



Government Sector Employment Act 2013



New South Wales

Government Sector Employment Act 2013 No 40

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Foreword

The *Government Sector Employment Act 2013* (GSE Act) received assent on 25 June 2013. Upon its commencement, likely to be early in 2014, it will replace the *Public Sector Employment and Management Act 2002* (PSEM Act).

The GSE Act applies to workforce management in the Public Service. It also applies more broadly across the government sector for provisions such as performance management and workforce diversity; information on the structure of the government sector is included in this publication.

This information booklet has been developed to help you to understand the key aspects of the GSE Act, including what will be different, and how the new or changed provisions will affect executive and non-executive employees.

The GSE Act modernises the framework for government sector employment and management in New South Wales (NSW). It reflects the commitment of the NSW Government to improve the government sector by providing employment arrangements which facilitate high performance, excellent customer service delivery and rewarding careers.

The GSE Act introduces a range of reforms in the structure and management of the NSW government sector. Two important areas of reform directly affecting staff are: changes to the executive structure of the Public Service and changes to employment arrangements and management practices which apply more generally to non-executive employees of the Public Service.

The new executive structures will provide a common employment and development framework for Public Service senior executives; reduce management layers, thereby bringing decision-making closer to service delivery; and provide for flexible assignment of executives to roles, with an emphasis on capabilities, performance, development and mobility.

A key change for non-executive employees of the Public Service is a shift away from appointment to a fixed position, to employment at a classification of work and assignment to a role, with reassignment to other roles within their agencies as priorities, resources, or an employee's development needs change.

The GSE Act also provides for a new type of statutory instrument in NSW: government sector employment rules (GSE Rules). As the independent Public Service Commissioner, I will make the GSE Rules, which will have the force of law. These Rules will outline the basic requirements for workforce management practices, thereby ensuring consistency, merit and fairness in employment and workforce management, and integrity and accountability in leadership.

Importantly, the GSE Act entrenches the merit principle in all aspects of workforce management; strengthens ethical behaviour and accountability; establishes capability as the basis for rigorous workforce planning, performance management and career development; and promotes a professional, flexible and mobile workforce where employees are given the opportunity to develop well-rounded work experiences.

We at the Public Service Commission look forward to working with all parts of the government sector to achieve these outcomes and deliver excellent services to NSW.



Graeme Head
Public Service Commissioner

The NSW government sector workforce: what is changing?

In line with NSW 2021 – a plan to make NSW Number One (NSW 2021) - the Public Service Commission's vision is for a highly capable public sector workforce characterised by a culture of integrity, trust, service and accountability.

The Public Service Commission (PSC) works with the NSW government sector on all aspects of workforce management to ensure delivery of the NSW Government's goals in NSW 2021. Our work is based on evidence such as: workforce data; the biennial whole-of-sector People Matter Employee Survey, inaugurated in 2012; operational and strategic advice from experts and government sector representatives; and extensive research into best practice models in all jurisdictions and across the world. The PSC aims to develop a principles-based workforce management framework that provides high level, consistent guidance to entities within the government sector on the essential elements of good practice in leading and managing people.

Good workforce management involves optimum alignment of workforce capability with priority service outcomes over time. It also requires an engaged, well informed workforce, committed to service outcomes and actively participating in capability development. The GSE Act will support this through:

- > Reforming **leadership** structures by replacing the Senior Executive Service (SES) and Senior Officer classification (and, as appropriate, equivalents) with a single Public Service senior executive. New executive structure design principles flatten executive layers for streamlined decision-making and will lead to clearer lines of accountability, and increase average spans of control in line with best practice.

