

Government Sector Employment Act

Key Questions and Answers as at 15 January 2014

Overview	3
1. What is the purpose of the new Government Sector Employment Act 2013?	3
2. What is the Public Service under the GSE Act?	3
3. What is the Government Sector under the GSE Act.....	4
4. When will the legislation commence? What is the timeframe for implementing the reforms?	4
5. What is contained in the Government Sector Employment Regulation 2014?	5
6. What are the Government sector employment rules?.....	5
7. What are Directions under the Government Sector Employment Act 2013?	5
8. What is the Ethical Framework for the government sector? Who does it apply to? How will it be promoted.....	6
9. What will happen to the Personnel Handbook and the Public Service Commission Policy Directory?.	6
10. Where can I find information on the GSE Act and the related reforms?	6
New Employment Arrangements and Workforce Management Practices	7
11. Who is the employer once the GSE Act commences?.....	7
12. What kinds of employment are provided for under the new GSE Act?.....	8
13. When the GSE Act commences employees will no longer “own a position” and will be assigned to a role. What does this mean? Will employee entitlements change?.....	8
14. Can an employee be assigned to a different role? How will this be done?.....	8
15. What is the process under the GSE Act for transfers of employees to a different role in a new location? Are there provisions for this in the GSE Act and the draft GSE Regulation?.....	9
16. What will happen to employees who have been seconded to other agencies or other positions on the commencement of the Act? What do the draft GSE Rules propose in relation to transfers and secondments?.....	9
17. How are non-executive employees terminated under the GSE Act? Will there be changes to Managing Excess Employees?	10



Recruitment and Promotion	10
18. How will application of the merit principle be applied in recruitment and promotion under the GSE Act and the draft GSE Rules?	10
19. Will there be new ways of recruiting people into the public service?	11
20. How does the NSW Public Sector Capability Framework 2013 support the implementation of the GSE Act, GSE Regulation and GSE Rules?	11
21. What are the proposed transitional arrangements for recruitment?	12
Public Service Senior Executives	12
22. What is the new executive structure? What are Executive Bands?	12
23. How will the new Executive Band system operate?	13
24. What happens to a Senior Officer who is unsuccessful in gaining a role in their agency's new executive structure?	14
25. Will all Senior Officers need to undergo an assessment in order to obtain a role in their agency's new executive structure? How is the assessment carried out? (Answer updated on 6 March 2014)	14
26. Will a Senior Officer who applies and is recruited to a role as a Public Service Senior Executive under the GSE Act remain on the current remuneration level?	15
27. Will a Senior Officer be financially disadvantaged by an appointment to a role under the GSE Act executive structure?	15
Performance Management and Misconduct.....	15
28. What are the changes to performance management and misconduct requirements under the GSE Act?	15
29. Does the GSE Act require performance management systems to be implemented in all agencies?	16
30. How will unsatisfactory performance be managed under the GSE Act?	16
Workforce Diversity	16
31. What are the workforce diversity requirements under the GSE Act, and draft GSE Regulation and Rules?.....	16
32. What provision is made to support the appointment to Aboriginal identified and targeted roles?	17



Overview

1. What is the purpose of the new Government Sector Employment Act 2013?

The *Government Sector Employment Act 2013* (GSE Act) provides the new legislative basis for government employment in NSW and implements the Government's priorities to reform the structure and management of the NSW public sector. The objects of the GSE Act (s 4 of the Act) are to:

- Develop a modern high performing government sector that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and that has effective and fair employment arrangements, management and leadership,
- Establish the Public Service as the general service within the government sector,
- Provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,
- Establish an ethical framework for the government sector comprising core values and principles that guide their implementation,
- Make provision for the objectives, functions and responsibilities of the Public Service Commissioner.

The GSE Act reforms will:

- Provide a foundation for an innovative, professional and accountable public sector;
- Provide a framework for modern recruitment methods and workforce development;
- Modernise employment arrangements and workforce management practices which apply to executive and non-executive employees of the Public Service;
- Change employment arrangements for non-executive employees of the Public Service to move from appointment to a fixed position to employment at a classification of work and assignment to a role, with reassignment to other roles within the agency as priorities, resources, or an employee's development needs change.
- Provide the legislative basis for the new executive structure of the Public Service.

