been convicted of, a serious offence, and
  - has not reported the matter to the appropriate Department Head in accordance with subclause (1),

- the senior officer must immediately inform the appropriate Department Head in writing that the senior officer has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence

- In this clause:

- **senior officer**, in relation to a member of staff, means the senior officer in the branch or section of the Department in which the member of staff is employed.
- **serious offence** means an offence referred to in section 48 of the Act.

#### **9D-3 Premier's Memorandum M1994-35: Suspension of public employees from duty**

- see: Premier's [M1994-35](#)

#### **9D-4 PEO Circular No: P1996-35: Payment of shift penalties disciplinary matters**

- see: [P1996-35](#) - Payment of Shift Penalties Disciplinary Matters