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- > Providing an enhanced focus on **workforce diversity** by requiring it to be a key element in workforce planning, ensuring that the government sector reflects the broader community which it serves. A diverse government sector workforce will bring clear productivity and engagement advantages.
- > Putting the focus squarely on **workforce mobility**, so that resources can be deployed to the areas where they are most needed for priority service delivery to the public. Mobility also means that employees gain far greater opportunity to broaden their range of experience; acquire a wide spectrum of capabilities; enhance their own career options and prospects; and, importantly, develop into well-rounded future leaders.
- > Building **workforce capability**, based on the new NSW Public Sector Capability Framework which describes the core capabilities – the knowledge, skills and abilities required of all staff across the government sector, at all levels and in all occupations. The Capability Framework provides a common foundation tool to support a wide range of workforce management and development activities, and will facilitate cross sector mobility through use of shared language to describe roles and the skills required at different levels.
- > Requiring agencies to develop and implement **performance management** systems for all employees, which meet core requirements set by the Public Service Commissioner. These systems will link individual and team performance with the organisational objectives and performance.

Crucially, they will ensure that each employee has regular opportunities to meet with their manager to discuss their role, their performance, their contribution to team and organisational effort, and future role and career options.

- > Focusing on the **merit** principle and the recruitment methods needed to ensure it is rigorously applied. The Public Service Commissioner has the power to make GSE Rules to strengthen merit selection, including simplified application processes; capability-based assessment methods; and the use of internal and external talent pools.
- > Embracing **innovation** to ensure the government sector is in the best possible position to deliver targeted, customer-focused services to the community and provide forward-thinking advice to the NSW Government. In August 2013, the PSC published Ideas at Work: Creating an Innovative Public Sector Discussion Paper 2013 which includes initiatives to help foster a culture of innovation across the government sector.

The GSE Act provides the foundation for an innovative, professional and accountable government sector that encourages and recognises performance, delivers the best possible front-line services for local communities across the state and creates the most competitive landscape for investors, economic growth and job creation in NSW.

Key features of the GSE Act 2013

The GSE Act establishes the platform for an ethical, responsive and customer focused government sector, where innovation, accountability and high performance are recognised.

Upon commencement, which is expected to be in early 2014, the GSE Act will replace the current PSEM Act.

Some of the important aspects of the GSE Act are outlined in this section.

The government sector

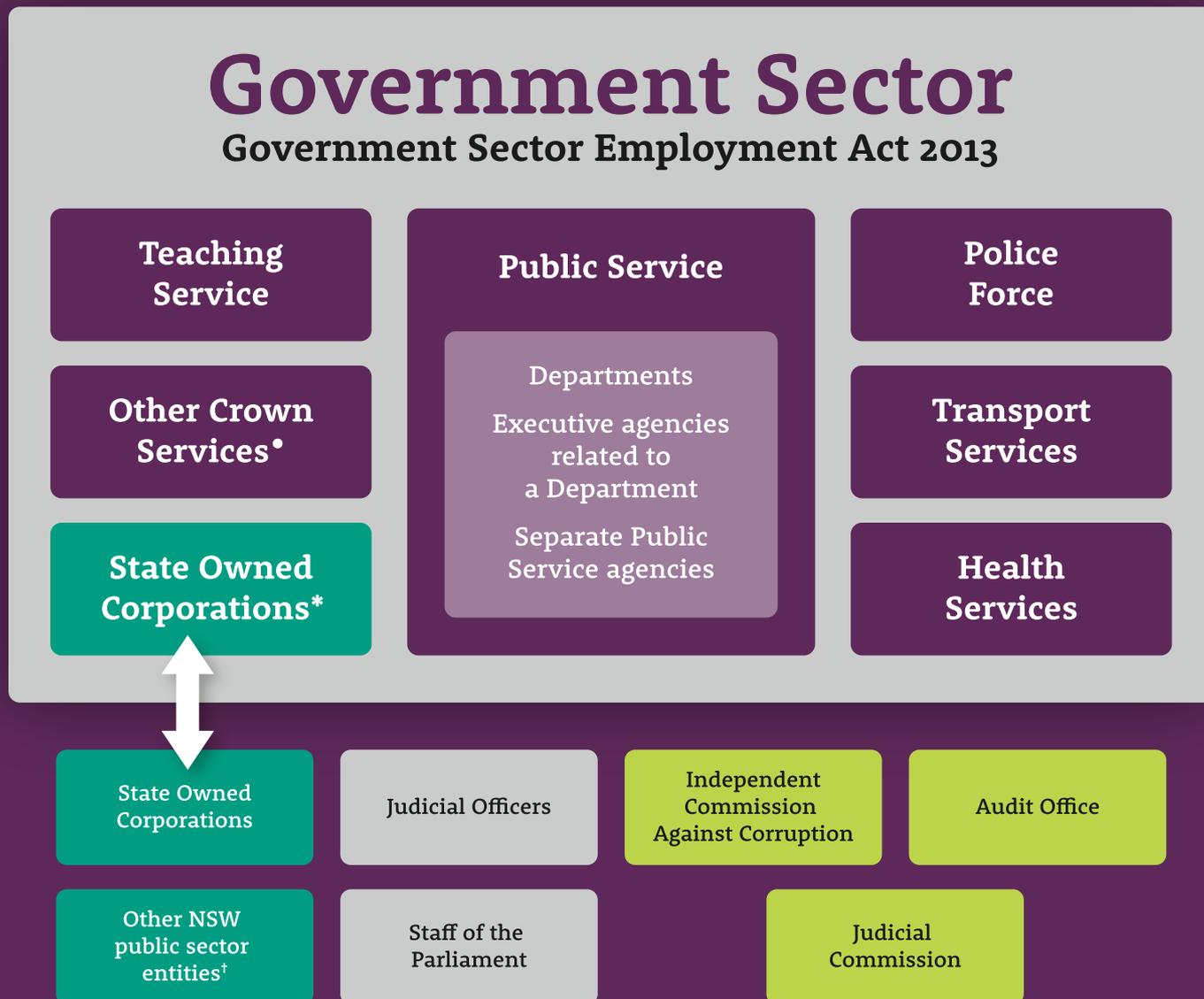
Under the PSEM Act, there is a complex array of employment structures, including the Government Service, the Public Service, the Public Sector, and the Public Sector Service. The GSE Act simplifies and clarifies these arrangements by establishing two main employment groups: the government sector and the Public Service.

