



Australian Capital Territory

Public Sector Management Act 1994

A1994-37

Republication No 27

Effective: 18 April 2011 – 30 June 2011

Republication date: 18 April 2011

Last amendment made by A2011-1

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Public Sector Management Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 18 April 2011. It also includes any amendment, repeal or expiry affecting the republished law to 18 April 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Public Sector Management Act 1994

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Australian Capital Territory

Public Sector Management Act 1994

An Act to regulate the administration of the public sector of the Territory, and for related purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Public Sector Management Act 1994*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*clerk*, for division 3.8 (Legislative Assembly—clerk and secretariat)—see section 45.' means that the term 'clerk' is defined in that section for division 3.8.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act s 127 (1), (4) and (5) for the legal status of notes.

3A Declaration of territory instrumentalities

- (1) The Minister may declare that a body is or is not a territory instrumentality for this Act.
- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

4 Operation of Act

This Act operates both within and outside the ACT.

5 Application

Unless the contrary intention appears, the provisions of this Act do not apply to any of the following:

- (a) a judge of the Supreme Court;
- (b) the master of the Supreme Court;
- (c) a magistrate;
- (d) a person engaged in an honorary capacity;
- (e) a person remunerated by fees, allowances or commissions only;
- (f) the Legal Aid Commission (A.C.T.);
- (g) ACTEW Corporation Limited;
- (h) ACTTAB Limited;
- (i) the University of Canberra.

Part 2 Administration of the public sector

Division 2.1 Values and general principles

6 Values and principles

Government agencies shall have an objective of implementing the following values and principles:

- (a) service to the public;
- (b) responsiveness to—
 - (i) the requirements of the government; and
 - (ii) the needs of the public;
- (c) accountability to the government for the ways in which functions are performed;
- (d) fairness and integrity;
- (e) efficiency and effectiveness.

7 General principles of public administration

The public sector shall be administered with an objective of giving effect to the following principles:

- (a) the public sector shall be administered to provide quality services to the public;
- (b) decisions shall be as fair as possible;
- (c) the best management practices shall be used;
- (d) the public sector shall be structured and organised to facilitate the timely and effective performance of its functions;

- (e) there shall be a clear and explicit delineation of the responsibilities and accountabilities of public employees, administrative units and territory instrumentalities;
- (f) the public sector shall be managed in accordance with principles of access and equity by giving all members of the public the opportunity to have a fair share of the resources which the Territory manages on their behalf and an opportunity to gain access to the resources to which they are entitled;
- (g) the public sector shall be administered to minimise the possibility of unlawful discrimination.

8 General principles of management in employment matters

In employment matters, government agencies shall be administered with an objective of giving effect to the following principles:

- (a) selection processes shall be directed towards and based on a proper assessment of merit;
- (b) all officers shall be afforded equal opportunities to secure promotion and advancement in their employment on the basis of relative merit;
- (c) best practices shall be adopted in the training and development of staff;
- (d) public employees shall be provided with safe and healthy working conditions;
- (e) public employees shall be afforded opportunities for appropriate participation in the decision-making processes relating to the administration of the government agencies in which they work.

9 General obligations of public employees

A public employee shall, in performing his or her duties:

- (a) exercise reasonable care and skill;
- (b) act impartially;
- (c) act with probity;
- (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
- (e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the territory laws and to understand any requirements that they are obliged to satisfy under those laws;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise;
- (g) not unlawfully coerce a member of the public or another public employee;
- (h) comply with this Act, the management standards and all other territory laws;
- (i) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (j) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties—
 - (i) disclose the interest to his or her supervisor; and
 - (ii) take reasonable action to avoid the conflict;as soon as possible after the relevant facts come to the employee's notice;

- (k) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
- (l) not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;
- (m) not disclose, without lawful authority—
 - (i) any information acquired by him or her as a consequence of his or her employment; or
 - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;
- (n) not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (o) not make improper use of the property of the Territory;
- (p) avoid waste and extravagance in the use of the property of the Territory;
- (q) report to an appropriate authority—
 - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
 - (ii) any possible maladministration in the public sector that he or she has reason to suspect.

9A Misconduct

The misconduct procedures that apply to a public employee are—

- (a) if an industrial instrument applies to the employee and includes procedures for misconduct—the misconduct procedures in the industrial instrument; or
- (b) in any other case—the prescribed misconduct procedures.

10 Sections 6, 7, 8 and 9 subject to other provisions

Sections 6, 7, 8 and 9 have effect subject to the other provisions of this Act and any other Act.

11 Legal effect

- (1) Nothing in this division is to be taken to create any legal rights not in existence before the enactment of this part or to affect any rights in existence before that enactment or that would, apart from this part, have come into existence after that enactment.
- (2) Subsection (1) does not prevent a contravention of section 9 (a) to (p) by an officer or employee from being dealt with under part 9.

Division 2.2 Constitution of the service

12 ACT Public Service

- (1) The body known as the Australian Capital Territory Government Service that was, immediately before the day fixed for the *Public Sector Management (Amendment) Act 1995*, section 2 (2), in existence because of this Act continues in existence by force of this subsection under the name of the Australian Capital Territory Public Service.
- (2) The service is constituted by—
 - (a) the chief executives; and
 - (b) the executives; and

- (c) other employees; and
 - (d) officers.
- (3) The Territory is the employer of all members of the service.

Division 2.3 Administrative arrangements

13 Constitution of administrative units

- (1) The Chief Minister may—
- (a) establish administrative units; and
 - (b) place chief executives in control of the administrative units.
- (2) An administrative unit consists of the offices within that administrative unit.
- (3) An instrument under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

14 Ministerial responsibility and functions of administrative units

- (1) The Chief Minister may—
- (a) allocate to a Minister responsibility for 1 or more administrative units; and
 - (b) allocate to an administrative unit responsibility for all or any of the enactments and matters for which the relevant Minister is responsible.
- (2) An instrument under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

15 Machinery of government changes—officers

- (1) If an administrative unit is abolished, the Chief Minister or the commissioner may, in writing, transfer an office in the administrative unit to another administrative unit.
- (2) If, because of administrative arrangements approved by the Chief Minister, a matter that immediately before those arrangements took effect was the responsibility of an administrative unit (the *losing area*) becomes the responsibility of another administrative unit (the *gaining area*), the commissioner may, in writing, transfer an office in the losing area to the gaining area where the holder of the office is required to perform duties that—
 - (a) relate wholly or mainly to that matter; or
 - (b) are certified by the Chief Minister to be ancillary to, or attributable to, that matter.
- (3) The transfer of an office under subsection (1) or (2) does not affect the identity of that office or anything done in relation to the office before the transfer.
- (4) Without limiting the operation of subsection (3)—
 - (a) if immediately before its transfer, an office was occupied by a person—the office continues to be occupied by the person; and
 - (b) if immediately before its transfer, an office was a part-time office—the office continues to be a part-time office.
- (5) A person occupying an office that has been transferred to an administrative unit under subsection (1) or (2) shall be taken to have been transferred to the administrative unit.
- (6) If immediately before the transfer of an office to an administrative unit (the *gaining area*)—
 - (a) the office was vacant; and

- (b) a person had been selected to fill the office following action taken for that purpose in accordance with this Act and the management standards and written notification of his or her selection had been forwarded to the person; and
- (c) the remaining steps necessary to fill the office in accordance with this Act and the management standards had not been taken;

those steps shall be taken in the gaining area.

- (7) If immediately before the transfer of an office from one administrative unit (the *losing area*) to another administrative unit (the *gaining area*)—

- (a) the office was vacant; and
- (b) steps had been taken in the losing area to fill the office in accordance with this Act and the management standards but no notification of the selection of a person had been forwarded;

the remaining steps necessary to fill the office in accordance with this Act and the management standards may be taken in the gaining area.

- (8) Subsection (7) does not impose an obligation on the gaining area, or on an officer in the gaining area, to take the remaining steps necessary to fill the office.
- (9) An instrument under subsection (1) that is expressed to transfer an office on the abolition of an administrative unit may be made before the abolition takes effect.

16 Machinery of government changes—employees

- (1) If—
 - (a) an administrative unit is abolished; or

- (b) because of administrative arrangements approved by the Chief Minister, a matter that was the responsibility of an administrative unit (the *losing area*) immediately before those arrangements took effect becomes the responsibility of another administrative unit (the *gaining area*);

subsection (2) has effect.

- (2) The commissioner may direct in writing that—
- (a) if subsection (1) (a) applies—an employee who was employed in the administrative unit immediately before the abolition is to be employed in another administrative unit; or
- (b) if subsection (1) (b) applies—an employee who was employed in the losing area immediately before the arrangements took effect is to be employed in the gaining area;

and, if such a direction is given, an employee shall be taken as from that time to be employed as so directed, in the same capacity and subject to the same conditions as were applicable immediately before that time.

- (3) Without limiting subsection (2), that subsection does not extend the term of employment of a person beyond the time when it would have ended if the employment had not been affected by a direction under that subsection.
- (4) An instrument made for subsection (2) may be made before the abolition takes effect.

Part 3 Management of the service

Division 3.1 Preliminary

17 Meaning of *officer* in pt 3

In this part:

officer includes an employee.

Division 3.2 Role of commissioner

18 Appointment of commissioner

- (1) The Chief Minister may appoint a person as the Commissioner for Public Administration.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) Section 65 (Application of merit principle) does not apply to the appointment of an acting commissioner.

- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) However, subsection (3) does not apply to the appointment if the Legislation Act, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment.

Note Under the Legislation Act, s 229 the appointment is a disallowable instrument.

20 General functions

- (1) The commissioner shall—
 - (a) advise the Chief Minister on the management of the service as a whole; and
 - (b) implement administrative rearrangements at the direction of the Chief Minister; and
 - (c) exercise any other functions given to the commissioner by this Act or any other law.
- (2) The commissioner may exercise the powers of any person to whom chief executive powers have been given other than the chief executive officer of an autonomous instrumentality.

21 Review of government agencies or functions

- (1) In this section, a reference to the service includes a reference to a government agency but does not include an autonomous instrumentality.
- (2) Subject to subsection (3), the commissioner, with the approval of the Chief Minister, may authorise management reviews to be undertaken in relation to—
 - (a) the service or a part of the service; or
 - (b) the functions of the service or a part of the service; or
 - (c) the possible variation of the functions referred to in paragraph (b) including the addition of functions to the service or a part of the service.
- (3) If a proposed review would relate to the Legislative Assembly secretariat, the commissioner may, with the approval of the Speaker, undertake the review.
- (4) The commissioner shall notify the relevant chief executive in writing before the commencement of the review.

- (5) On completion of the review, the commissioner may make recommendations to the relevant chief executive on the action that should be taken, or could be taken, to give effect to any proposals arising from that review.
- (6) If the relevant chief executive disagrees with the recommendations or does not within a reasonable time take action to implement them, the chief executive shall—
 - (a) notify the relevant Minister and the Chief Minister of his or her reasons for disagreeing with the recommendations or not taking action to implement them; and
 - (b) provide a copy of those reasons to the commissioner.
- (7) The commissioner shall, from time to time, report to the Chief Minister on the operation of this section.

22 Investigative powers of commissioner

- (1) The commissioner may, for the purpose of carrying out the commissioner's functions—
 - (a) conduct inspections of, or make inquiries or investigations into the operations of, government agencies; and
 - (b) enter premises occupied by a government agency at any time.
- (2) For an inspection, inquiry or investigation, the commissioner, or a person authorised in writing by the commissioner, may, by written notice given to a person, require the person to appear before the commissioner, at a stated time and place, to do either or both of the following:
 - (a) to give evidence;
 - (b) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.

(3) The commissioner may require a witness appearing before the commissioner to give evidence for an inspection, inquiry or investigation to do 1 or more of the following:

- (a) to take an oath;
- (b) to answer a question relevant to the inspection, inquiry or investigation;
- (c) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.

Note 1 **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

(4) An inspection, inquiry or investigation by the commissioner is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to inspections, inquiries or investigations by the commissioner.

22A Witness expenses

A person, other than an officer, is not required to comply with a notice given to the person under section 22 (2) unless a reasonable amount for expenses that the person would incur in complying with the notice on any day when the person's attendance is required is paid or tendered to the person—

- (a) when the notice is given to the person; or
- (b) within a reasonable time before the date for compliance mentioned in the notice.

23 Records of members

- (1) The commissioner shall cause to be kept a record of each member of the service, showing—
 - (a) the date of birth of the member; and
 - (b) for each officer—
 - (i) the date when the officer was appointed to the service; and
 - (ii) the classification of the officer; and
 - (c) for each employee—the date the employee was engaged.
- (2) If, under this Act, a period of service of a person otherwise than in the service is to be reckoned as employment in the service, the record shall show, in relation to that person, the date when that period of service commenced and concluded.
- (3) In the application of this section to an officer, or employee, of an autonomous instrumentality, the reference to the commissioner is a reference to the chief executive officer of the instrumentality.

Division 3.3 Exercise of chief executive powers in relation to certain public employees

24 Powers of chief executive officers of certain territory instrumentalities

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, of a territory instrumentality (the *instrumentality staff*) must be employed under this Act.

- (2) The chief executive officer of the territory instrumentality has all the powers of a chief executive in relation to the instrumentality staff (including, for example, in relation to the appointment of people to, or the employment of people for, that staff).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), this Act applies in relation to the territory instrumentality as if—
- (a) the instrumentality were an administrative unit; and
 - (b) the chief executive officer were the chief executive of that administrative unit; and
 - (c) all other necessary changes were made.

25 Powers of certain statutory office-holders

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, assisting a statutory office-holder (the *office staff*) must be employed under this Act.
- (2) The statutory office-holder has all the powers of a chief executive in relation to the office staff (including, for example, in relation to the appointment of people to, or the employment of people for, that staff) if—
- (a) the Chief Minister makes a declaration under subsection (4); or
 - (b) this Act or another territory law gives (however expressed) all the powers of a chief executive to the statutory office-holder.

Examples for par (b)

- 1 the clerk under section 54 (2)
- 2 the auditor-general under the *Auditor-General Act 1996*, section 23

3 the director of public prosecutions under the *Director of Public Prosecutions Act 1990*, section 30

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), if, under that subsection, the statutory office-holder has all the powers of a chief executive in relation to the office staff, this Act applies in relation to the statutory office-holder and office staff as if—
- (a) the statutory office-holder and the office staff were an administrative unit; and
 - (b) the statutory office-holder were the chief executive of that administrative unit; and
 - (c) all other necessary changes were made.
- (4) The Chief Minister may declare that the statutory office-holder has all the powers of a chief executive in relation to the office staff.
- (5) A declaration under subsection (4)—
- (a) is a notifiable instrument; and
 - (b) has effect subject to the Act under which the statutory office-holder holds office.

Note A notifiable instrument must be notified under the Legislation Act.

26 Powers relating to certain Calvary Health Care staff

- (1) This section applies if an agreement is in force between the Territory and Calvary Health Care ACT Limited for staff at Calvary Health Care ACT Limited (Public Division) to be employed under this Act.

- (2) The chief executive officer, Calvary has all the powers of a chief executive in relation to the people employed in Calvary public health care (including, for example, in relation to the appointment of people to, or the employment of people for, Calvary public health care).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), this Act applies in relation to Calvary public health care as if—
- (a) Calvary public health care were an administrative unit; and
 - (b) the chief executive officer, Calvary were the chief executive of that administrative unit; and
 - (c) all other necessary changes were made.
- (4) In this section:

Calvary public health care means the branch of the service that provides services required to enable Calvary Health Care ACT Limited (Public Division) to exercise its public functions.

chief executive officer, Calvary means the person engaged to exercise the functions of the position of chief executive officer (however described) of Calvary Health Care ACT Limited (Public Division) under the rules of Calvary Health Care ACT Limited.

Division 3.4 Chief executives

27 Office of chief executive

The Chief Minister may, by writing, create or abolish an office of chief executive in an administrative unit.

28 Chief executives—engagement

- (1) A person may be engaged by a contract under this section to perform the duties of an office of chief executive.
- (2) The parties to a contract under this section are the Territory and the person engaged.
- (3) A contract under this section shall—
 - (a) be in writing; and
 - (b) be signed by or on behalf of each party; and
 - (c) specify the day the person engaged is to commence to perform the duties of the office; and
 - (d) specify a day the period of employment is to end that is not more than 5 years after the day specified in accordance with paragraph (c).
- (4) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

28AA Chief executives—contract variation

- (1) A contract under section 28 may be varied at any time by a written agreement between the parties.

Note If a person engaged by a contract under s 28 is transferred or assigned under s 33A, the person's contract is taken to be varied by the transfer or assignment (see s 33A (4)).

- (2) However, a variation of a contract under section 28 that would do either or both of the following is void:
- (a) extend the period of employment under the contract—
 - (i) to longer than 5 years, unless the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years; or
 - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years;
 - (b) increase the rate at which remuneration or an allowance is payable to the person employed otherwise than in accordance with the management standards.

28A Early termination of contract

- (1) A contract under section 28 may provide for termination of the employment of the person employed before the end of the period of employment specified in the contract.
- (2) A contract under section 28 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.
- (3) The grounds specified under subsection (2) shall not include—
 - (a) the ground that the person employed under the contract is incompatible with another person; or
 - (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in relation to the termination other than the benefit (if any) prescribed for this subsection.

- (5) The employment of a chief executive who is employed under a contract under section 28 is not capable of being terminated on the ground of invalidity unless—
- (a) if the chief executive is an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—
 - (i) the chief executive has not reached the chief executive's maximum retiring age within the meaning of the Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the chief executive; or
 - (b) if the chief executive is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the chief executive is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the chief executive; or
 - (c) if the chief executive is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
 - (i) the chief executive is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the chief executive.
- (6) In this section:
- invalidity*** means—
- (a) for an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—invalidity under the Act; or

- (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under the Act; or
- (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under the Act.

28B Effect of contracts on responsibilities of Ministers

Nothing in a contract under section 28 shall be taken to derogate in any way from the responsibility of the Minister administering an administrative unit for—

- (a) the policies developed or applied by the administrative unit; or
- (b) the financial and other performance of the administrative unit.

28C Application of merit principle to re-engagements

Section 65 (1), (3) and (4) does not apply in relation to a second or subsequent engagement of a person to perform the duties of the same office of chief executive, or an office of chief executive with similar duties, if—

- (a) the period of the second or subsequent engagement is to commence immediately on the end of the period of the previous engagement; and
- (b) the Chief Minister has certified in writing that he or she is satisfied that it would be in the interests of the service for the person to be re-engaged to perform those duties.

28D Notice or payment if chief executive not re-engaged

- (1) This section applies in relation to a person engaged by a contract under section 28 (Chief executives—engagement) if the Chief Minister does not intend to re-engage the person under that section to exercise the functions of the same office of chief executive or another office of chief executive.

- (2) However, to remove any doubt, this section does not apply if the contract is terminated before the end of the period of employment specified in the contract.

Note For the termination of a contract under s 28, see s 28A (Early termination of contract).

- (3) At least 3 months before the day the contract ends, the Chief Minister may give the person written notice that the person will not be re-engaged.
- (4) An amount equal to $\frac{1}{4}$ of the person's final annual salary is payable to the person by the Territory if, when the person's contract ends—
- (a) the Chief Minister has not given a notice under subsection (3); and
 - (b) the person has not accepted another position in the public sector; and
 - (c) the person is not entitled to a redundancy payment (however described) for not being re-engaged.

Note Section 248B provides that the Territory or a territory instrumentality must not, within 3 months after the day the contract ends, and without the commissioner's written consent, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (5) The amount must be paid within 3 months after the day the contract ends.
- (6) In this section:

final annual salary, for a person engaged by a contract under section 28, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments instead of employer-provided benefits).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

29 Chief executives—responsibilities

- (1) This section applies to a person exercising the functions of an office of chief executive.
- (2) For each administrative unit under the person's control, the person—
 - (a) is responsible, under the relevant Minister, for the unit's administration and business; and
 - (b) must advise that Minister on all matters relating to the unit; and
 - (c) must have regard to the interests of the government and the service as a whole.
- (3) The Chief Minister may assign a chief executive to special duties on behalf of the Territory.

