

# Separate Public Service agencies

## What is a separate Public Service agency?

### Key points

- The *Government Sector Employment Act 2013* establishes the Public Service.
- Separate Public Service agencies are part of the Public Service. The head of a separate Public Service agency employs all staff within the agency, including senior executives.
- Relevant provisions: GSE Act - Section 22, Part 4 Division 3, and Schedule 1 Part 3.

### The Public Service

The *Government Sector Employment Act 2013* (GSE Act) establishes the Public Service of New South Wales. Public Service employees are employed in:

- Departments
- Public Service executive agencies related to Departments
- Separate Public Service agencies

Employees of a separate Public Service agency are Public Service employees. The GSE Act, the *Government Sector Employment Regulation 2014* (GSE Regulation) and the *Government Sector Employment Rules 2014* (GSE Rules) apply to separate agencies.

### What is a separate Public Service agency?

Due to the nature of their functions or their statutory independence, separate Public Service

agencies require a greater level of autonomy in their employment arrangements.

The GSE Act includes specific provisions about separate Public Service agencies which are different from the provisions for Public Service executive agencies related to Departments. Three key differences are outlined below.

### Agency heads

The heads of separate Public Service agencies are either statutory senior executives or public office holders. This means that their offices are not created by the GSE Act. Most heads of separate Public Service agencies are appointed by the Governor and have some degree of statutory independence in the exercise of their functions.

Statutory senior executives and public office holders are employed under the Act that constitutes their office and have special employment arrangements.



Statutory senior executives have employment arrangements similar to Public Service senior executives. Although they are not appointed under the GSE Act, the Act that constitutes their office will provide for certain employment arrangements under the GSE Act to apply. They are employed in a band, and remunerated in accordance with the Statutory and Other Offices Remuneration Tribunal (SOORT) determination relevant to that band.

Public office holders have special employment arrangements that are defined within the Act that constitutes their office. They are remunerated in accordance with a SOORT determination made specifically for that office and/or appointment.

### **Employer functions and employment arrangements**

The head of a separate Public Service agency carries out the employer functions of the NSW Government in relation to Public Service senior executives and non-executive employees of the separate agency as well as any statutory senior executives employed under the Act that constitutes their office.

### **Compliance with Public Service Commissioner's directions**

The head of a separate Public Service agency is not required to comply with a direction from the Public Service Commissioner (given under section 13 of the GSE Act) if the head of the separate agency considers that the direction is not consistent with the independent exercise of his or her statutory functions, or those of the separate agency.

However, the head of the separate agency is required to report to any Parliamentary Committee that oversees the exercise of those functions on the reasons for non-compliance with the direction (see section 13(4) of the GSE Act).

### **Assignment to role**

To promote mobility and the development of a single and capable Public Service senior executive cohort, a senior executive may be assigned to a role in any Public Service agency in the band in which the senior executive is employed.

The assignment can be by the senior executive's employer or the Public Service Commissioner. However, the Commissioner may only assign a senior executive to a role within a separate Public Service agency with the agreement of the head of that separate agency.

### **What are the separate Public Service agencies?**

Separate Public Service agencies are listed in [Schedule 1 Part 3](#) of the GSE Act. There are 14 separate Public Service agencies. See the Appendices for more information.

### **What is a staff agency?**

A number of Public Service agencies listed in Schedule 1 to the GSE Act have 'Staff Agency' in their name. These agencies comprise persons who are employed under the GSE Act in the service of a statutory body that does not have the power to employ staff in its own right.

For example, the Environment Protection Authority Staff Agency comprises persons employed under the GSE Act to enable the Authority to exercise its functions.

### **Would you like more information?**

To read the GSE Act and other supporting instruments, such as the GSE Regulation and GSE Rules, please see the [EmploymentPortal](#)

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## Appendix A

Separate Public Service agencies where the head of the agency is a statutory senior executive

Agency	Head	Appointed by	Appointed under	Who signs the contract of employment?	Employer functions that may be exercised in relation to the agency head under the GSE Act
<b>Board of Studies, Teaching and Educational Standards Staff Agency</b>	President of the Board	Governor	<i>Board of Studies, Teaching and Education Standards Act 2013</i>	Minister for Education	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> <li>• Termination of employment</li> </ul>
<b>TAFE Commission (Senior Executives) Staff Agency</b>	Managing Director	Governor	<i>Teaching and Further Education Commission Act 1990</i>	Minister for Education	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> <li>• Termination of employment</li> </ul>
<b>Office of the Children's Guardian</b>	Children's Guardian	Governor	<i>Children and Young Persons (Care and Protection) Act 1998</i>	Minister for Family and Community Services	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> </ul>
<b>Environment Protection Authority Staff Agency</b>	Chairperson	Governor	<i>Protection of the Environment Administration Act 1991</i>	Minister for the Environment	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> </ul>
<b>Health Care Complaints Commission Staff Agency</b>	Commissioner	Governor	<i>Health Care Complaints Act 1993</i>	Minister for Health	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> </ul>
<b>Independent Transport Safety Regulator</b>	Chief Executive	Governor	<i>Transport Administration Act 1988</i>	Minister for Transport	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration, employment benefits and allowances</li> </ul>
<b>Legal Aid Commission Staff Agency</b>	Chief Executive Officer	Attorney General	<i>Legal Aid Commission Act 1979</i>	Attorney General	<ul style="list-style-type: none"> <li>• Executive band</li> <li>• Contract of employment</li> <li>• Remuneration,</li> </ul>

- employment benefits and allowances
- Termination of employment

## Appendix B

Separate Public Service agencies where the head of the agency is a public office holder

Agency	Head	Appointed by	Appointed under
<b>Office of the Director of Public Prosecutions</b>	Director of Public Prosecutions	Governor	<i>Director of Public Prosecutions Act 1986</i>
<b>Independent Pricing and Regulatory Tribunal Staff Agency</b>	Chairperson	Premier	<i>Independent Pricing and Regulatory Tribunal Act 1992</i>
<b>Information and Privacy Commission</b>	Information Commissioner	Governor	<i>Government Information (Information Commissioner) Act 2009</i>
<b>NSW Crime Commission Staff Agency</b>	Commissioner	Governor	<i>Crime Commission Act 2012</i>
<b>NSW Electoral Commission Staff Agency</b>	Electoral Commissioner	Governor	<i>Parliamentary Electorates and Elections Act 1912</i>
<b>Ombudsman's Office</b>	Ombudsman	Governor	<i>Ombudsman Act 1974</i>
<b>Police Integrity Commission Staff Agency</b>	Commissioner	Governor	<i>Police Integrity Commission Act 1996</i>
<b>Public Service Commission</b>	Public Service Commissioner	Governor	<i>Government Sector Employment Act 2013</i>

**Note:** Public office holders are not required to enter into a contract of employment under the GSE Act.