The government sector is to comprise most government employees, including the Public Service, the NSW Police Force, the Teaching Service, the Health Service, the Transport Service and other services of the Crown.

The Public Service is one of the services of the government sector. In the Public Service there are Departments, Public Service executive agencies related to a Department, and separate Public Service agencies. The head of a Department will be called a Secretary, which will replace the current title of Director-General.

The GSE Act does not refer to the term 'cluster', which is currently used to describe the administrative arrangements by which the NSW Government Service is configured into nine groups of agencies to allow for coordination of related services. The term will continue to be used for administrative purposes once the GSE Act has commenced, with each 'cluster' including a Department (which may, at an administrative level, include other entities), Public Service executive agencies related to a Department and, in some cases, one or more separate Public Service agencies.

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• Other Crown Services include the TAFE Commission

* State Owned Corporations may be part of the Government Sector for specified purposes

† Other NSW public sector entities include Public Financial Corporations such as TCorp

Figure 1: NSW Public Sector

Due to the unique and independent nature of their functions, some organisations will remain outside the government sector, and the GSE Act will not apply to them. This includes Judicial Officers and officers or employees of either House of Parliament. Staff members of the Independent Commission Against Corruption, the Audit Office and the Judicial Commission are also outside the government sector as each of these agencies has its own employment provisions in its own enabling legislation.

For most purposes, State Owned Corporations are also outside the government sector. However, there are specific provisions in the GSE Act that will apply to State Owned Corporations, for example, in respect of workforce diversity in workforce planning, employee transfer and secondment arrangements, and provisions applying to employees contesting elections. State Owned Corporations may also be brought into the government sector for other purposes where prescribed by the Government Sector Employment Regulation (GSE Regulation), for example, providing workforce data to the Public Service Commissioner.

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Government Sector Employment Regulation

The GSE Regulation will include key provisions which are transferred from the PSEM Act, such as extended and other leave entitlements, and recognition of prior service. Some provisions of the current *Public Sector Employment and Management Regulation 2009* (PSEM Regulation) will also be retained in the GSE Regulation.