30 Chief executives—temporary contracts

- (1) If—
 - (a) a person employed to perform the duties of an office of chief executive is absent from duty or is, for any other reason unable to perform the duties of that office; or
 - (b) no person is employed to perform the duties of such an office;an executive, an officer or another person may be engaged by a contract under this section to temporarily perform the duties of that office.
- (2) The parties to a contract under this section shall be the Territory and the person engaged.
- (3) A contract under this section shall—
 - (a) be in writing; and
 - (b) specify the period during which the person engaged is to perform the duties of the office; and

- (c) be signed by or on behalf of each party.
- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.
- (8) A contract under this section may be terminated at any time by one party giving written notice to the other party.
- (9) A person is not entitled to any compensation for the termination of a contract under subsection (8).

30A Chief executives—variation of temporary contracts

- (1) A contract under section 30 may be varied at any time by a written agreement between the parties.
- (2) However, a variation of a contract under section 30 that extends the period of employment under the contract to longer than 2 years is void.

31 Negotiation and execution of contracts

- (1) The following contracts and contract variations must be signed for the Territory by the Chief Minister:
- (a) a contract under section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts);

- (b) a variation of a contract under section 28AA (Chief executives—contract variation) or section 30A (Chief executives—variation of temporary contracts).
- (2) If an office to which a contract under section 28 or section 30 relates, or will relate, is an office in an administrative unit for which the Chief Minister has allocated responsibility to another Minister, the Chief Minister shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of that other Minister.

31A Presentation of contracts and variations of contracts

The Chief Minister shall present a copy of—

- (a) each contract made under section 28 or section 30; and
(b) each instrument by which such a contract is varied;

to the Legislative Assembly within 6 sitting days after the day the contract or variation is made.

32 Chief executive engagements not affected by defects etc

The engagement of a person under section 28 or section 30 to perform the duties of an office of chief executive is not invalid, and shall not be called into question, by reason of a defect or irregularity in relation to the engagement.

33 Employment to perform duties of multiple positions

A person may be employed to perform the duties of more than 1 office of chief executive.

33A Chief executives—transfer or assignment

- (1) The Chief Minister may, in writing, for a person engaged by a contract under section 28 (Chief executives—engagement)—
 - (a) transfer the person from the office of chief executive under the contract to—
 - (i) another office of chief executive; or
 - (ii) any other office (including an executive office) in an administrative unit; or
 - (b) assign the person to exercise other stated functions in the public sector.
- (2) The Chief Minister may transfer or assign the person only if the Chief Minister has—
 - (a) given the person an opportunity to state the person's views about the transfer or assignment; and
 - (b) considered the person's views (if any).
- (3) A transfer under subsection (1) (a) (i) may be made only to an office that has the same classification as, or a lower classification than, the office from which the person was transferred.
- (4) The transfer or assignment is taken to be a variation of the contract.
- (5) The transfer or assignment of a person under this section does not affect—
 - (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
 - (b) the period of the person's employment under the contract; or
 - (c) the right to terminate the person's employment if the contract provides for termination under section 28A (Early termination of contract).

- (6) If a person engaged by a contract under section 28 is transferred to an office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the office or exercise the stated functions.

33B Chief executive transfers or assignments under s 33A not affected by defects etc

- (1) A transfer, or anything done in relation to a transfer, is not invalid only because of a defect or irregularity in relation to the transfer.
- (2) In this section:

transfer means a transfer or assignment of a person under section 33A.

34 Notification of chief executive's engagement etc

The Chief Minister must notify in the gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 28 (Chief executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 33A (Chief executives—transfer or assignment).

35 Remunerative employment outside the service

A chief executive shall not, except in accordance with the written approval of the Chief Minister, accept or engage in any remunerative employment other than in relation to the performance of his or her duties in the service.

Division 3.5 Powers of delegation

36 Delegation by commissioner or chief executives

(1) In this section:

public sector officer means—

- (a) an officer or employee; or
- (b) a statutory office-holder; or
- (c) a person exercising a function on behalf of the Territory otherwise than as—
 - (i) an officer or employee; or
 - (ii) a statutory office-holder.

(2) Subject to subsections (3) and (5), the commissioner may—

- (a) delegate to a public sector officer all or any of his or her powers under this Act or under any other law; or
- (b) subdelegate to a public sector officer all or any of the powers delegated to him or her under a law other than this Act.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

(3) Subsection (2) does not extend to powers exercisable by the commissioner under section 20 (2).

(4) Subject to subsection (5), a chief executive may—

- (a) delegate to a public sector officer all or any of his or her powers under this Act or under any other law; or
- (b) subdelegate to a public sector officer all or any of the powers delegated to him or her under a law other than this Act.

- (5) A power shall not be delegated or subdelegated under subsection (2) or (4) to a person exercising a function on behalf of the Territory unless the commissioner or chief executive, as the case may be, considers that the tasks to be undertaken by the person require the exercise of that power.
- (6) If the commissioner has delegated or subdelegated a power under subsection (2) or a chief executive has delegated or subdelegated a power under subsection (4), the commissioner or the chief executive, as the case may be, may give directions to the delegate or subdelegate in relation to the exercise of the power.
- (7) If—
- (a) the commissioner gives a delegation or subdelegation under subsection (2) or a chief executive gives a delegation or subdelegation under subsection (4); and
 - (b) the delegation or subdelegation is expressed to be given to people each of whom occupies or performs the duties of an office of a kind described in the delegation or subdelegation;

the delegation or subdelegation extends to any person who occupies, or performs the duties of, an office of a kind described in the delegation or subdelegation, even though the office does not come into existence until after the delegation or subdelegation is given.

37 Delegations in autonomous instrumentalities

The chief executive officer of an autonomous instrumentality may delegate all or any of the officer's powers under this Act to a member of the staff of the instrumentality.

Division 3.7 Whole-of-government management responsibilities

39 Definitions for div 3.7

In this division:

access and equity principle means the principle mentioned in section 7 (f).

access and equity program means a program to promote the access and equity principle.

designated group means a group of any of the following people:

- (a) an Aboriginal person or Torres Strait Islander;
- (b) a person who has migrated to Australia and whose first language is a language other than English;
- (c) a child of a person mentioned in paragraph (b);
- (d) a person who has a disability.

disability—see the *Discrimination Act 1991*, section 5AA.

discrimination means discrimination that is unlawful under the *Discrimination Act 1991*.

employment matters means—

- (a) the selection of people for appointment as officers, or for employment as employees, in the service; and
- (b) the promotion and transfer of officers to offices in the service; and
- (c) training and staff development for officers and employees in the service; and
- (d) terms or conditions of service of officers and employees in the service; and

- (e) any other matter related to the employment of officers and employees in the service.

equal employment opportunity program means a program designed to ensure that—

- (a) appropriate action is taken to eliminate discrimination against women and people in designated groups in relation to employment matters in the service; and
- (b) measures are taken to enable women and people in designated groups to—
 - (i) compete for promotion and transfer in the service; and
 - (ii) pursue careers in the service;as effectively as other people.

industrial democracy program means a program designed to achieve appropriate participation by officers in the decision-making processes relating to the administration of the government agencies in which they work.

40 Equal employment opportunity programs

- (1) As soon as practicable, and in any event, within 12 months after the commencement of this section, the commissioner shall—
 - (a) after giving relevant unions and any other people the commissioner considers appropriate an opportunity to put their views, cause to be developed an equal employment opportunity program for the service; and
 - (b) cause to be prepared a written statement setting out the program so developed; and
 - (c) give a copy of the statement to the Chief Minister.

- (2) The management standards may provide for an equal opportunity program for the service to implement a statement provided to the Chief Minister under subsection (1).

41 Access and equity programs

- (1) As soon as practicable, and in any event, within 12 months after the commencement of this section, the commissioner shall—
- (a) after giving relevant unions and any other people the commissioner considers appropriate an opportunity to put their views, cause to be developed an access and equity program for the service; and
 - (b) cause to be prepared a written statement setting out the program so developed; and
 - (c) give a copy of the statement to the Chief Minister.
- (2) The management standards may provide for an access and equity program for the service to implement a statement provided to the Chief Minister under subsection (1).

42 Industrial democracy programs

- (1) As soon as practicable, and in any event, within 12 months after the commencement of this section, the commissioner shall—
- (a) in consultation with the joint council, relevant unions and with any other people the commissioner considers appropriate, cause to be developed an industrial democracy program for the service; and
 - (b) cause to be prepared a written statement setting out the program so developed; and
 - (c) give a copy of the statement to the Chief Minister.

- (2) The management standards may provide for an industrial democracy program for the service to implement a statement provided to the Chief Minister under subsection (1).

43 Development of programs in autonomous instrumentalities

In the application of sections 40 (1), 41 (1) and 42 (1) to an officer, or employee, of an autonomous instrumentality—

- (a) the reference to the commissioner shall be taken to be a reference to the chief executive officer of the instrumentality; and
- (b) the reference to the service shall be taken to be a reference to the staff of the instrumentality; and
- (c) the reference to the Chief Minister shall be taken to be a reference to the Chief Minister and the relevant Minister.

44 Joint council

- (1) The management standards shall provide for the establishment of a joint union-management consultative forum to be known as the *joint council*.
- (2) The joint council shall be representative of the commissioner, government agencies and relevant unions.
- (3) The joint council shall be constituted in the way that is prescribed.
- (4) The joint council shall have the functions in relation to the service that are prescribed.

Division 3.8 Legislative Assembly—clerk and secretariat

45 Definitions for div 3.8

In this division:

clerk means the clerk of the Legislative Assembly.

secretariat means the Legislative Assembly secretariat.

46 Clerk of Legislative Assembly

- (1) The office of Clerk of the Legislative Assembly is established.
- (2) The Speaker must, on behalf of the Territory, appoint the clerk—
 - (a) on the advice of the appropriate standing committee of the Legislative Assembly; and
 - (b) in consultation with the Leader of the Opposition; and
 - (c) in consultation with the Executive; and
 - (d) in accordance with the merit principles set out in section 65 that relate to the appointment.
- (3) The clerk is not subject to direction by the Executive in the exercise of the clerk's functions.

47 Leave of absence

- (1) The Speaker may grant leave of absence to the clerk on the terms and conditions that are prescribed.
- (2) Management standards for subsection (1), shall not provide for the remuneration or allowances payable to the clerk in relation to his or her leave of absence.

48 Disclosure of interests by clerk

The clerk must give a written statement of the clerk's personal and financial interests to the Speaker within 7 days after—

- (a) the day the clerk is appointed; and
- (b) the first day of each financial year; and
- (c) the day there is a change in an interest.

49 Resignation

- (1) The clerk may resign from office by signed notice given to the Speaker.
- (2) The Speaker shall forward to the Executive a copy of a notice received under subsection (1).

50 Suspension and ending of appointment of clerk

- (1) The Speaker must end the clerk's appointment if the Legislative Assembly resolves to require the Speaker to end the clerk's appointment on the ground of misbehaviour or physical or mental incapacity.
- (2) The Speaker may suspend the clerk from duty for misbehaviour or physical or mental incapacity.
- (3) The Speaker must present to the Legislative Assembly a statement of the reasons for the suspension on the first sitting day after the day the clerk is suspended.
- (4) If, within 3 sitting days after the day the statement is presented, the Legislative Assembly resolves to require the Speaker to end the clerk's appointment, the Speaker must end the clerk's appointment under subsection (1).

- (5) The clerk's suspension ends—
- (a) if a statement of the reasons for the suspension is not presented to the Legislative Assembly in accordance with subsection (3)—at the end of the day the statement should have been presented to the Assembly; or
 - (b) if, within 3 sitting days after the day the statement is presented, the Assembly resolves in favour of ending the suspension or not to call on a motion to end the clerk's appointment—on the passing of the resolution; or
 - (c) if the Assembly does not pass a resolution mentioned in subsection (4) within the 3 sitting days—at the end of the 3rd sitting day.
- (6) If the clerk is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12-month period, the Speaker may end the clerk's appointment.
- (7) The clerk may only be suspended from duty under this section.
- Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).
- (8) The clerk is entitled to be paid salary and allowances while suspended.
- (9) The clerk's appointment may only be ended under this section or section 51.

51 Retirement

- (1) The Speaker may retire the clerk on the ground of physical or mental incapacity.
- (2) However, the clerk is not capable of being retired from office on the ground of invalidity unless—

- (a) if the clerk is an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—
 - (i) the clerk has not reached the clerk’s maximum retiring age within the meaning of the Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the clerk; or
 - (b) if the clerk is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the clerk is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the clerk; or
 - (c) if the clerk is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
 - (i) the clerk is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the clerk.
- (3) In this section:
invalidity—see section 28A (6).

52 Terms and conditions generally

- (1) The clerk holds office on the terms and conditions (if any) in relation to matters not provided for by this division that are prescribed.
- (2) Management standards for subsection (1) shall not provide for the remuneration or allowances payable to the clerk.

53 Acting appointment as clerk

The Speaker may appoint the deputy clerk, or in the absence of the deputy clerk any other member of the staff of the secretariat, to act as the clerk.

Note For the making of acting appointments, see the Legislation Act, div 19.3.2.

53A Legislative Assembly secretariat

The Legislative Assembly secretariat consists of—

- (a) the clerk; and
- (b) the staff under section 54.

54 Staff

- (1) The staff required to assist the clerk in the exercise of the clerk's powers, and the performance of the clerk's functions, shall be people employed under this Act.
- (2) The clerk has all the powers of a chief executive in relation to the staff assisting him or her as if the staff were employed in an administrative unit under the control of the office-holder.

Part 4 **Creation, classification and abolition of offices in the service**

Division 4.1 **Creation and abolition of executive offices**

54A **Creation and abolition of offices**

- (1) The administering chief executive may, in writing, create or abolish an executive office in an administrative unit or other branch of the service.
- (2) The administering chief executive shall not create or abolish an executive office in an administrative unit, or other branch of the service, in relation to which he or she is not the relevant chief executive unless the relevant chief executive has recommended the creation or abolition of that office.
- (3) The administering chief executive shall, in the instrument creating an office under subsection (1), state that the office is created as an executive office.
- (4) In the application of this section to an autonomous instrumentality, a reference to the administering chief executive is a reference to the chief executive officer of the instrumentality.

Division 4.1A Creation and abolition of offices other than offices of chief executives and executive offices

54B Meaning of *office* in div 4.1A

In this division:

office means an office other than an office of chief executive or an executive office.

55 Creation and abolition of offices

- (1) The chief executive of an administrative unit, for the purpose of enabling the administrative unit to exercise its functions, may, in writing—
 - (a) create an office in the administrative unit; or
 - (b) abolish an office in the administrative unit.
- (2) An instrument under subsection (1) creating an office shall specify the classification of the office, being a classification that is an approved classification under section 56 (1).

56 Classification of offices and officers

- (1) A classification is an approved classification for this Act only if—
 - (a) an industrial agreement is in force in relation to an officer holding an office having that classification, and the agreement states the salary payable in relation to offices having that classification; or
 - (b) in a case to which paragraph (a) does not apply—the commissioner declares, in writing, that the classification is an approved classification for this subsection.

- (2) If the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to 2 offices is the same, the classifications of the 2 offices shall be taken to be equal.
- (3) If the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to an office is greater than the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to another office, the classification of the firstmentioned office shall be taken to be higher than the classification of the secondmentioned office.
- (4) Subject to section 127 (2), an unattached officer who held an office immediately before becoming an unattached officer shall, until he or she ceases to be an unattached officer, have a classification corresponding to the classification of that office.
- (5) Nothing in subsection (1) shall be taken as limiting in any way the provision that may be made by an industrial award to vary the salary applicable in relation to an office or an officer.
- (6) In the application of this section to an officer in an autonomous instrumentality, the reference to the commissioner is a reference to the chief executive officer of the instrumentality.

58 Reclassification of offices

- (1) Subject to the management standards, the chief executive of an administrative unit may, in writing, alter the classification of an office in the administrative unit to the classification specified in the instrument, being a classification that is an approved classification under section 56 (1).
- (2) Subject to section 59 (2), the commissioner may, by written notice to the chief executive of an administrative unit, direct the chief executive to alter the classification of an office, or a class of offices, in the administrative unit to a classification specified in the notice, being a classification that is an approved classification under section 56 (1).

- (3) Subject to subsection (4), if—
- (a) the classification of an office is altered; and
 - (b) the rate of salary, or the maximum rate of salary, payable in relation to the office immediately after the alteration is different from the rate of salary, or the maximum rate of salary, payable in relation to the office immediately before the alteration;

the office becomes vacant and the officer who held the office immediately before the alteration becomes an unattached officer.

- (4) The commissioner may, in writing, direct that subsection (3) shall not apply in relation to alterations of the classification of offices included in a specified class of alterations of the classification of offices.

59 Reclassification of offices in autonomous instrumentalities

The commissioner shall not give a direction under section 58 (2) in relation to an office in an autonomous instrumentality.

Division 4.2 Part-time offices

59A Meaning of *office* in div 4.2

In this division:

office means an office other than an office of chief executive or an executive office.

60 Part-time offices

- (1) The chief executive of an administrative unit may, with the consent of the officer holding an office in an administrative unit, in writing, declare the office to be a part-time office.

- (2) A declaration under subsection (1) in relation to an office shall not be varied, amended or revoked without the consent of the officer holding the office.
- (3) The management standards may prescribe conditions to be complied with before—
 - (a) a declaration may be made in relation to an office under subsection (1); or
 - (b) a declaration under subsection (1) may be varied, amended or revoked.

61 Hours of attendance of part-time officers

- (1) A declaration under section 60 (1) in relation to an office shall specify, subject to subsection (2), the hours of attendance that are to be applicable to the officer who occupies the office.
- (2) A declaration under section 60 (1) in relation to an office shall not specify hours of attendance that are greater than maximum hours of attendance, or less than minimum hours of attendance, prescribed for this subsection in relation to that office or in relation to a class of offices in which that office is included.
- (3) The management standards shall not prescribe hours of attendance in relation to an office that are greater than the hours of attendance that would be applicable to the office if a declaration under section 60 (1) were not made in relation to the office.
- (4) Subject to subsection (2), the hours of attendance applicable to an officer who holds an office in relation to which there is in force a declaration under section 60 (1) shall, notwithstanding anything in the management standards, be the hours of attendance specified in the declaration.

62 Hours of attendance of certain unattached officers

- (1) Subject to subsection (4), if an officer—
- (a) becomes an unattached officer; and
 - (b) immediately before becoming an unattached officer, held a part-time office;

the hours of attendance applicable to the unattached officer shall, until he or she ceases to be an unattached officer, be the hours of attendance applicable to the officer immediately before he or she became an unattached officer.

- (2) Subject to subsection (4), if—
- (a) a person who had previously ceased to be an officer is reappointed to the service as an unattached officer under section 192 or section 193; and
 - (b) the person, immediately before he or she ceased, or last ceased, to be an officer—
 - (i) held a part-time office; or
 - (ii) was an unattached officer to whom subsection (1) applied;

the hours of attendance applicable to the person shall, until he or she ceases to be an unattached officer, be the hours of attendance applicable to him or her immediately before he or she ceased, or last ceased, to be an officer.

- (3) Subject to subsection (4), if—
- (a) a person is appointed under section 68, or reappointed under section 118, to the service as an unattached officer; and

- (b) the relevant chief executive is satisfied that the person will, when he or she ceases to be an unattached officer, be appointed to a part-time office;

the relevant chief executive may declare, in writing, that the hours of attendance that are applicable to the officer shall, until he or she ceases to be an unattached officer, be those specified in the declaration.

- (4) If the hours of attendance applicable to a person are ascertained in accordance with subsection (1), (2) or (3) or a previous application of this subsection, the relevant chief executive may, with the consent of the person, determine, in writing, that the hours of attendance applicable to the person are those specified in the determination and, if such a determination is made, the hours of attendance that are applicable to the person shall, until he or she ceases to be an unattached officer, be those specified in the determination.
- (5) A declaration under subsection (3) or a determination under subsection (4) shall not specify hours of attendance that are inconsistent with the requirements of the management standards.