2. What is the Public Service under the GSE Act?

The GSE Act establishes the Public Service of New South Wales (Part 4, GSE Act).

Public Service employees are employed in 'Departments', 'Public Service executive agencies related to Departments', or 'separate Public Service agencies' (s 22 GSE Act). The GSE Act also enables staff to be employed in Departments of Public Service agencies to enable statutory bodies or statutory officers to exercise their functions (s2 GSE Act)

These bodies will be listed in Schedule 1 to the GSE Act by an administrative arrangements order (made under Part 7 of the *Constitution Act 1902*). An order may also address the transfer of existing Principal Departments and Government Service Divisions into the new Department and Public Service agency structure. An order (containing the substitution Schedule 1) is expected to be made and published shortly.

3. What is the Government Sector under the GSE Act

The GSE Act also establishes the ‘government sector’ (s 3 Definitions). The *government sector* includes the public service and also the other following government services:

- the Teaching Service
- the NSW Police Force
- the NSW Health Service
- the Transport Service of New South Wales
- any other service of the Crown; and
- other bodies as prescribed (for example State owned corporations)

Certain provisions of the GSE Act apply to all employees of the services in the government sector. This includes the provisions of Part 5 of the GSE Act, including s63 Workforce diversity, (applies to the government sector including State owned corporations); s64 Employee transfers and secondments; s65 Cross-agency employment; s66 Temporary assignments of staff between government sector agencies and other relevant bodies; s67 Performance management systems; s68 Unsatisfactory performance of government sector employees; and s69 Misconduct (if the agency is prescribed for this section).

The government sector does not include employees listed in s5 of the GSE Act (for example, staff of the Independent Commission Against Corruption and the Judicial Commission of New South Wales) though the Act expressly provides for application of some provisions to those employees (for example s64 Employee transfers and secondments).

4. When will the legislation commence? What is the timeframe for implementing the reforms?

The GSE Act will commence on 24 February 2014. When it commences, the GSE Act will repeal the *Public Sector Employment and Management Act 2002* (PSEM Act).

Provisions will be made for appropriate transitional arrangements to support a smooth conversion to employment and management arrangements under the GSE Act. Transitional arrangements are set out in Schedule 4 of the GSE Act. Transitional regulations will also be made to ensure that there is no disruption to employment arrangements or services.

For non-executive employees, all relevant provisions of the GSE Act will take effect immediately upon commencement on 24 February 2014. On GSE start, non-executive positions and other employment under the PSEM Act automatically become roles under the GSE Act. All non-executive employees in the new Public Service are deemed to be employed at a specified classification of work in the Public Service and assigned to a role that corresponds to the person’s position or work on the repeal of the PSEM Act. (Schedule 4, Clause 5(4)).

Implementation of the Public Service senior executive reforms across the Public Service will be completed over a three year period, to February 2017.

5. What is contained in the Government Sector Employment Regulation 2014?

The Government Sector Employment Regulation (GSE Regulation) includes provisions retained from the *Public Sector Employment and Management Regulation 2009*, provisions transferred from the *Public Sector Employment and Management Act 2002*, and other matters included by the GSE Act. The GSE Regulation will commence on 24 February at the same time as the GSE Act and will be published on the [NSW Legislation website](#).

The Public Service Commissioner has commenced a six week consultation period on the draft GSE Regulation. A consultation draft of the GSE Regulation is available on the [Public Service Commission website](#). The consultation period will end on 13 January 2014.

6. What are the Government sector employment rules?

The GSE Act also provides for the Government Sector Employment Rules (GSE Rules) to deal with more operational and procedural employment matters which may be applied to the government sector. The Public Service Commissioner will make GSE rules and they will be published on the [NSW Legislation website](#).

The Government Sector Employment Rules (GSE Rules) are a statutory instrument made under the GSE Act that will contain mandatory requirements, particularly for agency heads and employers generally carrying out workforce management roles. A failure to comply with the obligations under the GSE Rules may be treated as misconduct.

The Public Service Commissioner has commenced a six week consultation period on the draft priority GSE rules. A consultation draft of the priority GSE rules is available on the [Public Service Commission website](#). The consultation period will end on 13 January 2014.