Government Sector Employment Rules

Under the GSE Act, the Public Service Commissioner can make GSE Rules. GSE Rules are a new instrument which will support the employment framework.

The GSE Rules will have the force of law, and they will be made about high level principles and any essential requirements in matters relating to the employment of Public Service senior executive and non-executive employees. This might include (but is not limited to) recruitment, kinds of employment, conditions of engagement, work level standards and job evaluation, capability and termination.

The Public Service Commissioner will consult when making GSE Rules. Like the GSE Act and GSE Regulation, the GSE Rules will be drafted by the Parliamentary Counsel. Once made, the GSE Rules will be published on the NSW legislation website and the PSC's website.

Employers and employees in the Public Service must comply with the GSE Rules. Where specified, GSE Rules will apply more broadly to the government sector.

GSE Rules are an important new instrument in NSW, which will bring the government sector in line with best practice workforce management in other jurisdictions. The PSC is reviewing existing policies, circulars, procedural guides, and related documents, to determine whether they are still required or need to be modified.

Public Service senior executives

The GSE Act provides a foundation for a single, leaner, flatter, and more mobile executive structure for the Public Service, to be known as the Public Service senior executive. Contemporary executive employment arrangements will support a high performing executive group capable of leading the delivery of NSW Government services efficiently and effectively.

The current Chief Executive Service, SES and award-based senior executives (Senior Officers and equivalent roles) will be replaced by a single executive structure with one set of employment arrangements for all. The streamlined structure for Public Service senior executives will comprise a top band for Department Secretaries and three bands for Public Service senior executives as shown.



Figure 2: Public Service senior executive bands

It is expected that the above roles and role titles will be used to improve consistency and create a clearer shared understanding of the nature of roles found in each senior executive band. Service-wide work level standards for each of the senior executive bands will be made available to help Departments and agencies determine the appropriate band for each senior executive role. Roles will be defined in terms of their functions, scope, accountabilities and required capabilities for placement within a band. The new NSW Public Sector Capability Framework will be used as the common reference to define the core capabilities required for each role, provide a common generic basis for performance management, inform development needs and support mobility.

For non-executive employees of the Public Service, the new executive employment arrangements under the GSE Act will mean fewer management layers and more efficient decision-making. Also, established work level standards and capabilities for executives will mean that non-executives can better plan for their own professional development and career progression.

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The new executive structure and management arrangements bring significant change. In the first six months after commencement of the GSE Act (expected to be in early 2014), each Department and agency in the Public Service will be required to develop a plan for a new executive structure that incorporates the new features and conduct a process to assess interested existing contract-and award-based executives for the available roles. To ensure an orderly transition and allow time for proper process, the transitional provisions in the GSE Act allow for an implementation period for the executive reforms of up to three years from commencement of the GSE Act.

To assist Departments and agencies which are undertaking a reorganisation of their executive structures and roles prior to the commencement of the GSE Act, the PSC is releasing interim guidelines on requirements for NSW public sector executive restructures and assessments. These guidelines outline organisation design principles and assessment processes to allow agencies to align their organisational changes with the intent of the GSE Act. This will reduce the need for further restructure or assessments once the GSE Act commences.

Kinds of employment in the Public Service

For Public Service senior executives, the GSE Act provides for two kinds of employment: ongoing employment and term employment. Ongoing employment means that a person's employment continues until such times as the employee resigns or his or her employment is terminated. Term employment is employment for a specified period or for the duration of a specified task. The existing SES five-year employment renewable contract will no longer be the usual mode of employment.

For non-executive employees in the Public Service, the GSE Act provides for three kinds of employment: ongoing employment, temporary employment and casual employment. Temporary employment is available where the employment is for a temporary purpose, as is currently the case under the PSEM Act. Casual employment continues to be available for use where the employment is to carry out irregular, short term or urgent work.