Part 5 **Employment in the service**

Division 5.1 **Preliminary**

63 **Interpretation for pt 5**

(1) In this part:

employment matters means—

- (a) the selection of people for appointment as officers, or for employment as employees, in the service; and
 - (b) the transfer or promotion of officers to offices in the service; and
 - (c) any other prescribed matters related to the employment of officers or employees in the service.
- (2) In this part, a reference to a vacant office includes a reference to an office that is expected to become vacant and a reference to a vacancy includes a reference to a vacancy that is expected to occur.
- (3) In this part, a reference to the determination of an appeal against the promotion of an officer is a reference to the allowing or disallowing of the appeal under section 85.
- (4) For this part, an appeal shall be taken to become inoperative if—
- (a) the appeal is withdrawn; or
 - (b) the appeal lapses under section 92 or section 93; or
 - (c) the appellant or the officer against whose promotion the appeal was made ceases to be an officer; or
 - (d) the appellant or the officer against whose promotion the appeal was made ceases, by reason of his or her promotion to another office having taken effect or for any other reason, to be eligible for promotion to the office concerned; or

- (e) the promotion against which the appeal was made lapses under management standards made for section 91.

64 Application to autonomous instrumentalities

Unless the contrary intention appears, the provisions of this part (other than section 73 and section 74) apply in relation to an autonomous instrumentality as if a reference to the commissioner in the applicable provisions were a reference to the chief executive officer of the instrumentality.

Division 5.2 Personnel management

65 Application of merit principle

- (1) This section applies if a function under this Act is exercised in relation to any of the following employment matters:
 - (a) an appointment;
 - (b) an engagement under section 28 (Chief executives—engagement) or section 72 (Executives engagement);
 - (c) an engagement by a contract under section 30 (Chief executives—temporary contracts) or section 76 (Executives—temporary contracts), if the period of engagement is more than 9 months;
 - (d) a transfer to an office of a higher classification for a period of more than 3 months;
 - (e) a promotion;
 - (f) a fixed term engagement if the period of engagement is for more than 12 months.

Note **Function** includes authority, duty and power (see Legislation Act, dict, pt 1).

- (2) The relevant chief executive exercising the function must ensure that—
- (a) all people who are eligible have, as far as practicable, a reasonable opportunity to apply for the appointment, engagement, transfer or promotion; and
 - (b) the decision is made on the basis of an assessment of the relative efficiency of the applicants, having regard to—
 - (i) the nature of the duties to be performed; and
 - (ii) the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicants.
- (3) For subsection (2) (a), the people who are eligible may be limited if the position is an identified position.
- (4) Without limiting subsection (2), a function under this Act must be exercised—
- (a) without patronage or favouritism; and
 - (b) without discrimination that is unlawful under the *Discrimination Act 1991*.
- (5) For subsection (4) (b), the exercise of a function that is in accordance with an approved program for women or people in a designated group is not unlawful under the *Discrimination Act 1991*.
- (6) In this section:

approved program means—

- (a) an equal employment opportunity program; or
- (b) a prescribed program to encourage the appointment, engagement, promotion or transfer of women or people in a designated group.

designated group—see section 39.

equal employment opportunity program—see section 39.

identified position means a position that the relevant chief executive has decided, in accordance with a prescribed process, must be filled by—

- (a) an Aboriginal person or Torres Strait Islander; or
- (b) a person who has a disability.

65A Exception for returning officers

Section 65 does not apply to the promotion of an officer to a higher classification if—

- (a) the officer, while an officer, was employed under the *Legislative Assembly (Members' Staff) Act 1989*, Part 2 or Part 3; and
- (b) while so employed, the officer was determined, under that Act, section 13A to have the higher classification; and
- (c) the officer has now returned to duty as an officer.

66 Notification of certain matters related to appointment, transfer or promotion

The commissioner shall cause notice of—

- (a) the appointment, transfer or promotion of an officer in the service; or
 - (b) the retirement or dismissal of an officer from the service;
- to be published in the Gazette.

Division 5.3 Appointment of officers

66A Application

This division does not apply in relation to the engagement of a chief executive or an executive.

67 Employment in the service

A person may be employed in the service in accordance with this Act—

- (a) by engagement under section 28 or section 30 to perform the duties of an office of chief executive; or
- (b) by engagement under section 72 or section 76 to perform the duties of an executive office; or
- (c) by appointment to be an officer; or
- (d) by engagement for temporary employment in accordance with division 5.7.

68 Appointments generally

- (1) Subject to subsection (2), the appointment of a person to the service as an officer shall be made by the relevant chief executive.
- (2) A person shall not be appointed to the service unless—
 - (a) he or she has been selected for appointment in accordance with the provisions of this Act and the management standards; and
 - (b) the person is an Australian citizen or a permanent resident of Australia; and
 - (c) the commissioner, or the chief executive making the appointment, as the case may be, has certified in writing that after due inquiry he or she is satisfied that the person is a fit and proper person to be so appointed having regard to—
 - (i) verification of the person's identity; and
 - (ii) whether the person has any prior criminal convictions; and
 - (iii) the previous employment record of the person; and

- (iv) the need for suitable references in support of the person's application for appointment; and
- (v) verification of the person's educational qualifications required for the appointment.

69 Classification of unattached officers

A person shall not be appointed as an unattached officer under section 68 (1) unless the chief executive making the appointment—

- (a) determines the classification of the person as an unattached officer having regard to the duties to be performed by the officer; and
- (b) the person is qualified for appointment to an office having a classification corresponding to his or her classification as an unattached officer.

70 Appointment on probation

- (1) The appointment of a person to the service as an officer is subject to a period of probation under this section, unless 1 of the following sections applies to the appointment:
 - (a) section 71 (Appointment on probation—prescribed training office);
 - (b) section 71A (Appointment on probation—teachers);
 - (c) section 71C (Appointment without probation).
- (2) Probation begins on the day the person is appointed and the appointment is taken to be confirmed 12 months after the day the person is appointed unless—
 - (a) the appointment is earlier confirmed under this section; or
 - (b) the appointment is earlier ended under this section; or
 - (c) the probationary period is earlier extended under section 71B.

- (3) The appointment may be confirmed any day after the day the officer is appointed if the relevant chief executive is satisfied that—
- (a) the officer has undergone a medical examination to assess the person's standard of health and fitness and the examination confirms that the standard of health and fitness of the person is satisfactory; or
 - (b) it is unnecessary, in the circumstances, to require the officer to undergo a medical examination.
- (4) The appointment may be ended at any time before the appointment is confirmed or taken to be confirmed if the relevant chief executive is satisfied on reasonable grounds that—
- (a) the officer has not undergone a medical examination to assess his or her standard of health and fitness; or
 - (b) the officer has undergone a medical examination to assess his or her standard of health and fitness and an authorised doctor provides a report that the standard of health and fitness of the officer is not satisfactory; or
 - (c) on the basis of a report from the officer's supervisor, or another appropriate officer—the performance of the officer's duties is not satisfactory; or
 - (d) the officer is not a fit and proper person to remain an officer of the service; or
 - (e) the officer is an excess officer.
- (5) An appointment on probation must not be ended unless the officer has been given at least 14 days written notice of—
- (a) the reason for ending the appointment; and
 - (b) the day the appointment will end.

- (6) Unless otherwise determined by the commissioner, an officer whose appointment has been ended under this section is not eligible for a further appointment to the service for the period of 12 months beginning immediately after the day the appointment ends.

71 Appointment on probation—prescribed training office

- (1) The appointment of a person to the service as an officer in a prescribed training office is subject to a period of probation under this section.
- (2) Probation begins on the day the person is appointed and is taken to be confirmed 6 months after the day the officer completes the course of training required for the prescribed training office unless—
- (a) the appointment is earlier confirmed under this section; or
 - (b) the appointment is earlier ended under this section; or
 - (c) the probationary period is earlier extended under section 71B.
- (3) The appointment may be confirmed any day after the officer successfully completes the course of training required for the prescribed training office if the relevant chief executive is satisfied that—
- (a) the officer has undergone a medical examination to assess the person's standard of health and fitness and the examination confirms that the standard of health and fitness of the officer is satisfactory; or
 - (b) it is unnecessary, in the circumstances, to require the officer to undergo a medical examination.
- (4) The appointment may be ended any time before the appointment is confirmed or taken to be confirmed if the relevant chief executive is satisfied on reasonable grounds that—
- (a) the officer has not undergone a medical examination to assess his or her standard of health and fitness; or

- (b) the officer has undergone a medical examination to assess their standard of health and fitness and an authorised doctor provides a report that the standard of health and fitness of the officer is not satisfactory; or
 - (c) on the basis of a report from the officer's supervisor, or another appropriate officer—the performance of the officer's duties is not satisfactory; or
 - (d) the officer is not a fit and proper person to remain an officer of the service; or
 - (e) the officer is an excess officer; or
 - (f) the officer has not successfully completed the course of training required for the prescribed training office.
- (5) An appointment on probation must not be ended unless the officer has been given at least 14 days written notice of—
- (a) the reason for ending the appointment; and
 - (b) the day the appointment will end.
- (6) Unless otherwise determined by the commissioner, an officer whose appointment has been ended under this section is not eligible for a further appointment to the service for the period of 12 months beginning immediately after the day the appointment ends.

71A Appointment on probation—teachers

- (1) The appointment of a person as a teacher is subject to a period of probation under this section.
- (2) Probation begins on the day the person is appointed and is taken to be confirmed 18 months after the day the person is appointed unless—
 - (a) the appointment is earlier confirmed under this section; or
 - (b) the appointment is earlier ended under this section; or

- (c) the probationary period is earlier extended under section 71B.
- (3) The appointment may be confirmed any day after the day the officer is appointed if the relevant chief executive is satisfied that—
 - (a) the officer has undergone a medical examination to assess the person's standard of health and fitness and the examination confirms that the standard of health and fitness of the officer is satisfactory; or
 - (b) it is unnecessary, in the circumstances, to require the officer to undergo a medical examination.
- (4) The appointment may be ended any time before the appointment is confirmed or taken to be confirmed if the relevant chief executive is satisfied on reasonable grounds that—
 - (a) the officer has not undergone a medical examination to assess his or her standard of health and fitness; or
 - (b) the officer has undergone a medical examination to assess their standard of health and fitness and an authorised doctor provides a report that the standard of health and fitness of the officer is not satisfactory; or
 - (c) on the basis of a report from the officer's supervisor, or another appropriate officer—the performance of the officer's duties is not satisfactory; or
 - (d) the officer is not a fit and proper person to remain an officer of the service; or
 - (e) the officer is an excess officer.
- (5) An appointment on probation must not be ended unless the officer has been given at least 14 days written notice of—
 - (a) the reason for ending the appointment; and
 - (b) the day the appointment will end.

(6) Unless otherwise determined by the commissioner, an officer whose appointment has been ended under this section is not eligible for a further appointment as a teacher for the period of 12 months beginning immediately after the day the appointment ends.

(7) In this section:

teacher means a person who holds an office classified as a teacher under the management standards or a relevant industrial instrument.

71B Extension of period of probation

(1) A period of probation for a person may be extended if—

- (a) the appointment has not been confirmed or taken to be confirmed; and
- (b) the relevant chief executive is satisfied on reasonable grounds that the extension is reasonably required to assess the person's suitability for office.

Examples—par (b)

- 1 Glen is appointed as an officer. Six weeks after starting work a family crisis occurs and Glen is absent on authorised unpaid leave for a 12-week period. Glen's extended absence means that there has not been a long enough period at work to assess whether work performance is satisfactory so an additional period of probation is reasonable.
- 2 Josephine is appointed as a teacher and undergoes a medical assessment to assess her standard of health and fitness. The report from the authorised doctor is delayed because the doctor is taken ill and cannot complete the report before the probationary period would be taken to be confirmed under s 71A (2). An additional period of probation is reasonable to allow for a medical assessment report to be provided.
- 3 Mai is appointed to a prescribed training office. The training required for the office usually takes two years to complete. An additional period of probation is reasonable to allow time for Mai to complete the required training.

Note An example is part of the Act is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The maximum additional period for probation under this section is as follows:
 - (a) for section 70 (Appointment on probation)—6 months;
 - (b) for section 71 (Appointment on probation—prescribed training office)—12 months;
 - (c) for section 71A (Appointment on probation—teachers)—12 months.
- (3) An appointment on probation must not be extended unless the officer has been given at least 14 days written notice of—
 - (a) the reason for the extension; and
 - (b) the length of the extension; and
 - (c) the day the probationary period will end.
- (4) An appointment that has been extended under this section may be confirmed any day after the extension if the relevant chief executive is satisfied that—
 - (a) the officer has undergone a medical examination to assess the person’s standard of health and fitness and the examination confirms that the standard of health and fitness of the officer is satisfactory; or
 - (b) it is unnecessary, in the circumstances, to require the officer to undergo a medical examination.
- (5) An appointment that has been extended under this section may be ended at any time before the appointment is confirmed or taken to be confirmed if the relevant chief executive is satisfied on reasonable grounds that—
 - (a) the officer has not undergone a medical examination to assess his or her standard of health and fitness; or

- (b) the officer has undergone a medical examination to assess his or her standard of health and fitness and an authorised doctor provides a report that the standard of health and fitness of the officer is not satisfactory; or
 - (c) on the basis of a report from the officer's supervisor, or another appropriate officer—the performance of the officer's duties is not satisfactory; or
 - (d) the officer is not a fit and proper person to remain an officer of the service; or
 - (e) the officer is an excess officer.
- (6) An appointment that has been extended under this section is taken to be confirmed on the day notified as the day the probationary period will end under subsection (3) (c) unless—
- (a) the appointment is earlier confirmed under this section; or
 - (b) the appointment is earlier ended under this section.

71C Appointment without probation

- (1) A relevant chief executive may appoint a person to an office without probation if the chief executive is satisfied that—
- (a) the appointment without probation is in the public interest; or
 - (b) immediately before the day of the appointment, for a period of 12 months or more, the person performed the duties of the office, or an office with similar duties.
- (2) A relevant chief executive must not appoint a person to an office without probation unless the chief executive is satisfied that—
- (a) the person has undergone a medical examination to assess the person's standard of health and fitness and on the basis of the examination, the standard of health and fitness of the person is satisfactory; or

- (b) it is unnecessary, in the circumstances, to require the person to undergo a medical examination.

Division 5.4 Engagement of executives

72 Executives—engagement

- (1) A person may be engaged by a contract under this section to perform the duties of an executive office.
- (2) The parties to a contract under this section are the Territory and the person to be engaged.
- (3) A contract under this section shall—
 - (a) be in writing; and
 - (b) be signed by or on behalf of each party; and
 - (c) specify the day when the person engaged is to commence to perform the duties of the office; and
 - (d) specify a day when the period of employment is to end that is not more than 5 years after the day specified in accordance with paragraph (c).
- (4) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

72A Executives—contract variation

- (1) A contract under section 72 may be varied at any time by a written agreement between the parties.

Note If a person engaged by a contract under s 72 is transferred or assigned under s 80A, the person's contract is taken to be varied by the transfer or assignment (see s 80A (3)).

- (2) However, a variation of a contract under section 72 that would do either or both of the following is void:
- (a) extend the period of employment under the contract—
 - (i) to longer than 5 years, unless the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years; or
 - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years;
 - (b) increase the rate at which remuneration or an allowance is payable to the person employed otherwise than in accordance with the management standards.

73 Early termination of contract

- (1) A contract under section 72 may provide for termination of the employment of the person employed before the end of the period of employment specified in the contract.
- (2) A contract under section 72 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.
- (3) The grounds specified under subsection (2) shall not include—
 - (a) the ground that the person employed under the contract is incompatible with another person; or
 - (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in relation to the termination other than the benefit (if any) prescribed for this subsection.

- (5) The employment of an executive who is employed under a contract under section 72 is not capable of being terminated on the ground of invalidity unless—
- (a) if the executive is an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—
 - (i) the executive has not reached the executive’s maximum retiring age within the meaning of the Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the executive; or
 - (b) if the executive is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the executive is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the executive; or
 - (c) if the executive is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
 - (i) the executive is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the executive.
- (6) In this section:
invalidity—see section 28A (6).

74 Effect of contracts on responsibilities of Ministers

Nothing in a contract under section 72 shall be taken to derogate in any way from the responsibility of the Minister administering an administrative unit for—

- (a) the policies developed or applied by the administrative unit; or
- (b) the financial and other performance of the administrative unit.

75 Application of merit principle to re-engagements

Section 65 (1), (3) and (4) does not apply in relation to a second or subsequent engagement of a person to perform the duties of the same executive office, or an executive office with similar duties, if—

- (a) the period of the second or subsequent engagement is to commence immediately on the end of the period of the previous engagement; and
- (b) the administering chief executive has certified in writing that he or she is satisfied that it would be in the interests of the service for the person to be re-engaged to perform those duties.

75A Notice or payment if executive not re-engaged

- (1) This section applies in relation to a person engaged by a contract under section 72 (Executives—engagement) if the relevant chief executive for the person does not intend to re-engage the person under that section.
- (2) However, to remove any doubt, this section does not apply if the contract is terminated before the end of the period of employment specified in the contract.

Note For the termination of a contract under s 72, see s 73 (Early termination of contract).

- (3) Three months or more before the day the contract ends, the relevant chief executive may give the person written notice that the person will not be re-engaged.
- (4) An amount equal to $\frac{1}{4}$ of the person's final annual salary is payable to the person by the Territory if, when the person's contract ends—
 - (a) the relevant chief executive has not given a notice under subsection (3); and
 - (b) the person has not accepted another position in the public sector; and
 - (c) the person is not entitled to a redundancy payment (however described) for not being re-engaged.

Note Section 248B provides that the Territory or a territory instrumentality must not, within 3 months after the day the contract ends, and without the commissioner's written consent, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (5) The amount must be paid within 3 months after the day the contract ends.
- (6) In this section:

final annual salary, for a person engaged by a contract under section 72, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments instead of employer-provided benefits).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

76 Executives—temporary contracts

- (1) If—
 - (a) a person employed to perform the duties of an executive office is absent from duty or is, for any other reason unable to perform the duties of that office; or
 - (b) no person is employed to perform the duties of such an office;
an executive, an officer or another person may be engaged by a contract under this section to temporarily perform the duties of that office.
- (2) The parties to a contract under this section shall be the Territory and the person engaged.
- (3) A contract under this section shall—
 - (a) be in writing; and
 - (b) specify the period during which the person engaged is to perform the duties of the office; and
 - (c) be signed by or on behalf of each party.
- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.

- (8) A contract under this section may be terminated at any time by one party giving written notice to the other party.
- (9) A person is not entitled to any compensation for the termination of a contract under subsection (8).

76A Executives—variation of temporary contracts

- (1) A contract under section 76 may be varied at any time by a written agreement between the parties.
- (2) However, a variation of a contract under section 76 that extends the period of employment under the contract to longer than 2 years is void.

77 Chief executive officer, Calvary

- (1) A person may be engaged under section 72 (Executives—engagement) or section 76 (Executives—temporary contracts) to exercise the functions of the position of chief executive officer, Calvary only if Calvary Health Care ACT Limited has agreed to the engagement in writing.
- (2) A contract under section 72 or section 76 by which a person is engaged to exercise the functions of the position of chief executive officer, Calvary may be varied only if Calvary Health Care ACT Limited has agreed to the variation in writing.
- (3) In this section:
chief executive officer, Calvary—see section 26 (4) (Powers relating to certain Calvary Health Care staff).

78 Negotiation and execution of contracts

- (1) The following contracts and contract variations must be signed for the Territory by the chief executive who is, or will become, the relevant chief executive of the person engaged:
 - (a) a contract under section 72 (Executives—engagement) or section 76 (Executives—temporary contracts);
 - (b) a variation of a contract under section 72A (Executives—contract variation) or section 76A (Executives—variation of temporary contracts).
- (2) However, the following contracts and contract variations must be signed for the Territory by the administering chief executive:
 - (a) a contract under section 72 or section 76 to engage a person to exercise the functions of the position of chief executive officer, Calvary;
 - (b) a variation of a contract mentioned in paragraph (a) under section 72A or section 76A.
- (3) If an office to which a contract under section 72 or section 76 relates, or will relate, is an office in an administrative unit that is under the control of a chief executive other than the administering chief executive, the chief executive of the administrative unit shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of the administering chief executive.
- (4) In this section:
chief executive officer, Calvary—see section 26 (4) (Powers relating to certain Calvary Health Care staff).