The priority draft GSE rules address the key areas of: conditions of employment, merit based employment, review of promotion decisions, workforce diversity, transfers and temporary secondments, performance management, misconduct procedural requirements, and additional senior executive provisions including contracts of employment.

In a number of other areas where there is provision in the Act to make rules, the Commission will prepare guidelines initially for a period to establish the principles and test new operational arrangements before establishing the rules. This approach will apply, for example, to assignments to roles.

7. What are Directions under the Government Sector Employment Act 2013?

The GSE Act also allows the Public Service Commissioner to issue a direction to the head of a government sector agency on specific matters related to the employees of that agency under section 13. The Public Service Commissioner is required to consult with the heads of those agencies prior to issuing a direction. Directions given by the Public Service Commissioner are published on the [Public Service Commission website](#).

8. What is the Ethical Framework for the government sector? Who does it apply to? How will it be promoted

The *Ethical Framework for the government sector* is set out in Part 2 of the GSE Act. It identifies the objectives, core values and principles of behaviour that apply to all government sector employees. The objectives include preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day. The core values are Integrity, Trust, Service and Accountability. The 18 principles set standards of conduct for all government sector employees in how to treat colleagues, clients, stakeholders and the government. These include, for example, considering people equally without prejudice or favour; acting professionally with honesty, consistency and impartiality; and placing the public interest over personal interest. These provisions were first introduced into the PSEM Act in 2011.

The GSE Act makes the Public Service Commissioner responsible for promoting and maintaining the core values and makes Department Secretaries and heads of agencies responsible for the general conduct and management of their agencies in accordance with the core values of the *Ethical Framework*.

The Public Service Commission is finalising guides and resources to support actions that are consistent with the *Ethical Framework*. This includes agency-level initiatives (such as ethical leadership and changing corporate culture) and a new Code of Ethics and Conduct for all government sector employees.

9. What will happen to the Personnel Handbook and the Public Service Commission Policy Directory?

The Personnel Handbook and the Public Service Commission's Policy Directory are important employment and workforce management policy resources. Prior to the GSE Act commencement, large parts of the Personnel Handbook and many of the Public Service Commission's policies will need to be revised or replaced. For this process, the Public Service Commission has reviewed over 600 documents in consultation with agencies to simplify the whole-of-government workforce policy framework.

The Public Service Commission is developing an online workforce management information portal, to be known as the *Employment Portal*, as a resource for employees and managers. It will be designed as the single source of legislative and policy information and resources for public sector employment. It will be designed as an accessible online resource for all employees and managers.

It is intended that the *Employment Portal* will replace the Personnel Handbook as the reference point for employment related matters. The Personnel Handbook and Public Service Commission's Policy Directory will remain available as archived resources.

10. Where can I find information on the GSE Act and the related reforms?

The Public Service Commission's (PSC) website is updated regularly as these public sector reforms progress. For up to date information, please see the [PSC reform webpage](#). To read the GSE Act, please see www.legislation.nsw.gov.au/maintop/view/inforce/act+40+2013+cd+o+N

To read the draft Government Sector Employment Regulation 2014 and explanatory notes, or the Government Sector Employment Rules 2014 and explanatory notes please see:

<http://www.psc.nsw.gov.au/Sector-Reform/Public-Sector-Reform/GSE-Act-Rules-and-Regulation>

The Public Service Commissioner has also put in place an engagement plan to ensure the NSW public sector is supported in the transition to the *Government Sector Employment Act 2013* (GSE Act) which will commence on 24 February 2014. This can be found at: <http://www.psc.nsw.gov.au/Sector-Reform/Public-Sector-Reform/GSE-Act-Engagement-Plan->

The GSE Act Toolkit currently being developed will provide guidance for Human Resources and Industrial Relations Practitioners. This will be available on the Public Service Commission website as well as the *EmploymentPortal* and will be accessible to all employees.

Regular updates are also provided in the Public Service Commissioner's e-newsletter, WorkWise. Please see www.psc.nsw.gov.au/News-and-Media For enquiries, please email publicsectorreform@psc.nsw.gov.au

In early 2014, staff in Sydney metropolitan and regional areas will be invited to attend information sessions with the Public Service Commissioner to hear about the reforms under the GSE Act, and other Public Service Commission programs and initiatives.