Assignment to role in the Public Service

For Public Service employees, the GSE Act removes the concept of officers holding a position. The concept of an employee holding a position is not consistent with modern management practice: it tends to result in low mobility within and between Departments and agencies; employees having a narrow range of capabilities specific to a position or particular function; limited development opportunities for employees; and restricted ability of a Department or agency to respond quickly to changing government priorities or community needs.

The GSE Act takes a new approach which will result in a non-executive employee of the Public Service being employed in a classification of work (and a senior executive being employed in an executive band), and then assigned to a role within that classification or band. Employees may later be reassigned to a different role within the classification or band in which they are employed. This might be due to roles being reconfigured to match current service delivery priorities, or a decision to enhance an employee's professional development through experience in a different area of work. However, there are explicit provisions in the GSE Act for ensuring consultation with employees prior to reassignment.

Under the transitional provisions of the GSE Act, non-executive Public Service employees will move from positions to roles when the GSE Act commences. These provisions provide that each employee's previous position and classification of work is to be taken to be their new role and classification of work under the GSE Act. For example an employee graded as a Clerk Grade 7/8 will continue to be graded the same, however under the GSE Act they will be employed at the Clerk Grade 7/8 classification and assigned to a role at that level, as opposed to being appointed to a position.

The NSW Public Sector Capability Framework will be applied progressively to all roles over a maximum period of three years, to support performance management, capability development and mobility for all employees.

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Leave entitlements and conditions of employment

One of the key government sector employment reform goals is to have a simplified GSE Act which provides the central framework for employment and workforce management but does not provide all of the detail. To achieve this, very specific provisions currently contained in the PSEM Act, such as leave entitlements, will be located in the GSE Regulation.

This change will not alter the current arrangements in relation to leave and recognition of prior service. The transitional provisions of the GSE Act provide for continuity of service and leave entitlements as they apply currently under the PSEM Act. Leave entitlements under relevant awards are not being altered.

Conditions of employment under state industrial instruments are not affected by the GSE Act and remain in force when the GSE Act commences.

Promotion appeals in the Public Service

The promotional appeals mechanism managed through the Industrial Relations Commission has progressively fallen into disuse over recent years; very few appeals have been lodged and almost none have been successful. The GSE Act removes this mechanism. The GSE Rules will require Departments and agencies in the Public Service to have an internal review process to deal with procedural concerns in promotion decisions.

Merit

The GSE Act will enhance government sector recruitment and selection processes, by focusing efforts on the right outcome: that roles are filled with the right people on the basis of merit and qualifications.

The GSE Act specifically provides for an ethical framework which supports a merit-based, apolitical and professional government sector. The recruitment and promotion of employees based on merit underpins the government sector core value of Accountability.

The GSE Act provides for the Public Service Commissioner to make GSE Rules on the recruitment of employees in the Public Service, including the application of the principle of employment based on merit.

The PSC has recently completed a major review of existing recruitment processes in the sector. As a result, a new principles-based approach to recruitment has been developed. This includes: capability-based workforce planning and market analysis to inform recruitment strategy; simplified applications processes; a selection process based on at least three different tools, with a strong emphasis on capability assessment; and the development and use of internal and external talent pools for common roles. The results of this work and principles of best practice will be released in 2013-14.

Ethical framework for the government sector

The Ethical framework for the government sector, established under the PSEM Act and brought forward into the GSE Act, applies to the government sector. It sets the high standards of performance and behaviour expected of all employees of the government sector. The Ethical Framework identifies the objectives of the government sector (such as to act in the public interest, add professional value and implement the decisions of the Government of the day), four core values (Integrity, Trust, Service and Accountability) and the principles of behaviour expected from all government sector employees. These principles are embedded in the new NSW Public Sector Capability Framework which was released in August 2013.

The Public Service Commissioner is charged with promoting and maintaining the government sector core values. In addition, the GSE Act provides that Department Secretaries and heads of agencies will be responsible for the ethical conduct and management of the functions and activities of their organisations in accordance with the government sector core values.

The PSC will continue to support Department Secretaries and heads of agencies to implement the Ethical Framework in their organisations, including the release of an ethical toolkit early in 2014.