79 Tabling of contracts and variations of contracts

The Chief Minister shall present a copy of—

- (a) each contract made under section 72 or section 76; and
- (b) each instrument by which such a contract is varied;

to the Legislative Assembly within 6 sitting days after the day the contract or variation is made.

80 Executive engagements not affected by defects etc

The engagement of a person under section 72 or section 76 to perform the duties of an executive office is not invalid, and shall not be called into question, by reason of a defect or irregularity in relation to the engagement.

80A Executives—transfer or assignment

- (1) The relevant chief executive may, in writing, for a person engaged by a contract under section 72 (Executives—engagement)—
 - (a) transfer the person from the executive office under the contract to another executive office that has the same classification; or
 - (b) assign the person to exercise other stated functions in the public sector.
- (2) The relevant chief executive may transfer or assign the person only if the relevant chief executive has—
 - (a) if it is proposed to transfer the person to an executive office in another administrative unit—consulted the chief executive of the other administrative unit; and
 - (b) given the person an opportunity to state the person's views about the transfer or assignment; and
 - (c) considered the person's views (if any).
- (3) The transfer or assignment is taken to be a variation of the contract.

- (4) The transfer or assignment of a person under this section does not affect—
- (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
 - (b) the period of the person's employment under the contract; or
 - (c) the right to terminate the person's employment if the contract provides for termination under section 73 (Early termination of contract).
- (5) If a person engaged by a contract under section 72 is transferred to another executive office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the executive office or exercise the stated functions.

80B Executive transfers or assignments under s 80A not affected by defects etc

- (1) A transfer, or anything done in relation to a transfer, is not invalid only because of a defect or irregularity in relation to the transfer.
- (2) In this section:

transfer means a transfer or assignment of a person under section 80A.

81 Notification of executive's engagement etc

The administering chief executive must notify in the gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 72 (Executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;

- (d) the transfer or assignment of a person under section 80A (Executives—transfer or assignment).

Division 5.5 Promotion of officers

82 Definitions—div 5.5

In this division:

appellable level position means an office—

- (a) with a maximum salary level that is lower than the minimum salary level for the senior officer grade C classification; or
- (b) for which teaching qualifications are required.

joint selection committee, for a promotion, means a committee constituted as prescribed and includes—

- (a) a committee that is agreed to by the principal union; and
- (b) a management initiated committee.

office means an office other than—

- (a) an office of chief executive; or
- (b) an executive office.

83 Promotion to vacant office

- (1) The relevant chief executive for an administrative unit in which a vacant office exists may promote an officer to fill the vacant office if the prescribed requirements are met.
- (2) If an officer is promoted under this division the relevant chief executive must give written notice of the promotion to the officer.

84 Promotion appeal

- (1) An officer may appeal against the promotion of another person to a vacant office under section 83 if—
 - (a) the promotion is to an appellable level position; and
 - (b) the officer applied for promotion to the vacant office.
- (2) The appeal must be made in accordance with—
 - (a) if an industrial instrument applies to an officer and includes a procedure for promotion appeals—the promotion appeals procedure in the industrial instrument; or
 - (b) in any other case—the prescribed promotion appeals procedure.
- (3) In deciding the appeal a decision-maker must apply the criteria set out in—
 - (a) if an industrial instrument applies to the officer and includes criteria for decision making for promotion appeals—the promotion appeals decision making criteria in the industrial instrument; or
 - (b) in any other case—the prescribed promotion appeals decision making criteria.

85 Promotion appeal by excess officer

- (1) This section applies if an officer has been told in writing by the relevant chief executive that he or she is an excess officer within the meaning of section 139.
- (2) The officer may appeal against the promotion of another person to a vacant office if—
 - (a) the promotion is to an appellable level position; and

- (b) the excess officer applied for transfer to the vacant office the classification of which is equal to or lower than the classification of the office occupied by the excess officer.
- (3) An appeal under this section does not affect the operation of part 6 (Retirement and redeployment of officers).
- (4) The appeal must be made in accordance with—
 - (a) if an industrial instrument applies to the officer and includes a procedure for promotion appeals—the promotion appeals procedures in the industrial instrument; or
 - (b) in any other case—the prescribed promotion appeals procedure.
- (5) In deciding the appeal a decision-maker must apply the criteria set out in—
 - (a) if an industrial instrument applies to the officer and includes criteria for decision making for promotion appeals—the decision making criteria in the industrial instrument; or
 - (b) in any other case—the prescribed decision making criteria.

86 Review of certain promotion decisions

- (1) An officer may apply for review of a promotion if—
 - (a) the promotion is to a reviewable level office; and
 - (b) the officer applied for promotion to the reviewable level office.
- (2) The review must be conducted in accordance with—
 - (a) if an industrial instrument applies to an officer and includes a review of promotion procedure—the review procedure in the industrial instrument; or
 - (b) in any other case—the prescribed review of promotion procedure.

- (3) In deciding the review, a decision-maker must apply the criteria set out in—
- (a) if an industrial instrument applies to the officer and includes criteria for review of promotion decisions—the criteria for review in the industrial instrument; or
 - (b) in any other case—the prescribed criteria for review of promotion decisions.
- (4) If the relevant chief executive cancels the promotion as a result of the review—
- (a) the officer whose promotion is cancelled must for all purposes be treated as having held the office from the date the promotion took effect to the date of the cancellation; and
 - (b) the chief executive—
 - (i) must transfer the officer to an office with a classification that is equal to the classification that the officer had immediately before the promotion took effect; and
 - (ii) may if necessary create an office to allow the transfer mentioned in subparagraph (i).
- (5) In this section:
- reviewable level office*** means an office—
- (a) with a maximum salary level that is equal to or higher than the minimum salary level for the senior officer grade C classification; and
 - (b) for which teaching qualifications are not required.

87 Promotion on advice of joint selection committee

- (1) The relevant chief executive for an administrative unit in which a vacant office exists may promote an officer to fill the vacant office if—
 - (a) a joint selection committee is established in relation to the promotion; and
 - (b) the committee recommends the promotion.
- (2) If a joint selection committee makes a recommendation to the chief executive about a promotion the chief executive may—
 - (a) accept the recommendation; or
 - (b) not accept the recommendation.
- (3) If an officer is promoted under this section the chief executive must—
 - (a) notify the promotion in the gazette; and
 - (b) state in the notification that the selection involved—
 - (i) a joint selection committee agreed to by the principal union (a *union agreed joint selection committee*); or
 - (ii) a management initiated joint selection committee; and
 - (c) state in the notification whether the promotion is appellable or reviewable.
- (4) A decision to promote under this section is not an appellable decision or a reviewable decision if the promotion is in accordance with—
 - (a) the recommendation of a union agreed joint selection committee; or
 - (b) the unanimous recommendation of a management initiated joint selection committee.

- (5) A decision to promote under this section is an appellable decision and a reviewable decision if—
- (a) an officer is promoted to an appellable level position; and
 - (b) the officer seeking to appeal applied for promotion to the position; and
 - (c) the promotion is not in accordance with—
 - (i) the recommendation of a union agreed joint selection committee; or
 - (ii) the unanimous recommendation of a management initiated joint selection committee.

88 How promotions take effect

- (1) A promotion takes effect as prescribed.
- (2) The salary payable for an office to which an officer is promoted under section 83 or section 87 is payable on and after the prescribed day.
- (3) If an appeal against a promotion results in a different officer being promoted to an office than had originally been promoted—the salary payable to the different officer is payable on and after the prescribed day for the original promotion.

89 Death of officer before appeal decided

If, before an appeal under section 84 against the promotion of an officer has been decided, the officer dies, the appeal is deemed to lapse on the day of the death, but the promotion does not take effect unless the death occurred on or after the prescribed day in relation to the promotion.

90 Cancellation of promotion

- (1) Before the promotion of an officer to a vacant office in an administrative unit takes effect, the chief executive of the administrative unit may cancel the promotion on reasonable grounds.
- (2) If a promotion of an officer under section 83 or section 87 that has not taken effect stops being a promotion, because of a change in rates of salary, the promotion is taken to be cancelled.
- (3) If a promotion is cancelled, or is taken to be cancelled under this section, any appeal under section 84 against the promotion lapses on the day of the cancellation.

Division 5.6 Transfer of officers

91 Definitions—div 5.6

In this division:

appellable level position means an office—

- (a) with a maximum salary level that is lower than the minimum salary level for the senior officer grade C classification; or
- (b) for which teaching qualifications are required.

joint selection committee, for a transfer, means a committee constituted as prescribed and includes—

- (a) a committee that is agreed to by the principal union; and
- (b) a management initiated committee.

office means an office other than—

- (a) an office of chief executive; or
- (b) an executive office.

92 Transfer to vacant office

- (1) This section applies if 2 or more officers from an administrative unit apply to transfer to a vacant office within the unit.
- (2) The relevant chief executive for an administrative unit in which a vacant office exists may transfer an officer from within the unit to fill the vacant office if the prescribed requirements are met.
- (3) If an officer is transferred under this division, the relevant chief executive must give written notice of the transfer to the officer.
- (4) A decision to transfer under this section is not an appellable decision or a reviewable decision.

93 Simultaneous transfer within administrative unit

- (1) This section applies if—
 - (a) 2 or more officers in an administrative unit occupy offices with the same classification; and
 - (b) the relevant chief executive approves the simultaneous transfer of the officers between the offices.
- (2) The relevant chief executive may transfer the officers if the prescribed requirements are met.
- (3) A decision to transfer under this section is not an appellable decision or a reviewable decision.

94 Transfer between administrative units

- (1) This section applies if a chief executive proposes to transfer an officer in an administrative unit to a vacant office within a different administrative unit.
- (2) The relevant chief executive for the vacant office (the *gaining chief executive*) must ask the chief executive of the administrative unit in which the officer is performing duties (the *releasing chief executive*) to approve the transfer.

- (3) If the releasing chief executive approves the transfer the gaining chief executive may transfer the officer to fill the vacant office.
- (4) If the releasing chief executive does not approve the transfer the gaining chief executive may ask the commissioner to approve the transfer.
- (5) If approval is sought under subsection (4) the commissioner must—
 - (a) give the officer and the gaining and releasing chief executives the opportunity to make submissions about the transfer; and
 - (b) consider the submissions; and
 - (c) either—
 - (i) transfer the officer; or
 - (ii) not transfer the officer.
- (6) A decision to transfer under this section is not an appellable decision or a reviewable decision.

95 Management initiated transfer—within administrative unit

- (1) This section applies if a relevant chief executive for an administrative unit is satisfied on reasonable grounds that the efficient administration of the unit requires the transfer of an officer from one part of the unit to another.
- (2) The relevant chief executive may transfer an officer to fill a vacant office in the unit if the chief executive—
 - (a) gives the officer an opportunity to state his or her views in relation to the transfer; and
 - (b) considers the views of the officer.
- (3) A decision to transfer under this section is not an appellable decision or a reviewable decision.

- (4) In this section:
officer includes—
- (a) an unattached officer; and
 - (b) an employee.

96 Management initiated transfer—between administrative units

- (1) This section applies if the commissioner is satisfied on reasonable grounds that the efficient administration of the service requires the transfer of an officer from 1 administrative unit to another.
- (2) The commissioner may transfer the officer, or direct a chief executive to transfer the officer, from 1 administrative unit to another if the commissioner—
 - (a) gives each of the following the opportunity to comment on whether the transfer is in the interests of the efficient administration of the service:
 - (i) the officer;
 - (ii) the relevant chief executive for the administrative unit that would gain the officer (the *gaining chief executive*);
 - (iii) the relevant chief executive for the administrative unit that would release the officer (the *releasing chief executive*); and
 - (b) considers whether the transfer is in the interests of the efficient administration of the service; and
 - (c) is satisfied that the efficient administration of the service requires the transfer of an officer from 1 administrative unit to another.

- (3) A direction under subsection (2) must specify—
 - (a) the date of effect of the transfer; and
 - (b) whether the transfer is temporary or permanent; and
 - (c) if the transfer is temporary—the duration of the transfer.
- (4) A decision to transfer under this section is not an appellable decision or a reviewable decision.
- (5) In this section:
officer includes—
 - (a) an unattached officer; and
 - (b) an employee.

96A Management initiated transfer—additional consultation if transfer of 2 or more officers

- (1) This section applies if the commissioner is satisfied for section 96 that the efficient administration of the service requires the transfer of 2 or more officers from one administrative unit to another.
- (2) In addition to requirements in section 95, the commissioner must follow any relevant consultation requirement that is set out in an industrial instrument that applies to an officer whose transfer is required.

96B Transfer on advice of joint selection committee

- (1) The relevant chief executive for an administrative unit in which a vacant office exists may transfer an officer to fill the vacant office if—
 - (a) a joint selection committee is established in relation to the transfer; and
 - (b) the committee recommends the transfer.

- (2) The joint selection committee must make a recommendation to the chief executive about the transfer.
- (3) The chief executive may—
 - (a) accept the recommendation; or
 - (b) not accept the recommendation.
- (4) If an officer is transferred in accordance with a recommendation under subsection (2) the chief executive must notify the transfer in the gazette.
- (5) If an officer is transferred on the recommendation of a union agreed joint selection committee—the decision to transfer is not an appellable decision or a reviewable decision.
- (6) In this section:
union agreed joint selection committee—see section 87.

96C How transfer takes effect

A transfer takes effect as prescribed.

96D Cancellation of transfer

- (1) Before the transfer of an officer to a vacant office in an administrative unit takes effect, the chief executive of the administrative unit may cancel the transfer on reasonable grounds.
- (2) If a transfer is cancelled under this section, any appeal against the transfer lapses on the day of the cancellation.

97 Transfers and promotions to specified offices may be made in accordance with order of passing examinations

- (1) The management standards may specify, in relation to a specified class of offices, circumstances in which a vacancy in an office or offices included in that class of offices may be filled by a transfer or promotion under this section.

- (2) The commissioner may declare that an examination applies to officers included in a stated class of officers.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) If—
- (a) in circumstances specified in relation to a class of offices under subsection (1) there is a vacancy in an office or offices included in that class; and
- (b) an examination applies to that class of officers under a declaration under subsection (2);

then, if the chief executive of the administrative unit in which the vacant office exists or the vacant offices exist—

- (c) if only 1 officer has passed the examination and is otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes that officer to that office or to 1 of those offices; or
- (d) if 2 or more officers have passed the examination and are otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes those officers to that office or those offices in accordance with the order of merit in which they passed the examination;

the transfer or promotion, or each of the transfers or promotions, shall be taken to have been made under this section and not under section 83.

- (5) The promotion of an officer to an office under this section takes effect on the day the promotion is made, and salary at the rate applicable to that office is payable to the officer on and from that day.

- (6) In this section:
- (a) a reference to an *examination* includes a reference to a test; and
 - (b) a reference to *passing* an examination includes a reference to completing satisfactorily any task required to be performed for the purposes of assessment.

98 Promotion of officers who complete courses of training for special positions

- (1) The management standards may provide that—
- (a) a specified office (a *training office*) is an office the occupant of which is required to undergo a course of training for the purpose of enabling him or her to perform duties that require professional, technical or other knowledge; and
 - (b) an officer who has completed that course of training to the satisfaction of the commissioner is entitled to occupy an office (the *relevant higher office*) having a specified classification.
- (2) If an officer is transferred or promoted under section 83 to a training office, another officer—
- (a) who holds an office the classification of which is not higher than the classification of the relevant higher office; or
 - (b) who, being an unattached officer, performs duties in relation to which there is payable to him or her a salary that is, or the maximum rate of which is, not higher than the salary or the maximum rate of salary applicable to the relevant higher office;
- may appeal against the transfer or promotion of that firstmentioned officer to the training office.
- (3) A decision to transfer or promote under this section is an appellable decision.

- (4) Subject to subsection (5), if there is a vacancy in an office that is, in relation to a training office, a relevant higher office, the chief executive of the administrative unit in which the relevant higher office exists shall—
- (a) if, at the time when that relevant higher office becomes vacant, an officer who has completed that course of training is, because of the operation of subsection (8), an unattached officer—transfer that officer to that office under this section; or
 - (b) if, at the time when that relevant higher office becomes vacant, 2 or more officers who have completed that course of training are, because of the operation of subsection (8), unattached officers—transfer to that office under this section whichever of those officers was the first so to become an unattached officer; or
 - (c) if, at the time when the relevant higher office becomes vacant, no officer who has completed that course of training is, because of the operation of subsection (8), an unattached officer—subject to subsection (9), promote to that office under this section the first officer to complete that course of training.
- (5) Subsection (4) does not entitle—
- (a) an officer who holds a part-time office to be transferred or promoted to a full-time office; or
 - (b) an officer who holds a full-time office to be transferred or promoted to a part-time office.
- (6) The promotion of an officer to an office as referred to in subsection (4) (c) takes effect on the day when the promotion is made and salary at the rate applicable to that office is payable to the officer on and from that day.

- (7) If 2 or more officers complete a course of training at the same time or become, because of the operation of subsection (8), unattached officers at the same time, they shall be treated, for subsection (4), as having completed that course of training, or as having become unattached officers, as the case requires, in a sequence of time corresponding to the order of merit in which, on the assessment of the person or body conducting the course of training, those officers completed the course.
- (8) If an officer who is entitled, on completion of a particular course of training to the satisfaction of the commissioner, to occupy a relevant higher office so completes that course of training but there is, at the time when he or she completes that course, no vacant relevant higher office, or no vacant relevant higher office to which he or she is entitled under subsection (4) (c) to be promoted—
- (a) he or she becomes, by force of this subsection, an unattached officer who is required to perform duties corresponding to the duties of such an office; and
 - (b) he or she shall have the classification appropriate to the occupant of such an office and shall be entitled to be paid the salary that would, from time to time, be payable to him or her if he or she were the occupant of such an office.
- (9) Nothing in subsection (4) shall be taken to prevent a chief executive from promoting or transferring an officer under section 83 to an office to which that subsection relates at any time when there is no officer immediately entitled to occupy that office in accordance with the management standards.
- (10) A transfer of an officer under section 83 to a vacant training office shall be notified in the Gazette.

- (11) If an officer is transferred under section 83 from an office held by him or her to a training office, no person shall be appointed or transferred to that firstmentioned office, and no promotion to that firstmentioned office shall take effect, until—
- (a) if paragraph (b) does not apply—the period for appealing against the transfer of that officer to the training office ends without any appeal having been made; or
 - (b) if any such appeal is, or 2 or more such appeals are, made within that period—that appeal or each of those appeals has been determined or has become inoperative.

100 Temporary transfer

- (1) The relevant chief executive for an administrative unit may temporarily transfer an officer from the unit to perform the whole, or part, of the duties of another office in the unit if the prescribed requirements are met.
- (2) A temporary transfer, other than a transfer requiring notification under section 101 (2), takes effect on—
- (a) the day written notice is given; or
 - (b) if a later day is stated in the written notice of the transfer—on that later day.
- (3) Written notice of a temporary transfer must be expressed to continue in force until—
- (a) the end of a stated day; or
 - (b) occurrence of a stated event.
- (4) Written notice of the temporary transfer must not be expressed to operate—
- (a) indefinitely; or
 - (b) until a notice terminating the transfer is given.

- (5) The relevant chief executive may, in writing—
 - (a) revoke the temporary transfer at any time; or
 - (b) vary the temporary transfer at any time.
- (6) The relevant chief executive of an administrative unit may temporarily transfer an officer from another administrative unit to perform the whole, or part, of the duties of an office in the unit if—
 - (a) the prescribed requirements are met; and
 - (b) the chief executive of the other administrative unit gives approval for the transfer.
- (7) The chief executive of the other administrative unit may withhold approval for a temporary transfer under subsection (6) if the transfer would cause substantial difficulties or inefficiencies in the management or functioning of the chief executive's unit.