New Employment Arrangements and Workforce Management Practices

11. Who is the employer once the GSE Act commences?

The Premier is the employer of the Secretary of a Department and also the employer of the head of a *separate* Public Service agency (as listed in Part 3, Schedule 1 GSE Act), unless otherwise specified in Schedule 1 of the GSE Act.

The Secretary of a Department is the employer of:

- The Public Service Senior Executives and other employees of the Department
- The head of each Public Service executive agency related to the Department. (Unless the agency head is a statutory office established by another Act, or is the Secretary, or Schedule 1 provides that some other person exercises employer functions in relation to the agency head).
- All public service senior executives assigned to roles in each Public Service agency related to the Department.

The head of a Public Service executive agency related to a Department holds the employer functions for all non-executive employees in that agency.

The head of a separate Public Service agency holds the employer functions in relation to all employees, both executive and non-executive, within their agency.

12. What kinds of employment are provided for under the new GSE Act?

For Public Service senior executives, the GSE Act provides for two kinds of employment (section 34): ongoing employment and term employment. Ongoing employment means that a Public Service executive employee's employment continues until 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.

For non-executive employees in the Public Service, the GSE Act provides for three kinds of employment (section 43): ongoing employment, temporary employment and casual employment. Ongoing employment means that a Public Service non-executive employee's employment continues until the employee resigns or his or her employment is terminated. Temporary employment is available where employment is for a temporary purpose, and casual employment continues to be available for use where the employment is to carry out irregular, short term or urgent work, as is currently the case for both types of employment under the PSEM Act.

13. When the GSE Act commences employees will no longer “own a position” and will be assigned to a role. What does this mean? Will employee entitlements change?

When the GSE Act commences, existing non-executive Public Service employees will be transitioned from a 'position' to a role in the same classification of work, at the same grade, and in the same Public Service agency in which they were employed under the PSEM Act. The concept of appointment to a “permanent” position ceases when the GSE Act commences. Instead employees will be assigned to a role and may be re-assigned to a different role within the agency as priorities, resources, or an employee's development needs change.

Existing entitlements for non-executive employees will not change when the GSE Act commences. The new Act preserves accrued leave and other entitlements for all non-executive employees. Conditions of employment are set out in applicable industrial instruments and the draft GSE Regulation 2014. Individual employees should speak to their manager or HR unit for more information about the conditions of employment that apply to them.

14. Can an employee be assigned to a different role? How will this be done?

The change from positions to roles is designed to promote mobility across the sector; broaden employees' capabilities and provide them with new development opportunities; and allow agencies to respond quickly to changing Government priorities or community needs. Guidelines on assignment will establish the assessment requirements for a new role assignment.

Under section 38 of the GSE Act, a Senior Executive may be assigned to a role in *any* Public Service agency in the band in which the executive is employed. The Secretary of a Department may not assign a Public Service senior executive to a role in a Public Service executive agency related to the Department without consulting the head of the agency. The executive must also be consulted, and the remuneration payable to the executive will not be reduced because of the assignment to the different role without the consent of the executive.

Under section 46 of the GSE Act, Public Service non-executive employees may be assigned to roles in the agency in the classification of work *in which the employees are employed*. Non-executive employees cannot be reassigned to a role in a different Public Service agency. A Public Service non-executive employee may not be assigned to a different role unless the employee has been consulted. The remuneration payable to the employee may not be reduced because of the assignment to the different role without the consent of the employee.

The Public Service Commissioner will be developing further guidance for agencies on assignment to roles for both non-executives and executives (as well as staff transfers and temporary assignments) and consultation in these circumstances. The GSE Act also allows for GSE Rules to be made on these matters. Movements of non-executive staff across agencies will also continue to occur through transfer and secondment provisions (sections 64 and 66 of the GSE Act). Where transfers and secondments are employer initiated, the employer is required to consult with the employee.

15. What is the process under the GSE Act for transfers of employees to a different role in a new location? Are there provisions for this in the GSE Act and the draft GSE Regulation?

Under the current PSEM Act, employees may be moved to a new position which may or may not be at a different workplace location (see section 86A and section 87 of the PSEM Act, and Chapter 3 'Commentary and guidelines on staff mobility' of the Personnel Handbook). Consultation with the employee is required to allow the person to raise any concerns.