Capability

Under the GSE Act, the PSC is charged with improving the capability of the government sector to provide strategic and innovative policy advice and provide efficient and effective services to the people of NSW.

Central to workforce performance are the capabilities – the knowledge, skills and abilities that government sector employees must demonstrate to perform their roles effectively.

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Some specific capability gaps were identified in the 2012 NSW Commission of Audit Interim Report on Public Sector Management, including those in the areas of financial management, human resource management, and contract management. The PSC's Executive Development Program, initiated in 2012, found the same gaps.

The PSC has developed a new NSW Public Sector Capability Framework which was released in August 2013 as part of the suite of reforms aimed to promote and support a modern, effective and capable government sector workforce. This Capability Framework replaces the 2008 Capability Framework and the draft Executive Capability Framework which was developed in 2011.

The NSW Public Sector Capability Framework describes the core capabilities and associated behaviours that are expected of all government sector employees, including NSW Public Service senior executives and non-executives. It provides a common foundation tool to support a wide range of workforce management and development activities including creating roles, recruiting to roles, managing performance, capability development and career-planning and, more broadly, workforce planning. This core Capability Framework works in combination with occupation or profession specific capability frameworks or standards.

Departments and agencies are expected to embed the NSW Public Sector Capability Framework in workforce management practices within three years, by August 2016. The PSC is working with the government sector to support adoption of the new Capability Framework, including establishing a reference group of government sector human resources representatives to develop supporting tools and resources and developing a model role description template for use by the government sector.

Performance management in the government sector

To achieve the best-qualified, capable and professional government sector, good performance needs to be consistently recognised and poor performance managed effectively and fairly. Under both the PSEM Act and the GSE Act, Departments and agencies must develop and implement a performance management system for their employees, which meet core requirements set by the Public Service Commissioner. In this respect there are no changes to the current arrangements.

The Public Service Commissioner has established the NSW Public Sector Performance Development Framework, which was issued in July 2013. This contains the essential elements for performance management systems which apply across the government sector. To support government sector agencies to implement these requirements, the PSC has also released guides for Human Resources practitioners, managers and employees.

The GSE Act provides for the Public Service Commissioner to make GSE Rules about the core requirements for performance management systems and about procedures for dealing with unsatisfactory performance in a fair and transparent manner.

Executive development

For a high performing Public Service, executive leaders must be capable, motivated and effective, especially as senior executives have a central role in leading the rollout of these significant employment and workforce management reforms. The new executive structures and employment frameworks will be supported by significant investment in executive development to start the shift towards the vision of a sector-wide executive leadership group.

The PSC's Executive Development Strategy will be expanded to target the capability areas required for leading and supporting the government sector, based on the new NSW Public Sector Capability Framework. Over 2013-2014, the PSC will implement executive leadership development programs targeting the capability areas identified as being in the greatest need, including strategic financial management, strategic human resource leadership, high level information and communications technology management and high level contract management.

In addition, specific programs will be delivered to support and develop the capabilities of human resources leaders, due to their central role in supporting the rollout of these significant workforce management reforms. The PSC is developing an SES Induction Program and a leadership program focused on entry level senior executive roles.

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Workforce diversity in the government sector

Equal opportunity and diversity in government sector workforce management is essential for an effective workforce that reflects the community it serves. In addition, there is increasing evidence to show that a diverse workforce brings clear engagement and productivity benefits. Under the PSEM Act, the approach is focused on compliance and reporting, through Equal Employment Opportunity Plans, rather than on outcomes. The GSE Act provides for modern management approaches to improving the diversity of the workforce which applies across the government sector.

Under the GSE Act, strategies for workplace diversity are to be integrated with mainstream workforce planning across all government sector agencies. There is a clear focus on established diversity groups (Aboriginal people, gender, people with a disability, and people from culturally and linguistically diverse backgrounds), but the legislation also provides the flexibility to encompass additional diversity groups if required.

Mobility

A modern, responsive and adaptive government sector is one where workforce resources can be deployed to where they are most needed, and employees are supported to play an active role in developing their skills and capabilities, including through opportunities to gain broader experience.