101 Notification of certain temporary transfers to higher office

- (1) This section applies to a temporary transfer to an appellable level position.
- (2) A chief executive must provide notification in the gazette of a temporary transfer if—
 - (a) the chief executive temporarily transfers an officer to perform the duties of a higher office to which this section applies; and
 - (b) the transfer is for a period of more than 6 months.

102 Appeal against temporary transfer to higher office

- (1) An officer may appeal against the temporary transfer of another officer to an appellable level position if—
 - (a) the other officer is transferred to an office that is a higher office for the other officer; and

- (b) the transfer is to an office that is a higher office for the officer seeking to appeal; and
 - (c) the officer seeking to appeal applied for temporary transfer to the higher office.
- (2) The appeal must be made in accordance with—
- (a) if an industrial instrument applies to the officer and includes a procedure for temporary transfer appeal—the temporary transfer appeal procedure in the industrial instrument; or
 - (b) in any other case—the prescribed temporary transfer appeal procedure.

103 Lapsing or discontinuing of appeal

- (1) An appeal against a temporary transfer under section 102 lapses if—
- (a) the temporary transfer finishes under section 100 (3); or
 - (b) the temporary transfer finishes because the person transferred stops being an officer; or
 - (c) the temporary transfer is revoked under section 100 (5); or
 - (d) the appellant stops being an officer; or
 - (e) the office that is the subject of the appeal is no longer a higher office for the appellant.
- (2) An appeal against a temporary transfer under section 102 must be discontinued if—
- (a) the appellant gives written notice that the appeal has been withdrawn to the person or body that considers the appeal under the temporary transfer appeal procedure mentioned in section 102 (2); or
 - (b) the chief executive of the administrative unit in which the appellant holds office gives written notice that—

- (i) the temporary transfer of the appellant would cause substantial difficulties or inefficiencies in the management or functioning of the chief executive's unit; and
 - (ii) if the appeal were successful, the chief executive would—
 - (A) withhold approval for the temporary transfer of the appellant; or
 - (B) only give approval for the temporary transfer for a period of less than 6 months.
- (3) If an appeal lapses or is discontinued under this section the person or body that considers the appeal under the temporary transfer appeal procedure mentioned in section 102 (2) must give written notice of the lapse or discontinuance to the appellant.

104 Temporary transfer if appeal successful

- (1) This section applies if the person or body that considers an appeal under the temporary transfer appeal procedure mentioned in section 102 (2) decides that the appellant would be more efficient in performing the duties of the office than the person transferred to the office under section 100.
- (2) The person or body must provide written notice of the decision to—
- (a) the appellant; and
 - (b) the person transferred under section 100; and
 - (c) the relevant chief executive.
- (3) If the relevant chief executive receives a notice under subsection (2) the relevant chief executive must—
- (a) revoke the temporary transfer of the person transferred under section 100; and
 - (b) temporarily transfer the appellant to the position.

- (4) A temporary transfer under this section—
- (a) takes effect when it is made; and
 - (b) must be expressed to continue in force for the same period for which the revoked temporary transfer would have operated; and
 - (c) is not subject to appeal.

Division 5.7 Temporary employment

105 Meaning of *office*—div 5.7

In this division:

office means an office other than—

- (a) an office of chief executive; or
- (b) an executive office.

106 Power to engage temporary employee

- (1) The relevant chief executive for an administrative unit may engage a person for temporary employment in the unit if satisfied that—
- (a) there is no officer available in the service with the expertise, skills or qualifications required for the duties to be performed; or
 - (b) assistance of a temporary nature is required for the performance of urgent or specialised work in the unit and it is not practical in the circumstances to use the services of an existing officer to do the work.
- (2) Temporary employment under this division must comply with any prescribed requirements.

107 Temporary employment—fixed term less than 12 months

- (1) The relevant chief executive for an administrative unit may engage a person in temporary employment to perform duties in the unit for a fixed term of less than 12 months.
- (2) A person engaged under this section may be re-engaged with no break in his or her service subject to the following:
 - (a) the total period of engagement must be less than 12 months;
 - (b) the relevant chief executive must have complied with the prescribed requirements for merit selection in temporary employment.

108 Temporary employment—fixed term not more than 5 years

- (1) The relevant chief executive for an administrative unit may engage a person in temporary employment to perform duties in the unit for a fixed term of not more than 5 years.
- (2) The chief executive must not engage a person under this section unless the principal union has been consulted about the need for the temporary employment.
- (3) A person engaged under this section may be re-engaged with no break in his or her service subject to the following:
 - (a) the total period of engagement must not be more than 5 years;
 - (b) in the initial engagement of the person the relevant chief executive must have complied with—
 - (i) the merit principle in section 65; and
 - (ii) the prescribed requirements for merit selection in temporary employment.

109 Entry to the workforce programs

- (1) A person may be engaged for temporary employment in the performance of duties under a prescribed scheme, being a scheme for enabling people to gain ability for the purposes of participating in the Australian workforce.
- (2) A chief executive may engage a person for temporary employment under subsection (1) without having to be satisfied about matters referred to in section 106 (1).

110 Casual employment

- (1) A person may be engaged for temporary employment on a casual basis.
- (2) Employment of a person under subsection (1) shall not be taken to be employment for a fixed term.

111 Employment of unsuccessful election candidates

- (1) If—
 - (a) a person who was an employee—
 - (i) resigned in order to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, or a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory; and
 - (ii) was a candidate at the election; and
 - (iii) failed to be elected; and
 - (b) the resignation took effect not earlier than 6 months before the day on which nominations for the election closed;

the commissioner shall, on application by the person within 2 months after the declaration of the result of the election, employ

the person in the same or a similar capacity with the same rate of pay as that payable to the person immediately before resigning.

- (2) The reference in subsection (1) to the declaration of the result of the election is, in relation to an election the result of which is challenged, a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

112 Termination of temporary employment

- (1) Subject to section 112A, unless terminated earlier under this section a person's temporary employment terminates at the end of the fixed term for which the person is engaged.
- (2) The relevant chief executive for an administrative unit may terminate the employment of—
 - (a) a person engaged in the unit as a casual employee—at any time before the end of the employment; and
 - (b) a person otherwise engaged in the unit as a temporary employee—on the provision of reasonable written notice.
- (3) A person engaged as a temporary employee in an administrative unit may terminate his or her employment by providing the relevant chief executive with 2 weeks notice of the termination.
- (4) If the chief executive and the person engaged as a temporary employee agree that 2 weeks notice is not required, the temporary employment may be terminated at the agreed time.

112A Temporary employee on maternity leave

- (1) The temporary employment of a woman who is absent on maternity leave must not be terminated.

(2) A woman who returns to temporary employment with a government agency after being absent on maternity leave must be given preference over anyone else (other than another woman to whom this subsection applies) for employment in work for which she is qualified.

(3) In this section:

maternity leave means a period of authorised absence from duty required or permitted in relation to the birth of a baby.

113 Work performed after termination of temporary employment

If—

- (a) the temporary employment of a person has been terminated, or has ceased, in accordance with section 112; and
- (b) that person continues to perform work, or render services, after the date such employment came to an end;

then any work performed, or services rendered, by that person after that date shall not be taken to renew or extend his or her contract of employment that existed before that date, without prejudice to the right of that person to reasonable remuneration for any work done, or any services rendered, in good faith after that date.

114 Engagement of certain former officers as employees, and contracts with certain former officers, prohibited

A chief executive shall not, without the written consent of the commissioner—

- (a) engage as an employee a person who has ceased to be an officer; or
- (b) enter into a contract with a person who has ceased to be an officer for the performance of services by that person;

if the person has—

- (c) within the previous year and before the day fixed for the *Public Sector Management (Amendment) Act 1995*, section 2 (2) been retired as an officer under section 128 or section 137; or
- (d) within the previous year been retired from the service under section 143 as an excess officer without having volunteered to accept retirement on that basis; or
- (e) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;

and received a payment from the Territory or a territory instrumentality for being so retired.

Division 5.8 Miscellaneous

117 Reappointment of retired officers

- (1) Subject to this section, the chief executive of an administrative unit may reappoint to an office in the administrative unit, under this section, a person who has ceased to be an officer.
- (2) A chief executive shall not, without the written consent of the commissioner, reappoint a person to the service under this section if the person has—
 - (a) within the previous year and before the day fixed for the *Public Sector Management (Amendment) Act 1995*, section 2 (2) been retired as an officer under section 128 or section 137; or
 - (b) within the previous year been retired from the service under section 143 as an excess officer without having volunteered to accept retirement on that basis; or
 - (c) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;

and received a payment from the Territory or a territory instrumentality for being so retired.

- (3) A chief executive shall not reappoint a person to the service under this section—
- (a) if the person ceased, or last ceased, to be an officer by reason of his or her having been dismissed from the service for misconduct or inefficiency; or
 - (b) if the person has, since ceasing, or last ceasing, to be an officer, been engaged in prescribed employment and been dismissed from that employment for misconduct or inefficiency.
- (4) Subsection (3) does not apply in relation to a person in relation to whom it would, but for this subsection, apply if—
- (a) the person was dismissed by reason of his or her having been found by a court to have committed a criminal offence; and
 - (b) the finding of the court has been nullified.
- (5) For subsection (3)—
- (a) a person shall be taken to have been dismissed from the service for misconduct if he or she was dismissed from the service under part 9; and
 - (b) a person shall be taken to have been dismissed from employment prescribed for subsection (3) (b) for misconduct if he or she was dismissed from that employment on grounds similar to the grounds on which an officer may be dismissed from the service under part 9.
- (6) For subsection (4), a finding of a court in relation to an offence shall be taken to have been nullified—
- (a) if a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has

been released from prison as a result of an inquiry into the conviction; or

(b) in any other case—if the finding has been set aside.

118 Reappointment of unsuccessful election candidates

(1) If—

(a) an executive performing the duties of an office in an administrative unit under a contract under section 72—

(i) terminated his or her contract to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory; and

(ii) was a candidate at the election; and

(iii) failed to be elected; and

(b) the contract was terminated not earlier than 6 months before the day nominations for the election closed;

the chief executive of the administrative unit shall, on application by the person within 2 months after the declaration of the result of the election, enter a further contract with the person under section 72 to engage the person to perform the duties of the same office or an equivalent office in the same administrative unit.

(2) A contract entered under subsection (1) shall be expressed to expire on the same day as the terminated contract was expressed to expire.

- (3) If—
- (a) a person who was an officer holding an office in an administrative unit—
 - (i) resigned to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory; and
 - (ii) was a candidate at the election; and
 - (iii) failed to be elected; and
 - (b) the resignation took effect not earlier than 6 months before the day nominations for the election closed;

the chief executive of the administrative unit shall, on application by the person within 2 months after the declaration of the result of the election, reappoint the person to the service to fill the office occupied by the person immediately before resigning or an equivalent office in the administrative unit or, if such an office is not available, as an unattached officer having the same classification as the person had immediately before resigning.

- (4) A reference in subsection (1) or (3) to the declaration of the result of an election is, in relation to an election the result of which is challenged, a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

118A Quashing etc of conviction

- (1) This section applies if—
 - (a) a person who is a member of the service has been convicted of an offence; and
 - (b) disciplinary action is taken against the person in accordance with the misconduct procedures applying to a public employee; and
 - (c) after the disciplinary action—
 - (i) the person's conviction is quashed, nullified or set aside; or
 - (ii) the person receives a pardon or is released from prison as a result of an inquiry into the conviction.
- (2) The person may apply to the relevant chief executive for—
 - (a) if the disciplinary action involved termination of employment from the service—reappointment to the service; or
 - (b) if the disciplinary action involved other actions—reconsideration of those actions.
- (3) The relevant chief executive—
 - (a) must consider the application; and
 - (b) may do 1 or more of the following:
 - (i) reappoint the person to an appropriate office;
 - (ii) transfer the person to an appropriate office;
 - (iii) promote the person;
 - (iv) take other action to address the disciplinary action;
 - (v) refuse the application.

- (4) The chief executive must give the applicant written notice of a decision made under subsection (3) and reasons for the decision.
- (5) A person who is given notice under subsection (4) may apply to the commissioner for a reconsideration of the decision.
- (6) A person who is reappointed under this section is taken to have—
 - (a) continuity of service as prescribed; and
 - (b) recognition of prior service as prescribed.
- (7) In this section:
appropriate office means an office that—
 - (a) was occupied by the person immediately before the disciplinary action was taken; or
 - (b) is, in the reasonable belief of the relevant chief executive or commissioner, equivalent to the office occupied by the person immediately before the disciplinary action was taken.

119 Unattached officers

- (1) The chief executive of an administrative unit may, with the written consent of an officer who holds an office in the administrative unit, declare, in writing, that the officer shall, on a day specified in the declaration, become an unattached officer and, if the chief executive does so, the office so held by the officer becomes vacant on the day so specified.
- (2) Except as otherwise directed by the commissioner under this or another provision of this Act, a person who is, or is deemed to be, an unattached officer of the service is included in the administrative unit in which the person last held an office.

120 Arrangements with other governments and bodies for provision of services by employees to the Territory

- (1) Subject to subsection (4), the commissioner may enter into an arrangement with an authority of the Commonwealth, a State, another Territory or a place overseas for the services of officers or employees of—
 - (a) the public service of the Commonwealth, State, Territory or place; or
 - (b) a body established for a public purpose by or under a law of the Commonwealth, State, Territory or place;to be made available to the commissioner.
- (2) Subject to subsection (4), the commissioner may enter into an arrangement with a body (other than a body referred to in subsection (1)) for the services of officers or employees of the body to be made available to the commissioner.
- (3) While a person is performing services under an arrangement under subsection (1) or (2), the person shall perform those services in accordance with the directions of the commissioner and not otherwise.
- (4) The commissioner shall not enter into an arrangement under subsection (1) or (2) unless the authority or body with whom the arrangement is made acknowledges in writing that while a person is performing services under the arrangement he or she is to perform those services in accordance with the directions of the commissioner and not otherwise.

121 Arrangements with other governments for provision of services by officers and employees of service

- (1) The commissioner may enter into an arrangement with an appropriate authority of the Commonwealth, a State, another Territory or a place overseas for an officer of an administrative unit, or an employee performing duties in an administrative unit, to perform any work or services for the government of the Commonwealth, State, Territory or place.
- (2) An arrangement under subsection (1) may provide that if an officer or employee of the service is performing work or services under the arrangement, he or she shall perform the work or services in accordance with the directions of a specified officer of the government for which the work or services are being performed and not otherwise.

122 Termination of employment

- (1) This section applies if under the misconduct procedures that apply to a public employee, the public employee has engaged in misconduct.
- (2) The relevant chief executive may terminate the employment of the public employee.
- (3) A decision to terminate employment for misconduct is not an appellable decision or a reviewable decision.

Note A public employee may be able to take action in relation to termination of employment under the *Fair Work Act 2009* (Cwlth).

Part 6 Retirement and redeployment of officers

139 Definitions—pt 6

In this part:

essential qualification, in relation to an officer, means a qualification that the officer must have—

- (a) to lawfully perform his or her duties; or
- (b) as a prerequisite to a function that is a necessary part of the officers' employment.

Note *Function* includes authority, duty and power (see Legislation Act, dict, pt 1).

excess officer includes—

- (a) an officer employed in an administrative unit in which there is a greater number of officers than is necessary for the efficient and economical working of the unit; or
- (b) an officer whose services cannot be effectively used because of—
 - (i) technological or other changes in the work methods of the administrative unit; or
 - (ii) changes in the nature, extent or organisation of the functions of the administrative unit; or
- (c) an officer who is not willing to perform duties at a relocated locality where the commissioner has decided the duties usually performed by the officer are to be performed.

not qualified to perform duties—an officer is *not qualified to perform duties* if—

- (a) the officer does not hold an essential qualification; or
- (b) the officer is not eligible to hold an essential qualification; or
- (c) an essential qualification has been suspended, cancelled or otherwise withdrawn from the officer by a court, person or body that is competent to do so.

officer does not include—

- (a) an officer whose appointment to the service on probation has not been confirmed; or
- (b) a chief executive; or
- (c) an executive.

underperformance, by an officer, includes failure by the officer to perform the duties of an office to the standard reasonably required.

140 Power to reduce officer's classification

- (1) The power given by this part to a chief executive to reduce an officer's classification is a power to assign an officer, being a person who holds an office, or is included, in the administrative unit of the chief executive, to an office of a lower classification in the administrative unit.
- (2) The power given by this part to the commissioner to reduce an officer's classification is a power—
 - (a) to assign an officer in an administrative unit to an office of a lower classification in that or another administrative unit; or
 - (b) to declare an officer in an administrative unit to be an unattached officer of a lower classification or, being an unattached officer, to have a lower classification and, in either

case, to direct that the officer is included in that or another administrative unit.

141 Retirement—minimum retiring age

- (1) An officer who has attained the age of 55 years is entitled to retire from the service at any time at which the officer desires to do so.
- (2) In subsection (1):
officer includes—
 - (a) an officer whose appointment to the service on probation has not been confirmed; and
 - (b) a person engaged as an employee for a fixed term.

143 Redeploy or retire officer from service

- (1) This section applies to an officer if the relevant chief executive for the office is satisfied on reasonable grounds that the officer—
 - (a) is unable to perform duties appropriate to the officer's classification because of physical or mental incapacity; or
 - (b) is not qualified to perform the officer's duties; or
 - (c) is an excess officer.
- (2) The relevant chief executive must take reasonable steps to identify a vacant position in the chief executive's administrative unit that the officer is capable of performing and qualified to fill.
- (3) If the chief executive identifies a position under subsection (2) the chief executive must—
 - (a) offer the position to the officer; and
 - (b) if the officer consents to be redeployed—redeploy the officer to the position.

- (4) The relevant chief executive must refer the matter to the commissioner if—
 - (a) the chief executive does not identify a position under subsection (2); or
 - (b) an officer is offered a position under subsection (3) and does not consent to be redeployed.
- (5) If a matter is referred under subsection (4) the commissioner must take reasonable steps to identify a vacant position in the service that the officer is capable of performing and qualified to fill.
- (6) If the commissioner identifies a position under subsection (5) the commissioner must—
 - (a) offer the position to the officer; and
 - (b) if the officer consents to be redeployed—redeploy the officer to the position.
- (7) The commissioner must refer the matter back to the relevant chief executive if—
 - (a) the commissioner does not identify a position under subsection (5); or
 - (b) an officer is offered a position under subsection (6) and does not consent to be redeployed.
- (8) On receiving a referral under subsection (7) the relevant chief executive may give the officer written notice of—
 - (a) the relevant chief executive's intention to—
 - (i) reduce the officer's classification; or
 - (ii) retire the officer from the service; and
 - (b) the proposed date of effect of the reduction or retirement.
- (9) A decision to give a notice under subsection (8) is an appellable decision.

144 Date of effect of redeployment or retirement

- (1) If the officer agrees with the action proposed under section 143 (8) the date of effect of the action is—
 - (a) for an officer unable to perform duties appropriate to the officer's classification because of physical or mental incapacity—a day agreed in writing between the officer and the relevant chief executive; or
 - (b) for an officer not qualified to perform duties or an excess officer—a day not earlier than the day the notice was given under section 143 (8) that is agreed in writing between the officer and the relevant chief executive.
- (2) If the officer does not agree with the action proposed under section 143 (8) the date of effect of the action is—
 - (a) for an officer unable to perform duties appropriate to the officer's classification because of physical or mental incapacity—
 - (i) if an industrial instrument applies to the officer and states a retention period for the circumstances—the day after the end of the retention period; or
 - (ii) if paragraph (i) does not apply—the latest of the following:
 - (A) the day stated in the notice given under section 143 (8);
 - (B) the day 1 month after the day the notice under section 143 (8) was given to the officer;
 - (C) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
 - (D) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided; and

- (b) for an officer not qualified to perform duties—the latest of the following:
 - (i) the day stated in the notice given under section 143 (8);
 - (ii) the day 1 month after the day the notice under section 143 (8) was given to the officer;
 - (iii) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
 - (iv) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided; and
- (c) for an excess officer—
 - (i) if an industrial instrument applies to the officer and states a retention period for the circumstances—the day after the end of the retention period; or
 - (ii) if paragraph (i) does not apply—the latest of the following:
 - (A) the day stated in the notice given under section 143 (8);
 - (B) the day 1 month after the day the notice under section 143 (8) was given to the officer;
 - (C) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
 - (D) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided.