Under the GSE Act, the assignment of an employee to a different role may also involve a move to a different workplace location in some cases and, similarly, consultation is required.

Also, the provisions of the Crown Employees (Transferred Employees Compensation) Award remain unchanged and will continue to apply to staff required to relocate.

16. What will happen to employees who have been seconded to other agencies or other positions on the commencement of the Act? What do the draft GSE Rules propose in relation to transfers and secondments?

It is proposed that on the time of commencement of the GSE Act secondments may continue for the agreed period but will be assigned to a role in their host agency and will return to an assigned role when their secondment ends, and not to a position.

The draft GSE Rules propose that temporary secondments at a higher level for less than 6 months and temporary secondments at level will require a suitability assessment. Secondments at a higher level for over 6 months will require a comparative assessment.

Secondments will be for a maximum period of two years.

Under the draft GSE Rules, transfers are permanent moves of employees between Agencies at their level of ongoing employment. A suitability assessment is required prior to a transfer.

17. How are non-executive employees terminated under the GSE Act? Will there be changes to Managing Excess Employees?

The GSE Act 2013 brings the existing grounds for termination of a non-executive employee together in a single section. The grounds for termination listed in Section 47 of the GSE Act are equivalent to provisions or actions available under the PSEM Act 2002 and the PSEM Regulation 2009.

The framework for determination of excess non-executive employees by an Agency Head is set out in Section 47(j) of the GSE Act and the draft Clause 8 of the GSE Regulation. The Managing Excess Employee (MEE) Policy (August 2011), and the Agency Change Management Guidelines (September 2011) will be adapted to apply to roles in much the same way as they currently do to positions. Agencies will continue to manage excess employees under the MEE Policy and Case Management and Redeployment Guidelines which will be updated to reflect the new concept of role which represents the duties and responsibilities of an employee.

The MEE Policy and the Agency Change Management Guidelines will continue to be key mechanisms by which public service agencies adapt to changing priorities and implement organisation reform to optimise service delivery.

The MEE policy does not apply to state owned corporations, the NSW Health Service, the Teaching Service, School Administration and Support Staff, the NSW Police Force (police officers), Fire and Rescue NSW (fire fighters), Sydney Trains, NSW Trains and the NSW Transport Service.

Recruitment and Promotion

18. How will application of the merit principle be applied in recruitment and promotion under the GSE Act and the draft GSE Rules?

The GSE Act enhances the application of the principle of merit as all employment decisions will be based on an assessment of an applicant's capabilities against the requirements of the role. This means that before any person can be assigned to a role, they must have been assessed as having the capabilities required to perform in the role, unless it is an at-level temporary secondment provided as a development opportunity.

Part 4 of the draft Government Sector Employment Rules establishes a new framework for merit-based employment introducing new concepts including comparative assessment and suitability assessment. The key difference between these assessments is that a comparative assessment requires competition between applicants whereas a suitability assessment involves assessing the suitability of an individual person against the requirements of a role.

A defining characteristic of the comparative assessment is comparison with the claims of other persons. As is currently the case, if there is only one applicant in response to a call for expressions of interest or external advertising, then an appointment will still meet the requirements of a comparative assessment, subject to the single applicant's claims meeting the pre-established standards for the role, based on the required range of assessment methods.

Capability based assessments may include but are not limited to: work sample tests, in-tray exercises, group activities, psychometric testing such as numerical and verbal reasoning, physical assessments, skills testing such as data entry or computer skills. The assessments will be fit for purpose and relevant to the role being recruited.

The requirements for multiple capability based assessments in the recruitment process will also ensure that a comprehensive assessment of applicants' capabilities in different settings rather than only one opportunity during an interview.

New Merit selection training is being designed and will be available early 2014. This training will be mandatory for Convenors of panels.

19. Will there be new ways of recruiting people into the public service?

The Public Service Commissioner has recently completed a major review of existing recruitment processes in the sector and a new best practice approach to recruitment is to be put into place during 2014.

For candidates, the future approach to recruitment brings a quicker and easier application process which includes a one page covering letter, a short statement in response to two role related questions and a resume/CV. Guidance material will be developed and published on the jobs.nsw website to help support applicants applying for roles.