By moving to employment in bands or classifications, and assignment to roles, rather than appointment to narrowly defined positions, the GSE Act will facilitate a workforce that is mobile and engaged, allowing employers the ability to move resources expeditiously to priority areas, whilst providing employees with opportunities for development and rewarding career opportunities.

Transition

The transitional provisions in the GSE Act and the GSE Regulation will support a smooth transfer to the new system.

For SES employees and Senior Officers, the current SES provisions or relevant award conditions will continue to apply to a Department's or an agency's executives until the senior executive implementation date for that Department or agency, which will occur at some time within three years of the commencement of the GSE Act (expected to be early in 2014).

Once the GSE Act commences, non-executive employees of the current Government Service will either become employees of the Public Service, or government sector employees where appropriate, in the same role and in the same kind of employment at the same classification of work. This means that employees who are officers will be taken to be in ongoing employment. For temporary employees, current employment arrangements will continue on a temporary basis.

Implementation of the GSE Act 2013

The PSC has commenced the planning and transition groundwork across the government sector to support and enable the implementation of these reforms to commence.

The PSC is focusing on two major streams of work: drafting the GSE Regulation and GSE Rules to support the GSE Act, and supporting Departments and agencies to manage the transition. This will include providing directions, policies, and guidelines to assist Departments and agencies to design and implement the changes to their executive structures. The PSC also has a small team dedicated to providing practical support and advice to Departments and agencies as they go through the change.

PSC representatives are regularly briefing human resources practitioners and other managers and staff, including the Community of Human Resources Professionals and other Communities of Practice. The PSC will continue to provide information materials, including Frequently Asked Questions, via its website and will aim to respond to any request to address groups of managers and/or staff over the coming months. A network of 'champions' from across the sector will be established to provide input on what information should be provided to the sector and how it should be disseminated.

In addition, the Public Service Commissioner intends to conduct another round of face-to-face information sessions across the government sector early in 2014.

Other senior executive reforms

In June 2013, the NSW Government announced that the Health Executive Service, the Police Senior Executive Service, and the Transport Senior Service would be aligned with the new arrangements which will apply to Public Service senior executives under the GSE Act. This alignment will support the overarching objectives of the government sector employment reforms, namely the development of a leaner, flatter, more mobile structure for senior executives. Provisions will be made to allow for the specific operating requirements of the Health and Transport services and the NSW Police Force.

The NSW Government is currently considering the details of these senior executive alignment reforms, with a Bill expected to be introduced in Parliament later in 2013.

Where can I find more information?

GSE Act 2013

To read the GSE Act, expected to commence early in 2014, please see: www.legislation.nsw.gov.au/maintop/view/inforce/act+40+2013+cd+o+N

PSC Website

The PSC's website is regularly updated as these government sector employment reforms progress.
For up to date information, please see: www.psc.nsw.gov.au/publicsectorreform

WorkWise

Regular updates are also provided in the PSC e-newsletter, [WorkWise](#)

NSW Public Sector Capability Framework

To read more about the NSW Public Sector Capability Framework, please see: www.psc.nsw.gov.au/Sector-Support/Capability-Framework

NSW Public Sector Performance Development Framework

To read more about the NSW Public Sector Performance Development Framework, please see: www.psc.nsw.gov.au/Sector-Support/Managing-for-Performance

Email

For enquiries, please email: publicsectorreform@psc.nsw.gov.au

Glossary of abbreviations used in this publication

| | |
|------------------------|--|
| GSE Act | <i>Government Sector Employment Act 2013</i> |
| GSE Regulation | Government Sector Employment Regulation |
| GSE Rules | Government Sector Employment Rules |
| NSW 2021 | NSW 2021 – a plan to make NSW Number One; released by the NSW Government on 6 September 2011 |
| PSC | Public Service Commission |
| PSEM Act | <i>Public Sector Employment and Management Act 2002</i> |
| PSEM Regulation | <i>Public Sector Employment and Management Regulation 2009</i> |
| SES | Senior Executive Service |



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