145 Limitation on retirement on ground of invalidity

- (1) This section applies despite anything in section 143 or section 144.
- (2) An officer is not capable of being retired from office on the ground of invalidity unless—
 - (a) if the officer is an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—
 - (i) the officer has not reached the officer's maximum retiring age within the meaning of the Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the officer; or
 - (b) if the officer is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the officer is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the officer; or
 - (c) if the officer is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
 - (i) the officer is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the officer.
- (3) In this section:
invalidity—see section 28A (6).

146 Unattachment of officers

- (1) If an authorised doctor has recommended that an officer should, because of physical or mental incapacity, be redeployed to perform other duties or retired from the service, the relevant chief executive may, by writing, declare that the officer shall, on a specified day, become an unattached officer and, if the relevant chief executive does so, the office held by the officer becomes vacant on that day.
- (2) As soon as practicable after a declaration is made under subsection (1) in relation to an officer, a copy of the declaration shall be given to the officer.

147 Underperformance

The procedures that apply to underperformance by an officer are—

- (a) if an industrial instrument applies to the officer and includes procedures for underperformance—the underperformance procedures in the industrial instrument; or
- (b) in any other case—the prescribed underperformance procedures.

U Part 8 Maternity leave

U 167 Definitions—pt 8

In this part:

confinement, in relation to an officer who has become pregnant, means the birth of a child, or other termination of the pregnancy that happens not earlier than 20 weeks before the expected date of birth of the child.

leave officer, in relation to an officer, means a person who may, whether in his or her own right or as a delegate of another person, grant leave to the officer on account of illness.

maternity leave means a period of absence from duty by an officer, permitted or required in accordance with this part, in relation to the confinement, or expected confinement, of the officer.

officer includes—

- (a) an employee; and
- (b) a statutory office-holder; and
- (c) a person employed by a territory instrumentality or a statutory office-holder.

unauthorised absence, in relation to an officer or in relation to officers included in a class of officers, means an absence from duty by an officer, being an absence in relation to which leave has not been granted under this Act, the management standards or an industrial award.

U 168 People in relation to whom pt 8 applies

- (1) Subject to this section, this part applies to—
 - (a) a woman who is an officer; and

- (b) a woman employed by a company that is incorporated under the Corporations Act and is declared by the management standards to be a body corporate in relation to which this part applies.
- (2) This part does not apply to a woman who is not entitled, as a condition of her employment, to leave of absence, with pay, on account of illness.

U 169 Absence on maternity leave

- (1) An officer who has become pregnant (whether before or after becoming a person to whom this part applies)—
 - (a) shall, on application made to a leave officer before she is confined, be granted maternity leave for a period not exceeding 52 weeks commencing on the date of commencement of the period of maternity leave required to be taken by her under paragraph (b); and
 - (b) shall, subject to section 173, whether or not she has been granted maternity leave under paragraph (a), take maternity leave for a period that—
 - (i) if she is still pregnant 6 weeks before the expected date of birth of her child—commences 6 weeks before the expected date of birth of her child and continues until the end of a period of 6 weeks commencing on the date of her confinement; or
 - (ii) if she is confined earlier than 6 weeks before the expected date of birth of her child—commences on the date of her confinement and continues for 6 weeks; and
 - (c) shall, on application made to a leave officer—
 - (i) during or after a period of maternity leave granted to her under paragraph (a) or under this paragraph; or

(ii) if no such maternity leave has been granted—during or after a period of maternity leave required to be taken by her under paragraph (b);

be granted a further period of maternity leave ending not later than the end of a period of 52 weeks commencing on the date of commencement of the period of maternity leave required to be taken by her under paragraph (b).

- (2) If the pregnancy of an officer terminates other than by way of confinement—
- (a) she shall not, after that termination, be granted maternity leave in accordance with this section in relation to that pregnancy; and
 - (b) if, before that termination, she has been granted maternity leave in accordance with this section, that grant shall be cancelled.

U 170 **Entitlement to paid maternity leave**

- (1) Subject to subsection (2) and sections 171 (1) and 172 (2), an officer who has been confined and who has been absent from duty is entitled to pay—
- (a) if the period of absence, or the sum of the periods of absence, exceeds 12 weeks—for the first 12 weeks of that absence; and
 - (b) in any other case—for the whole of that absence.
- (2) An officer is not entitled, under subsection (1), to pay in relation to any absence that occurs before the day the continuous period, or the last continuous period, during which she is under subsection (3), to be taken to be a person to whom this subsection applies first exceeds 12 months.

- (3) A person shall be taken to be a person to whom subsection (2) applies under this subsection—
- (a) while she is a person to whom this part applies; or
 - (b) while she is employed by a body corporate (other than an incorporated company, society or association), or an unincorporated body, established for a public purpose by an Act but is not a person in relation to whom this part applies; or
 - (c) if paragraphs (a) and (b) do not apply to the person—while she is employed by a prescribed body or a prescribed organisation.
- (4) If under subsection (1), an officer is entitled to pay in relation to a period, the pay that the officer is to receive shall be the pay, salary, wage or other payment that the officer would have received if, for that period, she had been granted leave of absence on full-pay on account of illness.
- (5) If—
- (a) an officer has, under section 169 (1) (a) or (c) been granted maternity leave for a period; and
 - (b) the officer applies for leave of absence of any kind with pay in relation to the whole or any part of that period, excluding a period in relation to which pay is payable under subsection (1);
- that application shall, if the officer is eligible for the leave to which the application relates, be granted.
- (6) The grant of leave of absence of any kind with pay in relation to a period in relation to which pay is payable under subsection (1) is of no effect.

U 171 Unauthorised absences

- (1) If, an unauthorised absence of an officer occurs immediately before the commencement of the period when, apart from the operation of paragraph (a), the officer would be required to take maternity leave under section 169 (1) (b), unless the relevant chief executive determines that the unauthorised absence occurs in extenuating circumstances—
- (a) the other provisions of this part do not apply to her in relation to her confinement, or her expected confinement; and
 - (b) she shall absent herself from duty during that firstmentioned period, but, subject to subsection (2), is not entitled to pay in relation to the period while she is so absent; and
 - (c) if, on the end of that firstmentioned period, the unauthorised absence of the officer continues—her unauthorised absence before the commencement of that period shall be deemed to be continuous with her unauthorised absence after the end of that period.
- (2) Subsection (1) does not affect an officer's entitlement to pay for any period of long service leave or leave of absence for recreation or on account of illness that is granted to her.

U 172 Absence on leave without pay

- (1) If an officer who is granted leave of absence without pay is pregnant before or during that leave, her absence from duty on maternity leave during part of the period of 52 weeks commencing 6 weeks before the expected birth of her child or if she is confined earlier than 6 weeks before the expected birth of her child, commencing on the date of her confinement, shall be taken, for sections 169 (1) (c) and 170 (1), to be absence from duty on maternity leave under section 169 (1) (a).

- (2) Notwithstanding subsection (1), if an officer who is granted leave of absence without pay for a period (the *relevant period*) being a period exceeding 6 weeks, has become pregnant before, or becomes pregnant after, the commencement of that leave, then unless the relevant chief executive otherwise determines—
- (a) section 169 (1) does not authorise a leave officer to grant her maternity leave under this part at any time while she is absent during the relevant period; and
 - (b) she is not entitled to pay under section 170 (1) in relation to any part of the relevant period.
- (3) Subsection (2) applies in relation to an officer who has been granted leave of absence without pay for a period whether or not she ceases to be absent from duty on leave without pay before the end of that period, but does not apply to such an officer unless she is absent on leave without pay in accordance with the grant for a continuous period exceeding 6 weeks.

U 173 Officers may continue to perform, or resume, duty in certain circumstances

- (1) If an officer who is pregnant gives to the leave officer—
- (a) not less than 6 weeks before the expected date of birth of her child; or
 - (b) on or before the date given to her under this subsection, being the date to which she is permitted to continue to perform duties;

a certificate given by a doctor certifying that, in the opinion of the doctor, she will continue to be fit for duty until a specified date, the leave officer may give her permission, in writing, to continue to perform duty until and including that date.

- (2) If permission is given under subsection (1) for an officer to continue to perform duty until and including a date specified in the permission—
- (a) if she is confined more than 6 weeks before the expected date of birth of her child—the grant of permission so to perform duty is of no effect; or
 - (b) if she is confined before the date so specified but not more than 6 weeks before the expected date of birth of her child—section 169 (1) (b) (i) has effect as if the period referred to in that subparagraph commenced on the date of her confinement; or
 - (c) in any other case—section 169 (1) (b) (i) has effect as if the period referred to in that subparagraph commenced on the day next following the date so specified.
- (3) If, before the end of the period when an officer who has been confined would, apart from this subsection, be required to take maternity leave under section 169 (1) (b), the officer gives the leave officer a certificate given by a doctor certifying that, in the opinion of the doctor, she will be fit to resume duty on a specified date occurring before the end of that period of maternity leave, the leave officer may give her permission, in writing, to resume duty on that date and the period when she shall, on permission being so given, be required to take maternity leave terminates immediately before that date.

U 174 Other applications to resume duty

- (1) An officer who takes maternity leave under section 169 (1) (a) or (c) may, at any time after the end of the period of maternity leave required to be taken by her under section 169 (1) (b), apply, in writing, to the leave officer for permission to resume duty on a day specified in the application.

- (2) Within 7 days after receipt of an application made under subsection (1), the leave officer shall—
 - (a) subject to subsections (3) and (6), grant or refuse to grant the application; and
 - (b) inform the applicant, in writing, whether he or she has granted or refused to grant the application.
- (3) A leave officer shall not grant an application made under subsection (1) to resume duty on a day that is less than 7 days after the application is received by the leave officer unless he or she is satisfied that there are special circumstances justifying the granting of the application.
- (4) If a leave officer refuses to grant an application for permission to resume duty and the application was received by the leave officer not less than 21 days before the day the applicant wished to resume duty—
 - (a) the leave officer shall give to the applicant, when informing the applicant that he or she has refused to grant the application, particulars of the grounds in which it would not, in his or her opinion, be in the interests of the service for her to resume duty on that date; and
 - (b) the applicant may, within 7 days after she has received the particulars referred to in paragraph (a) request the commissioner, in writing, to review the decision of the leave officer and give, with her request, particulars of any matters she wishes the commissioner to consider in making the review.
- (5) If the commissioner receives a request under subsection (4), the commissioner shall, within 7 days after receiving the request—
 - (a) subject to subsection (6)—
 - (i) affirm the decision of the leave officer; or

- (ii) set aside the decision of the leave officer and grant the applicant the permission sought in her application; and
- (b) inform the applicant, in writing, of the decision.
- (6) An application under subsection (1) shall be granted by the leave officer to whom the application is made, or by the commissioner in reviewing a refusal by the leave officer to grant the application, unless the leave officer or the commissioner is satisfied that it would not be in the interests of the service to grant the application.
- (7) If an applicant is granted, under this section, permission to resume duty before the end of a period in relation to which she had been granted permission to absent herself from duty, that period shall be treated as having ended immediately before the day she resumes duty.

U 175 **Grant of maternity leave not to affect continuity of service**

- (1) If an officer is absent on maternity leave for a period—
 - (a) if she has been paid, whether under section 170 (1) or otherwise, in relation to the period or of a part of the period—the period, or the part of the period, of absence for which she has been so paid forms part of her period of service or employment for all purposes of this Act or any other territory law; and
 - (b) subject to subsection (2) if she has not been so paid in relation to the period or of a part of the period—the period, or the part of the period, of absence for which she has not been so paid does not form part of her period of service or employment for this Act or of any other territory law, but shall not be taken to have broken her continuity of service or employment.

- (2) If an officer, who is absent on maternity leave for a period, had not, immediately before the commencement of that period, been an officer for a continuous period of 12 months, the period of the absence or the period comprising the first 12 weeks of the period of absence, whichever is the less, forms part of her period of service or employment for all purposes of this Act or of any other territory law.

U 176 Officers on maternity leave

- (1) Notwithstanding anything in this Act, if—
- (a) an officer is absent on maternity leave; and
 - (b) that absence is after her confinement and is without pay;
- the relevant chief executive may, with the officer's written consent, declare that the office held by the officer is vacant and, in that event, the officer becomes an unattached officer for this Act.
- (2) If an officer who has become an unattached officer under subsection (1) returns to duty on completion of her maternity leave, she shall be appointed—
- (a) if the office occupied by her immediately before she so became an unattached officer is vacant—to that office; or
 - (b) in any other case—to another office that, in status and salary, is as near as possible to the office referred to in paragraph (a).
- (3) Notwithstanding subsection (2), if an officer who has become an unattached officer under subsection (1) returns to duty before the end of the period of 52 weeks commencing on the date of commencement of the period when she is required to take maternity leave under section 169 (1) (b), the chief executive is not required to comply with the provisions of subsection (2) until the firstmentioned period has ended.

U 177 Temporary employees on maternity leave

- (1) Notwithstanding the provisions of this or another Act, if a woman, who is engaged in temporary employment in accordance with this Act, is absent on maternity leave, her employment shall not terminate, or be terminated, while she is so absent.
- (2) If—
 - (a) a woman referred to in subsection (1) returns to duty with a government agency, her employment terminates, or is terminated, or notice of termination of her employment is given to her; and
 - (b) the woman then applies to that agency for temporary employment;

that agency shall give to the woman preference over all other people (other than other women to whom this subsection applies) for employment on work for which she is qualified.

Part 10 Forfeiture of office

221 Forfeiture of office

- (1) If an officer is absent from duty without permission, and has been so absent for a continuous period of not less than 4 weeks, the relevant chief executive may send to the officer by post addressed to him or her at his or her address last known to the chief executive a notice informing him or her that unless, within a period of 2 weeks from and including the day the notice was sent—

- (a) he or she returns to duty; or
- (b) he or she explains his or her absence and seeks the permission of the chief executive for any further period of absence that may be necessary having regard to that explanation;

the officer will be taken to have retired from the service at the end of that period of 2 weeks.

- (2) If an officer to whom a notice under subsection (1) has been sent does not, within the period of 2 weeks from and including the day the notice was so sent—

- (a) return to duty; or
- (b) explain his or her absence and seek the permission of the chief executive for any further period of absence;

and the notice has not been revoked under subsection (5), the officer shall be taken to have retired from the service on the day following the end of that period of 2 weeks.

- (3) If a notice has been sent to an officer under subsection (1) and, within the period of 2 weeks after that notice was so sent, the officer explains his or her absence and seeks the permission of the chief executive for any further period of absence, the chief executive shall, as soon as practicable, consider the matter and may, by written

notice sent to the officer by post addressed to him or her at his or her address last known to the chief executive, inform the officer—

- (a) that he or she has been granted leave of absence for the period and on the conditions specified in the notice; or
 - (b) that he or she is required to return to duty and that, unless he or she returns to duty within a specified period (being a period of at least 2 weeks from and including the day the notice is sent) he or she will be taken to have retired from the service at the end of the period so specified.
- (4) If an officer who is required by a notice sent to him or her under subsection (3) to return to duty does not return to duty within the period specified to in the notice and the notice is not revoked under subsection (5), he or she shall be taken to have retired from the service on the day following the end of that period.
- (5) The commissioner may, at any time before an officer is to be deemed to have retired from the service under this section, by written notice sent to the officer by post addressed to him or her at his or her address last known to the commissioner, revoke a notice previously sent to the officer under this section, and the notice is then void and of no effect.

222 Reappointment of officers taken to have retired under s 221

- (1) A person who is taken to have retired under section 221 may apply to the relevant chief executive, in writing, for reappointment to the service.
- (2) If the chief executive is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the chief executive must reappoint the applicant to the service to fill—
- (a) the office occupied by the applicant immediately before the applicant is taken to have retired; or

- (b) if that office is not available—an equivalent office, or an office as nearly as possible equivalent, to that office; or
 - (c) with the written consent of the applicant—another office.
- (3) If the chief executive is not satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the chief executive must refuse the application.
- (4) If the chief executive refuses an application the chief executive must give the applicant written notice of the refusal and the reasons for the refusal.
- (5) A person who is given notice under subsection (4) may apply to the commissioner for a reconsideration of the decision.
- (6) A person who is reappointed under this section is taken to have—
 - (a) continuity of service as prescribed; and
 - (b) recognition of prior service as prescribed.

Part 11 Review and appeal

223 Definitions—pt 11

In this part:

appellable decision—means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

officer—means an officer or employee in an administrative unit or territory instrumentality, but does not include a chief executive or an executive.

reviewable decision—means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

224 Reviewable decision—notice and review

- (1) A person who makes a reviewable decision must give written notice of the decision to an officer mentioned in schedule 1, column 4 in relation to the decision.
- (2) An officer mentioned in schedule 1, column 4 in relation to a decision may apply for review of the decision.

225 Appellable decision—notice and appeal

- (1) A person who makes an appellable decision must give written notice of the decision to an officer mentioned in schedule 2, column 4 in relation to the decision.
- (2) An officer mentioned in schedule 2, column 4 in relation to a decision may appeal the decision.

Part 13 Miscellaneous

241 Returns and information generally

The chief executive of an administrative unit shall, at the request of the commissioner, supply any returns or other information that may be required for the purposes of carrying out the provisions of this Act or the management standards.

242 Improper influence

- (1) An officer or employee shall not—
 - (a) seek the influence of another person; or
 - (b) supply another officer or employee with certificates or testimonials;to improperly obtain promotion, transfer or other advantage in relation to his or her employment in the service.
- (2) An officer or employee shall not knowingly provide false information to another officer or employee, or to another person acting on behalf of the Territory, in relation to his or her appointment to the service.
- (3) An officer or employee shall not take, or seek to take, advantage of his or her functions to influence any person or body to enter into a financial or other arrangement with that officer or employee, or any other person or body.
- (4) An officer or employee shall not give a benefit, or enter, or seek to enter, into a financial or other arrangement, to influence another officer or employee in the exercise of that other officer's or employee's functions.

243 Protection of people in relation to work reports on officers or employees

- (1) An action or proceeding does not lie against a person for or in relation to any oral or written report made in good faith by that person on or in relation to—
 - (a) work performed, or proposed to be performed, by an officer or employee; or
 - (b) conduct of an officer or employee.
- (2) A report shall be deemed to have been made in good faith if the person by whom the report was made was not actuated by ill will to the officer or employee affected or by any other improper motive.
- (3) Subsection (1) does not apply in relation to a report unless—
 - (a) the person who made the report believed on reasonable grounds that it was the function or duty of the person to whom the report was made to receive the report; and
 - (b) for a report containing matter that was false or misleading in a material respect—the person who made the report did not know, and could not with reasonable diligence have ascertained, that the report contained matter that was so false or misleading.

244 Second jobs

- (1) An officer shall not, except in accordance with the written approval of the relevant chief executive or as otherwise provided by the management standards—
 - (a) accept or continue in employment—
 - (i) with the Commonwealth, a State, another Territory or the government of a foreign country; or
 - (ii) in or under any public or municipal corporation; or

- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in relation to, any business whether carried on by any corporation, company, firm or individual; or
 - (c) engage in or undertake business of the kind referred to in paragraph (b), whether as principal or agent; or
 - (d) engage or continue in the private practice of any profession occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged; or
 - (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of the office held by the officer or otherwise on behalf of the Territory; or
 - (f) accept or engage in any other remunerative employment.
- (2) Nothing in subsection (1) shall be deemed to prevent an officer from becoming a member or shareholder only of any incorporated company or of any company or society of people registered under any law in any State or elsewhere.

245 Remuneration additional to salary

- (1) An officer or employee shall not demand, or except with the approval of the relevant chief executive given in accordance with the management standards, receive for his or her own use any remuneration, other than salary and allowances payable under this Act, for services rendered in relation to the performance of his or her duties in the service.
- (2) An approval given for subsection (1) may specify a period during which an amount of remuneration, or a specified percentage of such amount, received by an officer or employee under that approval may be retained for his or her own use.