The assessment process will involve at least three different tools to assess an applicant's capabilities so the new recruitment process will ensure that applicants are given a fair opportunity to demonstrate their capabilities from different perspectives and in different settings, rather than just one opportunity during the interview. Depending on the role, this might include the use of work samples and/or cognitive ability tests.

Cyclical/ bulk recruitment and the establishment of talent pools are a new feature of the GSE Act which will change the way we recruit people into the public service. The talent pool for a role is a list of those people who have satisfied the pre-established standards for a particular role through a comparative assessment process. Talent pools are likely to be used for common role types such as graduates, project officers and Band 1 executives, and to facilitate mobility across the sector. Agencies will be able to access the talent pools to fill roles, either directly or after an additional assessment process.

20. How does the NSW Public Sector Capability Framework 2013 support the implementation of the GSE Act, GSE Regulation and GSE Rules?

The NSW Public Sector Capability Framework 2013 (www.psc.nsw.gov.au/Sector-Support/Capability-Framework) describes the core capabilities and behaviours required of all NSW public sector employees, across all levels and all occupational groups. Departments and agencies are expected to embed the NSW Public Sector Capability Framework in workforce management practices within three years, by August 2016.

The Framework provides a foundation for role design description and evaluation, recruitment and assessment, performance development, capability development, and strategic workforce planning. It

is designed to work in conjunction with occupation/profession specific capability sets for employees in various occupations. More specifically, the Framework will provide:

- A common basis for describing core capability requirements which will support development of consistent role descriptions;
- Better recruitment outcomes as managers and selection panels will know the type and level of capability required for the role, and can apply targeted assessment methodologies
- The basis for capability assessment and development planning as part of the performance development process
- Mobility based on consistent capabilities required in similar roles across the Government sector
- Capability development activities targeted to specific capability levels such as assessment of executives under the 2014 Executive Development Program
- The basis for employees to identify career pathways based on the capabilities required for progression to chosen roles
- A consistent basis for agencies to identify workforce capability strengths and gaps in workforce planning.

21. What are the proposed transitional arrangements for recruitment?

The Public Service Commissioner is currently preparing transitional regulations in a number of areas to support a smooth transition to the GSE Act. Transitional requirements and timeframes for compliance with the new merit rules are being considered including a possible grace period of six months for full compliance for recruitment actions.

From now on, all recruitment advertisements and supporting documentation should flag that the employment framework will change once the GSE Act commences.

Existing eligibility lists made under the *Public Sector Employment and Management Act 2002* are anticipated to continue to have applicability up until the end of their currency, or up to six months after commencement of the Act, whichever is the earliest.

To support implementation of the new approach to merit-based recruitment under GSE, new merit selection training will be offered from 24 February 2014 in line with commencement of the Act.

Training will be provided as online e-learning packages and a 'recruitment guide' will provide further guidance and support. Merit training is expected to be mandatory for convenors and recommended for other panel members and there will be advanced e-Learning training modules for recruiters, HR staff and convenors. There will also be renewed emphasis on using the sector-wide E-recruitment system (Oracle Taleo) to replace paper-based systems.

Public Service Senior Executives

22. What is the new executive structure? What are Executive Bands?

The GSE Act provides the foundation for a single, leaner, flatter, and more mobile executive structure for the Public Service which will be known as the Public Service senior executive. The current Chief Executive Service, SES and award-based senior executives (Senior Officers (SO) and equivalent roles) will be replaced by a single executive structure with one set of employment arrangements for all, including a model written employment contract.

Under the GSE Act a Public Service senior executive is a Secretary of a Department and the head of a Public Service agency if the head is an employee of the agency and not a statutory officer, and any other employee of a Public Service agency who is employed in a Public Service senior executive band.

The streamlined structure for Public Service senior executives will now be comprised of the following four broad senior executive bands:

- Department Secretaries Band** – Department Secretaries
- Senior Executive Band 3** – Deputy Secretaries and Agency Heads
- Senior Executive Band 2** – Executive Directors and Agency Heads
- Senior Executive Band 1** – Directors

It is expected that the above role titles will be used across the Public Service to improve consistency and create a clearer, shared understanding of the nature of roles found in each band. Exceptions might be needed in rare cases, for example if the role is of a kind commonly referred to by another title (for example Chief Finance Officer).

23. How will the new Executive Band system operate?

All Public Service agencies will conduct a review of their executive structures within three years of commencement of the Act, to achieve alignment with the new executive arrangements.