- (3) If an officer or employee receives an amount of remuneration of the kind referred to in subsection (1), otherwise than in accordance with an approval given for that subsection, the officer shall be taken to receive such remuneration on behalf of the Territory and shall pay the amount of that remuneration to the Territory.

246 Payments to officers

Payments to an officer or employee in relation to his or her employment, other than by way of salary, allowances or expenses payable under this Act or the management standards, may only be made under the authority of the commissioner from money appropriated by the Assembly.

247 Personation etc at examinations

- (1) A person shall not—
- (a) personate another person at an examination held under this Act; or
 - (b) permit another person to personate him or her at an examination held under this Act; or
 - (c) before the time when an examination is to be held under this Act—
 - (i) improperly obtain possession of; or
 - (ii) except with proper authority, give to a person; an examination paper that has been set for that examination or particulars relating to such an examination paper.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) In subsection (1):
examination includes a test.

248 Contracts

An officer or employee shall not, without proper authority, incur any liability or enter into any contract on behalf of the Territory or alter the terms or conditions of any contract to which the Territory is a party.

248A Engagement of certain former officers and employees prohibited

- (1) This section applies to a person—
 - (a) who was engaged by a contract under section 28 as a chief executive or by a contract under section 72 as an executive; and
 - (b) whose employment under that contract was terminated under a provision of the kind referred to in section 28A (1) or section 73 (1); and
 - (c) who received in relation to that termination a benefit prescribed for section 28A (4) or section 73 (4) that included a sum of money calculated by reference to the salary payable in relation to a period of employment of the person (the *benefit period*), being a sum that was not payable for services performed or in relation to leave.
- (2) The Territory or a territory instrumentality shall not, without the written consent of the commissioner, employ a person to whom this section applies within the period immediately after his or her retirement from the service that corresponds to the length of his or her benefit period.

248B Engagement of certain former chief executives and executives prohibited

- (1) This section applies to a person if—
 - (a) the person was engaged by a contract under section 28 (Chief executives—engagement) and has received, or is entitled to, an amount mentioned in section 28D (4) (Notice or payment if chief executive not re-engaged) in relation to the contract; or
 - (b) the person was engaged by a contract under section 72 (Executives—engagement) and has received, or is entitled to, an amount mentioned in section 75A (4) (Notice or payment if executive not re-engaged) in relation to the contract.
- (2) The Territory or a territory instrumentality must not, without the commissioner's written consent, employ the person within the 3-month period after the day the contract ends.

249 Imprisonment

- (1) This section applies if an officer in the service is—
 - (a) in custody awaiting trial for an offence; or
 - (b) in prison following conviction for an offence.
- (2) The officer is taken to be on leave of absence without pay for the period of custody or imprisonment unless—
 - (a) the employment of the officer is terminated for misconduct; or
 - (b) the relevant chief executive is satisfied that the officer is experiencing hardship and is to be paid the whole or part of the officers' salary for a stated time.
- (3) If the officers' employment is not terminated for misconduct—
 - (a) a period of service before the custody or imprisonment must be regarded as continuous with a period of service after the custody or imprisonment; and

- (b) the period of custody or imprisonment is not to be regarded as service under this Act or any other Act, unless the commissioner decides otherwise.
- (4) If, immediately before a period of custody or imprisonment, an officer was suspended from duty—the suspension is taken to be removed from the start of the period of custody or imprisonment.
- (5) An officer must not be suspended from duty during a period of custody or imprisonment.
- (6) In this section:
suspended from duty means suspended under an industrial agreement that applies to the officer and includes a procedure for suspension.

250 Attachment of salary of officers and employees

- (1) The rule of the common law that debts owing by the Crown for the salaries of its officers and employees are not capable of being attached, is, in relation to the Crown in right of the Territory, abolished.
- (2) If an order is made by law attaching a debt owing by the Crown in right of the Territory, or by a territory instrumentality, in relation to the salary of an officer or employee, the order shall be complied with out of money lawfully available.

250A Deduction of monetary penalty

- (1) This section applies if a person who pays the salary of an officer or employee is notified of any of the following:
 - (a) a monetary penalty has been imposed on an officer or employee under the misconduct procedures that apply to a public employee;

- (b) an order for the payment of an amount of money by an officer or employee has been made under the misconduct procedures that apply to a public employee;
 - (c) a direction for the deduction of an amount of money by an officer or employee has been made under the misconduct procedures that apply to a public employee.
- (2) The person who pays the salary of an officer or employee must deduct an amount of salary from the officer or employee unless the person is satisfied that the amount has been paid.
 - (3) A deduction under this section may be made in instalments.
 - (4) A deduction under this section must not be more than $\frac{1}{4}$ of the salary payable to the officer or employee for a pay period.

251 Management standards

- (1) The commissioner may, with the Chief Minister's written approval, make management standards for this Act.
- (2) The management standards may make provision in relation to—
 - (a) the structure and organisation of the service; and
 - (b) appointment to and employment in the service, including entry to and advancement in the service; and
 - (c) terms and conditions of employment of officers and employees; and
 - (d) the implementation of the access and equity principles referred to in section 7 (f) in the provision of services; and
 - (e) the improvement of management practices and accountability; and
 - (f) reviews or inquiries into the administration of the service; and
 - (g) public sector industrial relations; and

- (h) terms and conditions on which statutory offices are held; and
- (i) ethics and conduct of officers and employees; and
- (j) discipline of officers and employees; and
- (k) procedures for hearing grievances and appeals; and
- (l) the redeployment, retirement, resignation and redundancy of officers and employees; and
- (m) arrangements for superannuation in relation to officers and employees; and
- (n) equal employment opportunity in the service; and
- (o) mobility of employment—
 - (i) between the public sector of the Territory and any body over which the Territory is in a position to exercise control in the ACT; and
 - (ii) between the public sectors of the Territory and the Commonwealth, a State or another Territory; and
 - (iii) between the public sectors of the Territory and a foreign country or a part of a foreign country; and
- (p) occupational health and safety in the service; and
- (q) training of officers and employees; and
- (r) performance appraisal of officers and employees; and
- (s) industrial democracy in the service; and
- (t) the evaluation of the implementation of government policy; and
- (u) internal audit; and
- (v) fraud minimisation; and

- (w) infrastructure for the effective management and operation of the service.
- (3) Management standards that provide for matters of the kind referred to in subsection (2) (i) take effect subject to any direction in force under the *Director of Public Prosecutions Act 1990*, section 12.
- (4) The management standards may, in relation to a matter, include special conditions that are applicable to officers who are returned soldiers or who are, or have been, on specified defence service, including conditions under which preference may be given to returned soldiers in relation to any proposed appointments or promotions.
- (5) In subsection (4):

returned soldier means a discharged member of the Forces within the meaning of the *Re-establishment and Employment Act 1945* (Cwlth), section 4 or section 139 and any other person who, as a member of the Defence Force, rendered continuous full-time service outside Australia—

- (a) as a member of a unit of the Defence Force that was allotted for duty within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5B (2); or
- (b) as a person who was allotted for duty within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5B (2);

in an operational area described in the *Veterans' Entitlements Act 1986* (Cwlth), schedule 2, item 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 or 14 during the period specified in that item.

specified defence service—

- (a) means—
- (i) continuous full-time service in a part of forces that are Emergency Forces or Reserves under the *Defence Act 1903* (Cwlth); or

- (ii) service in a part of those forces for a period determined under regulations made under the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth) or the *Air Force Act 1923* (Cwlth); but
 - (b) does not include service rendered because of a voluntary undertaking and not required under the legislation mentioned in paragraph (a).
- (6) An approval by the Chief Minister under subsection (1) may be given in relation to all management standards to be made for a specified purpose.
- (7) An approval of the kind referred to in subsection (6) may be given subject to conditions to be complied with by the commissioner in making management standards to which the approval relates.
- (8) A management standard is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Schedule 1 Reviewable decisions

(see s 224)

| column 1 item | column 2 section | column 3 decision | column 4 officer |
|--------------------------|-----------------------------|---|-----------------------------------|
| 1 | 86 | promotion to reviewable level office | officer who applied for promotion |
| 2 | 87 (5) | promotion not in accordance with certain recommendations of joint selection committee | officer who applied for promotion |

Schedule 2 Appellable decisions

(see s 225)

| column 1 item | column 2 section | column 3 decision | column 4 officer |
|---------------|------------------|---|--|
| 1 | 84 | promotion of officer to vacant office | officer who applied for promotion |
| 2 | 85 | promotion of officer to vacant office | excess officer who applied for transfer |
| 3 | 87 (5) | promotion not in accordance with certain recommendations of joint selection committee | officer who applied for promotion |
| 4 | 98 | promotion or transfer of officer to training office | <ul style="list-style-type: none">officer who applied for promotionunattached officer who applied for promotion |
| 5 | 102 | temporary transfer to higher office duties | officer who applied for temporary transfer to higher office duties |
| 6 | 143 (8) | notice to reduce classification or retire from the service | officer given notice |

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- Chief Minister
- Commonwealth
- document
- Executive
- function
- judge
- Legislative Assembly
- magistrate
- occupy
- Speaker
- Supreme Court
- the Territory.

Aboriginal person or Torres Strait Islander means a person who—

- (a) is a descendent of an Aboriginal person or Torres Strait Islander; and
- (b) identifies as an Aboriginal person or Torres Strait Islander; and
- (c) is accepted as an Aboriginal person or Torres Strait Islander by an Aboriginal or Torres Strait Islander community.

access and equity principle, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

access and equity program, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

administering chief executive means the chief executive of the administrative unit responsible for administering this Act.

administrative unit means a unit of the service established under section 13 (1) (a).

appeal means—

- (a) if an industrial instrument applies to the employee or officer and includes an appeal process—appeal in accordance with the appeal process in the industrial instrument; or
- (b) in any other case—appeal in accordance with the prescribed appeal process.

appeal committee, for part 6 (Retirement and redeployment of officers other than chief executives and executives)—see section 139.

appellable decision—see section 223.

appellable level position means—

- (a) for division 5.5 (Promotion of officers)—see section 82; and
- (b) for division 5.6 (Transfer of officers)—see section 91.

auditor-general's office means the auditor-general and the staff assisting the auditor-general under the *Auditor-General Act 1996*, section 23.

authorised doctor means a doctor authorised by the chief executive of the administrative unit primarily responsible for public health matters, or the commissioner, to—

- (a) perform medical examinations under this Act; and
- (b) make recommendations under this Act in relation to redeployment or retirement; and
- (c) make recommendations under this Act in relation to the health and physical fitness of officers whose appointment to the service on probation has not been confirmed.

authorised officer, for division 9.5 (Employees other than chief executives and executives)—see section 201.

autonomous instrumentality means—

- (a) the auditor-general's office; or
- (b) the Office of the Director of Public Prosecutions.

chief executive means a person employed under section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts) to perform the duties of an office of chief executive.

chief executive officer means—

- (a) in relation to a territory instrumentality—the person who has responsibility for managing the affairs of the instrumentality; and
- (b) in relation to an autonomous instrumentality—
 - (i) for the auditor-general's office—the auditor-general; and
 - (ii) for the Office of the Director of Public Prosecutions—the director of public prosecutions.

classification means—

- (a) in relation to an executive office—a description that identifies the class of offices to which the office belongs, being a class of offices with the same range of salaries; and
- (b) in relation to an office that is not an executive office—a description that identifies the class of offices to which the office belongs, being a class of offices that are of a similar kind, that have responsibilities of a similar level, the performance of the duties of which requires work of similar value and the salary, or range of salaries, applicable to which are the same; and

- (c) in relation to an officer who holds an office—the classification of that office; and
- (d) in relation to an unattached officer—the classification that the officer has as an unattached officer determined in accordance with section 56 (4) or section 69.

clerk, for division 3.8 (Legislative Assembly—clerk and secretariat)—see section 45.

commissioner means the Commissioner for Public Administration appointed under section 18 (1).

Commonwealth officer means an officer of the Australian Public Service constituted by the *Public Service Act 1999* (Cwlth), section 9.

criminal offence means—

- (a) an offence against a law of the Territory or the Commonwealth; or
- (b) an offence against a law of a State or another Territory, being an offence of a kind that if committed in, or within the jurisdiction of, the ACT would constitute an offence against a law of the Territory; or
- (c) an offence against a law of, or of a part of, a foreign country, being an offence of a kind that if committed in, or within the jurisdiction of, the ACT would constitute an offence against a law of the Territory or the Commonwealth.

designated group, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

direction, for division 5.6 (Temporary performance of duties—offices other than offices of chief executive and executive offices)—see section 99.

disability, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

discrimination, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

eligible public employment, for part 9 (Discipline)—see section 178.

employee means—

- (a) a chief executive; or
- (b) an executive; or
- (c) a person engaged under division 5.7 (Temporary employment); or
- (d) a person who is an employee because of the Public Sector Management (Consequential and Transitional Provisions) Act 1994.

employment matters—

- (a) for division 3.7 (Whole-of-government management responsibilities)—see section 39; and
- (b) for part 5 (Employment in the service)—see section 63.

equal employment opportunity program, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

essential qualification, for part 6 (Retirement and redeployment of officers)—see section 139.

excess officer, for part 6 (Retirement and redeployment of officers)—see section 139.

executive means a person employed under section 72 or section 76 to perform the duties of an executive office.

executive office means an office created under section 54A.

government agency means—

- (a) an administrative unit; or

- (b) a territory instrumentality; or
- (c) a statutory office-holder and the staff required to assist the statutory office-holder.

industrial democracy program, for division 3.7 (Whole-of-government management responsibilities)—see section 39.

industrial instrument means an instrument—

- (a) made under, or recognised by, a workplace law as defined by the *Fair Work Act 2009* (Cwlth); and
- (b) concerning the relationship between employers and employees.

joint selection committee means—

- (a) for division 5.5 (Promotion of officers)—see section 82; and
- (b) for division 5.6 (Transfer of officers)—see section 91.

Legislative Assembly secretariat means the Legislative Assembly secretariat under section 53A.

management standards means the management standards made under section 251.

misconduct, by an officer, means—

- (a) a failure of the officer to fulfil his or her duty as an officer; or
- (b) a failure to comply with section 9.

non-appellable promotion means a promotion under section 83 to an office having—

- (a) a classification equal to or higher than the classification of senior officer grade C; or
- (b) a classification equivalent to a classification mentioned in paragraph (a), other than a classification for an office for appointment to which teaching qualifications are required.

notified, for division 5.6 (Temporary performance of duties—offices other than offices of chief executive and executive offices)—see section 99.

not qualified to perform duties, for part 6 (Retirement and redeployment of officers)—see section 139.

office means—

- (a) for division 4.1A (Creation and abolition of offices other than offices of chief executives and executive offices)—see section 54B; and
- (b) for division 4.2 (Part-time offices)—see section 59A; and
- (c) for division 5.5 (Promotion of officers)—see section 82; and
- (d) for division 5.6 (Transfer of officers)—see section 91; and
- (e) for division 5.7 (Temporary employment)—see section 105.

office of chief executive means an office created under section 27.

officer—

- (a) means a person who is—
 - (i) an officer because of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*; or
 - (ii) appointed as an officer under division 5.3 (Appointment of officers) or division 5.8 (Miscellaneous); and
- (b) for part 3 (Management of the service)—see section 17; and
- (c) for part 6 (Retirement and redeployment of officers)—see section 139; and
- (d) for part 11 (Review and appeal)—see section 223.

overseas means outside Australia and the Territories.

part-time office means an office in relation to which a declaration under section 60 is in force.

prescribed means prescribed by the management standards.

principal union, for an office, means the relevant union with the largest number of members in the service occupying positions at the same classification level as the office.

promotion, in relation to an officer, means a movement of the officer within the service for the purpose of holding an office of a higher classification than the office held by the officer immediately before being so moved.

public employee means a person—

- (a) employed in the service; or
- (b) employed by a territory instrumentality or a statutory office-holder.

public sector means all government agencies and public employees.

relevant chief executive means—

- (a) in relation to an administrative unit, including the officers and employees employed, or to be employed, in the administrative unit—the chief executive responsible for the administrative unit; or
- (b) in relation to a territory instrumentality, including the officers and employees employed, or to be employed, in the territory instrumentality—the person who has the powers of a chief executive in relation to the staff; or
- (c) in relation to a statutory office, including the officers and employees employed, or to be employed, to assist the statutory office-holder—the statutory office-holder, if the office-holder has the powers of a chief executive in relation to the staff; or

Note Certain statutory office-holders have all the powers of a chief executive of an administrative unit (see s 25).

- (d) in relation to an unattached officer—the chief executive who has control of the administrative unit in which the officer last held an office.

relevant union, for an office, means an employee organisation—

- (a) registered under the *Fair Work (Registered Organisations) Act 2009* (Cwlth); and
- (b) entitled to represent the industrial interests of 1 or more people working in the administrative unit in which the office exists; and
- (c) covered by an industrial agreement that applies to 1 or more people working in the administrative unit in which the office exists.

review, for part 5, part 11 and schedule 1, means—

- (a) if an industrial agreement applies to the employee or officer and includes a review process—review in accordance with the review process in the industrial agreement; or
- (b) in any other case—review in accordance with the prescribed review process.

reviewable decision—see section 223.

secretariat, for division 3.8 (Legislative Assembly—clerk and secretariat)—see section 45.

service means the Australian Capital Territory Public Service mentioned in section 12.

specified, for division 5.6 (Temporary performance of duties—offices other than offices of chief executive and executive offices)—see section 99.

statutory office-holder means the holder of an office established by an Act, and includes everyone who at any time occupies for the time being, or performs for the time being the duties of, an office established by an Act.

territory instrumentality means a body corporate that is established by or under an Act, or under the Corporations Act, and—

- (a) is comprised of people, or has a governing body comprised of people, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory; or
- (b) is subject to control or direction by a Minister; or
- (c) is declared under section 3A to be a territory instrumentality;

but does not include—

- (d) an administrative unit; or
- (e) a body declared under section 3A not to be a territory instrumentality.

unattached officer means an officer who does not hold an office, but does not include a person who is a detached officer within the meaning of division 9.4.

underperformance, for part 6 (Retirement and redeployment of officers)—see section 139.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

| | |
|--|--|
| A = Act | NI = Notifiable instrument |
| AF = Approved form | o = order |
| am = amended | om = omitted/repealed |
| amdt = amendment | ord = ordinance |
| AR = Assembly resolution | orig = original |
| ch = chapter | par = paragraph/subparagraph |
| CN = Commencement notice | pres = present |
| def = definition | prev = previous |
| DI = Disallowable instrument | (prev...) = previously |
| dict = dictionary | pt = part |
| disallowed = disallowed by the Legislative Assembly | r = rule/subrule |
| div = division | reloc = relocated |
| exp = expires/expired | renum = renumbered |
| Gaz = gazette | R[X] = Republication No |
| hdg = heading | RI = reissue |
| IA = Interpretation Act 1967 | s = section/subsection |
| ins = inserted/added | sch = schedule |
| LA = Legislation Act 2001 | sdiv = subdivision |
| LR = legislation register | SL = Subordinate law |
| LRA = Legislation (Republication) Act 1996 | sub = substituted |
| mod = modified/modification | <u>underlining</u> = whole or part not commenced or to be expired |

Endnotes

3 Legislation history

3 Legislation history

Public Sector Management Act 1994 No 37

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

remainder commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

as amended by

Public Interest Disclosure Act 1994 No 108 s 40

notified 22 December 1994 (Gaz 1994 No S289)

s 1, s 2 commenced 22 December 1994 (s 2 (1))

s 40 commenced 21 June 1995 (s 2 (2) and Gaz 1995 No S126)

Electricity and Water (Corporatisation) (Consequential Amendments) Act 1995 No 7 sch

notified 28 June 1995 (Gaz 1995 No S148)

commenced 1 July 1995 (s 2)