The NSW Public Service Senior Executive Senior Work Level Standards will be the main classifying tool for determining the band for a new Public Service senior executive role. These new Work Level Standards outline, in broad terms, the expected work to be performed at each senior executive band except for the Departmental Secretaries band.

Once the band is determined for a new senior executive role using the Work Level Standards, an evaluation of the role will be undertaken to determine its work value based in approved methods. The work value will determine the remuneration range for the role within the band.

The following key operational principles apply to the new executive band structure:

- There will be no overlapping of senior executive bands.
- There will be no levels or sub-bands within bands
- Generally there should be no more than three executive reporting layers below the Secretary.
- Intra-band executive reporting, where a senior executive within one of the three bands reports to a senior executive within the same band, should be avoided but can be accommodated for special circumstances. For example, it may be needed where a specialist is engaged to provide specific expertise or conduct a time limited project and that role reports to a senior executive manager in the same band.
- A broad band structure can accommodate a mixture of designs – for example an agency may have bands 1, 2 and 3 senior executives reporting to a Secretary, or a combination of bands 1 and 2 senior executives reporting to a band 3.
- Public Service senior executives (other than Secretaries and heads of agencies) will be employed in a senior executive band, and assigned to a role within that band (ss 37 and 38 GSE Act).

24. What happens to a Senior Officer who is unsuccessful in gaining a role in their agency's new executive structure?

Senior executive redesign and implementation under the GSE Act may be conducted on a cluster, agency or part agency-basis.

Roles in the new executive structure will be filled in the first instance from within the ranks of existing executive staff through an Expressions of Interest (EOI) process. If any senior executive roles are not filled through the initial EOI, the Department or agency can then advertise the roles externally.

Current Senior Officers may apply for roles in their existing Department/agency (either through an internal EOI process or where a role is externally advertised) or in another Department or agency where an executive position is advertised externally.

If a Senior Officer is unsuccessful in gaining employment as a senior executive within their agency, they will become excess once their existing Senior Officer role is deleted. Where the Secretary or agency head determines that a Senior Officer is excess to the requirements of the relevant part of the agency in which they are employed, the Managing Excess Employees (MEE) Policy will apply.

25. Will all Senior Officers need to undergo an assessment in order to obtain a role in their agency's new executive structure? How is the assessment carried out?

All current Senior Officers and Senior Executive Service (SES) officers who wish to be considered for a senior executive role in their Department or agency under the GSE Act will be required to undertake a rigorous assessment process prior to being employed in a public service senior executive band and assigned to a role.

The assessment process will have regard to capabilities, experience and knowledge of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the Public Service agency in which the person is to be employed.

Key elements of the assessment process for a senior executive role (or roles) are:

- Must comprise of at least three assessment methods, conducted as a separate elements contributing to an overall assessment. Departments and agencies will select the most appropriate combination of assessment tools. These may include: behavioural based interview, work samples, cognitive testing, personality testing, assessment tools from respected providers, and role play based assessments with a qualified assessor.
- The assessment methods used will be applied against the 20 core capabilities (16 core capabilities if the role has no managerial responsibilities) in the NSW Public Sector Capability Framework, complemented by an assessment against any occupation-specific capability requirements.
- A rigorous 'fit-for-purpose' reference checking that builds on the outcomes of the three assessment methods.

The capability assessment scores will be valid for 12 months and can be considered as part of the assessment process for another senior executive role.

26. Will a Senior Officer who applies and is recruited to a role as a Public Service Senior Executive under the GSE Act remain on the current remuneration level?

As part of the executive restructure it is likely that many of the existing Senior Officer positions will be replaced by new roles with changed duties and responsibilities.

The remuneration level for these new roles will therefore depend on the application of the new Work Level Standards and the placement of the new role in the new Band structure.

27. Will a Senior Officer be financially disadvantaged by an appointment to a role under the GSE Act executive structure?

It is intended that current Senior Officers who move to new executive arrangements will be no worse off financially at the point of transfer if they move to a role of equivalent value. Consideration is being given to aspects such as superannuation and leave loading.

Performance Management and Misconduct

28. What are the changes to performance management and misconduct requirements under the GSE Act?

Under the Government Sector Employment Act 2013 (GSE Act), the management of misconduct will now be dealt with separately from management of unsatisfactory performance.

The concept of 'disciplinary action' in the Public Sector Employment and Management Act 2002 (PSEM Act) has been removed and replaced in the GSE Act under s69 with actions that may be taken in circumstances where an employee has been convicted of a serious offence, or there is a finding of misconduct.

Section 69 GSE Act provides for Government Sector Employment Rules (GSE Rules) to be made in respect of misconduct or an employee's conviction for a serious offence, and the procedural requirements for dealing with allegations of misconduct - consistent with procedural fairness.

Part 9 of the draft GSE Rules sets out procedural requirements for the initial stage for dealing with allegations, provides for the conduct of inquiries where appropriate, and provides for the agency head to make findings concerning the allegation of misconduct.

Where there is a finding of misconduct made in accordance with the GSE Rules, then the GSE Act provides various options under s69 (4) to the head of a public sector agency (the same options as are currently available under the PSEM Act). These include: imposing a fine, reducing remuneration, classification or grade, assigning the employee to a different role, cautioning or reprimanding the employee, or terminating employment. Whilst the language in s69 has been modernised, there is no change to the misconduct management regime other than providing the capacity to reassign an employee to a different role.

29. Does the GSE Act require performance management systems to be implemented in all agencies?

The PSEM Act 2002 (section 101A) requirement that heads of public service agencies develop and implement a performance management system for their employees is brought forward into the GSE Act. (section 67). The Public Service Commissioner has established the NSW Public Sector Performance Development Framework, which was issued in July 2013. This [framework](#) contains the essential elements and mandatory guidelines for agency performance development systems and sets the approach for managing all aspects of employee performance in the NSW public sector. (www.psc.nsw.gov.au/performance)

30. How will unsatisfactory performance be managed under the GSE Act?

As is the case under the PSEM Act 2002 provisions, the GSE Act provides for a range of options for dealing with unsatisfactory performance, including reduction in remuneration, reduction in classification or grade or assignment to a different role, and termination. (section 68)

The management of unsatisfactory performance will be in accordance with the Government Sector Rules and in-line with the agency's performance management system required under the GSE Act.

Part 8 of the draft GSE Rules prescribes the core requirements of performance management systems and how unsatisfactory performance should be dealt with. In dealing with unsatisfactory performance the draft GSE Rules provide that reasonable steps must have been taken to advise the employee that their performance is unsatisfactory and the basis on which it is unsatisfactory. The employee must also be notified if action is proposed under section 68 and given a reasonable opportunity to respond.

Workforce Diversity

31. What are the workforce diversity requirements under the GSE Act, and draft GSE Regulation and Rules?

Diversity in Government sector workforce management continues to be a priority under the GSE Act. A diverse workforce which is free of discrimination and reflective of the NSW community is an important factor in the delivery of high quality services

The previous requirements under Part 9A of the *Anti-Discrimination Act 1977* have been removed and the requirements for diversity are now solely under the GSE Act. The Public Service Commissioner will lead the strategic development and management of the government sector workforce in relation to equity and diversity, including strategies to ensure the sector reflects the diversity of the wider community.

Department secretaries and agency heads are responsible for workforce diversity within their organisations.

The GSE Act preserves the focus on existing diversity groups (women, people from culturally and linguistically diverse backgrounds, Aboriginal people and people with a disability), but also provides flexibility to encompass a broader spectrum of diversity.

The draft GSE Regulation prescribes certain agencies and universities as government sector agencies, for the purposes of workplace diversity, and also deals with existing EEO plans.

Some of the elements supporting workforce diversity will be embedded within Part 6 of the GSE Rules. The draft GSE Rules continue special arrangements for the employment of eligible persons including Aboriginal people, people with a disability, and young people. In addition the draft GSE Rules require the head of a government sector agency to ensure that information within the agency related to workforce diversity is collected and is able to be provided to the Public Service Commissioner.

32. What provision is made to support the appointment to Aboriginal identified and targeted roles?

Under the draft GSE Rules, departments and agencies can appoint Aboriginal people to identified roles and via targeted employment action.

The draft GSE Rules and further policy advice from the PSC will update advertising and appointment provisions that are currently detailed in the Personnel Handbook.