Public Sector Management (Amendment) Act 1995 No 51

notified 20 December 1995 (Gaz 1995 No S313)

s 1, s 2 commenced 20 December 1995 (s 2 (1))

remainder commenced 21 December 1995 (s 2 (2) and Gaz 1995 No S315)

Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995 No 56 sch

notified 20 December 1995 (Gaz 1995 No S313)

commenced 21 December 1995 (s 2 and see Gaz 1995 No S315)

Public Sector Management (Amendment) Act 1996 No 24

notified 4 June 1996 (Gaz 1996 No S101)

commenced 1 July 1996 (s 2)

Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 28

notified 1 July 1996 (Gaz 1996 No S130)

commenced 1 July 1996 (s 2)

Betting (Corporatisation) (Consequential Amendments) Act 1996 No 33 sch 1

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2 (1))

Gungahlin Development Authority (Consequential Provisions) Act 1996 No 39 pt 4

notified 10 July 1996 (Gaz 1996 No S160)
commenced 19 August 1996 (s 2 and see Gaz 1996 No S212)

University of Canberra (Transfer) Act 1997 No 74 s 19

notified 25 November 1997 (Gaz 1997 No S360)
s 1, s 2 commenced 25 November 1997 (s 2 (1))
s 19 commenced 1 December 1997 (s 2 (2))

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Public Sector Management (Amendment) Act 1999 No 55

notified 17 September 1999 (Gaz 1999 No S54)
ss 4 (c), 9 and 10 commenced 1 Jan 2000 (s 2 (2))
remainder commenced 17 September 1999 (s 2 (1))

Public Sector Legislation Amendment Act 1999 No 70 s 3

notified 3 December 1999 (Gaz 1999 No S62)
commenced 5 December 1999 (s 2 and see Cwlth Gaz 1999 No S584)

Occupational Health and Safety (Amendment) Act (No 2) 1999 No 82 sch pt 2

notified 23 December 1999 (Gaz 1999 No S65)
ss 1-3 commenced 23 December 1999 (s 2 (1))
sch pt 2 commenced 23 June 2000 (s 2 (3))

Public Sector Legislation Amendment Act 2000 No 77 s 3

notified 21 December 2000 (Gaz 2000 No S69)
s 1, s 2 commenced 21 December 2000 (IA s 10B)
s 3 commenced 31 December 2000 (s 2)

Endnotes

3 Legislation history

Legislation (Consequential Amendments) Act 2001 No 44 pt 316 (as am 2002 No 30 amdt 3.577)

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
amdt 1.3496 om 2002 No 30 before commencement
pt 316 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Legislative Assembly (Members' Staff) Amendment Act 2001 No 57 pt 3

notified 10 September 2001 (Gaz 2001 No S66)
s 1, s 2 commenced 10 September 2001 (IA s 10B)
pt 3 commenced 13 September 2001 (Gaz 2001 No S69)

Legislation Amendment Act 2002 No 11 pt 2.40

notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.40 commenced 28 May 2002 (s 2 (1))

Statute Law Amendment Act 2002 No 30 amdt 3.577

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
amdt 3.577 commenced 17 September 2002 (s 2 (1))

Note This Act only amends the Legislation (Consequential Amendments) Act 2001 No 44.

Planning and Land Legislation Amendment Act 2003 A2003-30 sch 1 pt 1.4

notified LR 30 June 2003
s 1, s 2 commenced 30 June 2003 (LA s 75 (1))
sch 1 pt 1.4 commenced 1 July 2003 (s 2 and see Planning and Land Act 2002 A2002-55, s 2)

Public Sector Management Amendment Act 2003 A2003-62

notified LR 11 December 2003
s 1, s 2 commenced 11 December 2003 (LA s 75 (1))
remainder commenced 12 December 2003 (s 2)

Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.19

notified LR 5 December 2003
s 1, s 2 commenced 5 December 2003 (LA s 75 (1))
sch 3 pt 3.19 commenced 19 December 2003 (s 2)

Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.28

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
sch 1 pt 1.28 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

Emergencies Act 2004 A2004-28 sch 3 pt 3.17

notified LR 29 June 2004
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))
sch 3 pt 3.17 commenced 1 July 2004 (s 2 (1) and CN2004-11)

Occupational Health and Safety Amendment Act 2004 A2004-29 sch 3

notified LR 8 July 2004
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))
sch 3 commenced 5 August 2004 (s 2 (1))

Health Professionals Legislation Amendment Act 2004 A2004-39 sch 5 pt 5.17

notified LR 8 July 2004
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))
sch 5 pt 5.17 commenced 7 July 2005 (s 2 and see Health Professionals Act 2004 A2004-38, s 2 and CN2005-11)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.47

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.47 commenced 2 June 2005 (s 2 (1))

Public Sector Management Amendment Act 2005 A2005-42

notified LR 31 August 2005
s 1, s 2 commenced 31 August 2005 (LA s 75 (1))
remainder commenced 1 September 2005 (s 2)

Public Sector Management Amendment Act 2005 (No 2) A2005-44

notified LR 30 August 2005
s 1, s 2 commenced 30 August 2005 (LA s 75 (1))
remainder commenced 8 September 2005 (s 2 and CN2005-19)

Endnotes

3 Legislation history

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.25

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.25 commenced 23 November 2005 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 1 pt 1.1, sch 3 pt 3.81

notified LR 22 March 2007
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))
sch 1 pt 1.1, sch 3 pt 3.81 commenced 12 April 2007 (s 2 (1))

Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.32

notified LR 20 June 2007
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))
sch 3 pt 3.32 commenced 11 July 2007 (s 2 (1))

Occupational Health and Safety Amendment Act 2007 A2007-31 sch 1 pt 1.2

notified LR 24 October 2007
s 1, s 2 commenced 24 October 2007 (LA s 75 (1))
sch 1 pt 1.2 commenced 25 October 2007 (s 2)

Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007 A2007-37 sch 2 pt 2.6

notified LR 22 November 2007
s 1, s 2 commenced 22 November 2007 (LA s 75 (1))
sch 2 pt 2.6 commenced 23 November 2007 (s 2)

Work Safety Legislation Amendment Act 2009 A2009-28 sch 2 pt 2.9

notified LR 9 September 2009
s 1, s 2 commenced 9 September 2009 (LA s 75 (1))
sch 2 pt 2.9 commenced 1 October 2009 (s 2 and see Work Safety Act 2008 A2008-51, s 2 (1) (b) and CN2009-11)

Statute Law Amendment Act 2009 (No 2) A2009-49 sch 1 pt 1.9, sch 3 pt 3.58

notified LR 26 November 2009
s 1, s 2 commenced 26 November 2009 (LA s 75 (1))
sch 1 pt 1.9, sch 3 pt 3.58 commenced 17 December 2009 (s 2)

Public Sector Management Amendment Act 2011 A2011-1

notified LR 23 February 2011

s 1, s 2 commenced 23 February 2011 (LA s 75 (1))

s 29 awaiting commencement (s 2)

remainder commenced 18 April 2011 (s 2 and CN2011-5)

Note default commencement under s 2 (2): 23 February 2013
(LA s 79 does not apply to this Act)

4 Amendment history**Dictionary**

s 2 om 2001 No 44 amdt 1.3478
ins A2007-3 amdt 3.429

Notes

s 2A ins A2007-3 amdt 3.429

Definitions for Act

s 3 am 1999 No 55 sch; 2001 No 44 amdt 1.3479, amdt 1.3481
defs reloc to dict A2007-3 amdt 3.428
om A2007-3 amdt 3.429
def **chief executive officer** orig def om A2007-3 amdt 3.423
def **Gazette** om 1999 No 55 s 4
def **medical practitioner** om A2004-39 amdt 5.24
def **senior executive service office** om 1995 No 51 s 4
def **senior executive service officer** om 1995 No 51 s 4
def **Territory Gazette** om 1999 No 55 s 4

Declaration of territory instrumentalities

s 3A ins 2001 No 44 amdt 1.3482
am A2009-49 amdt 3.135

Application

s 5 am 1995 No 7 sch; 1996 No 33 sch 1; 1996 No 39 s 13; 1997
No 74 s 19; A2003-30 amdt 1.13

Values and general principles

div 2.1 hdg (prev pt 2 div 1 hdg) renum R3 LA

General obligations of public employees

s 9 pars renum R4 LA

Misconduct

s 9A ins A2011-1 s 4

Constitution of the service

div 2.2 hdg (prev pt 2 div 2 hdg) renum R3 LA

Endnotes

4 Amendment history

ACT Public Service

s 12 am 1995 No 51 s 5

Administrative arrangements

div 2.3 hdg (prev pt 2 div 3 hdg) renum R3 LA

Constitution of administrative units

s 13 am 1999 No 55 sch; 2001 No 44 amdt 1.3483; A2009-49
amdt 3.136

Ministerial responsibility and functions of administrative units

s 14 am 1999 No 55 sch; 2001 No 44 amdt 1.3484, amdt 1.3485;
A2009-49 amdt 3.137

Preliminary

div 3.1 hdg (prev pt 3 div 1 hdg) renum R3 LA

Role of commissioner

div 3.2 hdg (prev pt 3 div 2 hdg) renum R3 LA

Appointment of commissioner

s 18 am 1999 No 55 sch; 2001 No 44 amdt 1.3486; 2002 No 11
amdt 2.80; A2007-3 amdt 3.430; ss renum R21 LA

Acting appointment

s 19 om A2007-3 amdt 3.431

Review of government agencies or functions

s 21 am A2005-42 s 5

Investigative powers of commissioner

s 22 am 1998 No 54 sch; 2002 No 11 amdt 2.81, amdt 2.82
sub A2005-53 amdt 1.125

Witness expenses

s 22A ins A2005-53 amdt 1.125

Exercise of chief executive powers in relation to certain public employees

div 3.3 hdg (prev pt 3 div 3 hdg) renum R3 LA

Powers of chief executive officers of certain territory instrumentalities

s 24 sub A2005-44 s 5

Powers of certain statutory office-holders

s 25 sub A2005-44 s 5
am A2007-37 amdt 2.12; A2009-49 amdt 3.138

Powers relating to certain Calvary Health Care staff

s 26 am 1995 No 51 s 6
sub A2005-44 s 5

Chief executives

div 3.4 hdg (prev pt 3 div 4 hdg) renum R3 LA

Chief executives—engagement

s 28 hdg sub A2005-44 s 6
s 28 sub 1995 No 51 s 7
am A2005-44 s 7; A2009-49 amdt 3.139

Chief executives—contract variation

s 28AA ins A2005-44 s 8
(3), (4) exp 8 September 2006 (s 28AA (4))

Early termination of contract

s 28A ins 1995 No 51 s 7
am A2007-3 amdt 1.2

Effect of contracts on responsibilities of Ministers

s 28B ins 1995 No 51 s 7

Application of merit principle to re-engagements

s 28C ins 1995 No 51 s 7

Notice or payment if chief executive not re-engaged

s 28D ins A2005-44 s 9
(7), (8) exp 8 September 2006 (s 28D (8))

Chief executives—responsibilities

s 29 sub A2005-44 s 10

Chief executives—temporary contracts

s 30 hdg sub A2005-44 s 11
s 30 sub 1995 No 51 s 8
am A2005-44 s 12, s 13

Chief executives—variation of temporary contracts

s 30A ins A2005-44 s 14
(3), (4) exp 8 September 2006 (s 30A (4))

Negotiation and execution of contracts

s 31 sub 1995 No 51 s 8
am A2005-44 s 15

Presentation of contracts and variations of contracts

s 31A ins 1995 No 51 s 8

Chief executive engagements not affected by defects etc

s 32 hdg sub A2005-44 s 16
s 32 sub 1995 No 51 s 8

Employment to perform duties of multiple positions

s 33 sub 1995 No 51 s 8

Chief executives—transfer or assignment

s 33A ins A2005-44 s 17
(7), (8) exp 8 September 2006 (s 33A (8))

Endnotes

4 Amendment history

Chief executive transfers or assignments under s 33A not affected by defects etc

s 33B ins A2005-44 s 17

Notification of chief executive's engagement etc

s 34 sub 1995 No 51 s 8
am 1999 No 55 sch
sub A2005-44 s 18

Powers of delegation

div 3.5 hdg (prev pt 3 div 5 hdg) renum R3 LA

Delegation by commissioner or chief executives

s 36 am A2007-3 amdt 3.432

Delegations in autonomous instrumentalities

s 37 sub 1996 No 24 s 5

Constitution and role of senior executive service

pt 3 div 6 hdg om 1995 No 51 s 9

The senior executive service

s 38 om 1995 No 51 s 9

Whole-of-government management responsibilities

div 3.7 hdg (prev pt 3 div 7 hdg) renum R3 LA

Definitions for div 3.7

s 39 def **designated group** am A2005-20 amdt 3.329
sub A2011-1 s 5
def **disability** ins A2005-20 amdt 3.330

Equal employment opportunity programs

s 40 am A2011-1 s 6

Access and equity programs

s 41 am A2011-1 s 7

Industrial democracy programs

s 42 am A2011-1 s 8

Development of programs in autonomous instrumentalities

s 43 am 1996 No 24 s 6

Joint council

s 44 am A2011-1 s 9

Legislative Assembly—clerk and secretariat

div 3.8 hdg (prev pt 3 div 8 hdg) renum R3 LA
sub A2005-42 s 6

Definitions for div 3.8

s 45 sub A2005-42 s 7
def **clerk** sub A2005-42 s 7
def **secretariat** ins A2005-42 s 7
def **Speaker** om R3 LA

Clerk of Legislative Assembly

s 46 am 1995 No 56 sch; ss renum R4 LA
sub A2005-42 s 8

Disclosure of interests by clerk

s 48 sub A2005-42 s 9

Suspension and ending of appointment of clerk

s 50 sub A2005-42 s 10

Retirement

s 51 (4) exp 4 March 1996 (s 51 (5))
(5) om R3 LA
am A2005-42 s 11; A2007-3 amdt 1.3

Acting appointment as clerk

s 53 sub A2005-42 s 12

Legislative Assembly secretariat

s 53A ins A2005-42 s 12

Creation and abolition of executive offices

div 4.1 hdg (prev pt 4 div 1 hdg) sub 1995 No 51 s 10
renum R3 LA

Creation and abolition of offices

s 54A ins 1995 No 51 s 10
am 1996 No 24 s 7

Creation and abolition of offices other than offices of chief executives and executive offices

div 4.1A hdg (prev pt 4 div 1A hdg) ins 1995 No 51 s 10
renum R3 LA

Meaning of office in div 4.1A

s 54B def **office** ins 1995 No 51 s 10

Classification of offices and officers

s 56 am A2009-49 amdt 1.23

Senior executive service classifications

s 57 am 1995 No 7 sch
om 1995 No 51 s 11

Reclassification of offices in autonomous instrumentalities

s 59 sub 1995 No 7 sch
am 1996 No 24 s 8

Endnotes

4 Amendment history

Part-time offices

div 4.2 hdg (prev pt 4 div 2 hdg) renum R3 LA

Meaning of *office* in div 4.2

s 59A def **office** ins 1995 No 51 s 12

Preliminary

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA

Interpretation for pt 5

s 63 am A2007-3 amdt 3.433

Application to autonomous instrumentalities

s 64 sub 1995 No 7 sch; 1996 No 24 s 9

Personnel management

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA

Application of merit principle

s 65 am 1995 No 51 s 13; pars renum R4 LA; A2005-44 s 19; pars renum R16 LA (see A2005-44 s 20)
sub A2011-1 s 10

Exception for returning officers

s 65A ins 2001 No 57 s 10

Notification of certain matters related to appointment, transfer or promotion

s 66 am 1999 No 55 sch

Appointment of officers

div 5.3 hdg (prev pt 5 div 3 hdg) am 1995 No 51 s 14
renum R3 LA

Application

s 66A ins 1995 No 51 s 15

Employment in the service

s 67 am 1995 No 51 s 16; A2003-62 s 4; A2004-28 amdt 3.55;
A2009-49 amdt 3.140

Appointments generally

s 68 am 1995 No 7 sch; 1995 No 51 s 17

Classification of unattached officers

s 69 am 1995 No 51 s 18

Appointment on probation

s 70 am 1995 No 51 s 19; A2004-39 amdt 5.25
sub A2011-1 s 11

Appointment on probation—prescribed training office

s 71 am 1999 No 55 s 5
sub A2011-1 s 11

Appointment on probation—teachers

s 71A ins A2011-1 s 11

Extension of period of probation

s 71B ins A2011-1 s 11

Appointment without probation

s 71C ins A2011-1 s 11

Engagement of executivesdiv 5.4 hdg (prev pt 5 div 4 hdg) sub 1995 No 51 s 20
renum R3 LA**Executives—engagement**s 72 hdg sub A2005-44 s 21
s 72 sub 1995 No 51 s 20
am A2005-44 s 22; A2009-49 amdt 3.141**Executives—contract variation**s 72A ins A2005-44 s 23
(3), (4) exp 8 September 2006 (s 72A (4))**Early termination of contract**s 73 sub 1995 No 51 s 20
am A2007-3 amdt 1.4**Effect of contracts on responsibilities of Ministers**

s 74 sub 1995 No 51 s 20

Application of merit principle to re-engagements

s 75 sub 1995 No 7 sch; 1995 No 51 s 20

Notice or payment if executive not re-engageds 75A ins A2005-44 s 24
(7), (8) exp 8 September 2006 (s 75A (8))**Executives—temporary contracts**s 76 hdg sub A2005-44 s 25
s 76 sub 1995 No 51 s 20
am A2005-44 s 26, s 27**Executives—variation of temporary contracts**s 76A ins A2005-44 s 28
(3), (4) exp 8 September 2006 (s 76A (4))**Chief executive officer, Calvary**

s 77 sub 1995 No 51 s 20; A2005-44 s 29

Negotiation and execution of contractss 78 sub 1995 No 51 s 20
am A2005-44 s 30, s 31

Endnotes

4 Amendment history

Tabling of contracts and variations of contracts

s 79 sub 1995 No 51 s 20

Executive engagements not affected by defects etc

s 80 hdg sub A2005-44 s 32
s 80 sub 1995 No 51 s 20

Executives—transfer or assignment

s 80A ins A2005-44 s 33
(6), (7) exp 8 September 2006 (s 80A (7))

Executive transfers or assignments under s 80A not affected by defects etc

s 80B ins A2005-44 s 33

Notification of executive's engagement etc

s 81 sub 1995 No 51 s 20
am 1999 No 55 sch
sub A2005-44 s 34

Promotion of officers

div 5.5 hdg (prev pt 5 div 5 hdg) am 1995 No 51 s 21
renum R3 LA
sub A2011-1 s 12

Definitions—div 5.5

s 82 sub 1995 No 51 s 22; A2011-1 s 13
def **appellable level position** ins A2011-1 s 13
def **joint selection committee** ins A2011-1 s 13
def **office** ins A2011-1 s 13

Promotion to vacant office

s 83 am 1995 No 51 s 23; 1999 No 55 sch
sub A2011-1 s 13

Promotion appeal

s 84 sub A2011-1 s 13

Promotion appeal by excess officer

s 85 am 1999 No 55 sch
sub A2011-1 s 13

Review of certain promotion decisions

s 86 sub A2011-1 s 13

Promotion on advice of joint selection committee

s 87 am 1995 No 51 s 24
sub A2011-1 s 13

How promotions take effect

s 88 am 1995 No 51 s 25; 1999 No 55 sch
sub A2011-1 s 13

Death of officer before appeal decided

s 89 am 1995 No 51 s 26; 1999 No 55 sch
sub A2011-1 s 13

Cancellation of promotion

s 90 sub A2011-1 s 13

Transfer of officers

div 5.6 hdg (prev pt 5 div 6 hdg) am 1995 No 51 s 27
renum R3 LA
om A2011-1 s 15
ins A2011-1 s 13

Definitions—div 5.6

s 91 ins A2011-1 s 13
def **appellable level position** ins A2011-1 s 13
def **joint selection committee** ins A2011-1 s 13
def **office** ins A2011-1 s 13

Transfer to vacant office

s 92 sub A2011-1 s 13

Simultaneous transfer within administrative unit

s 93 sub A2011-1 s 13

Transfer between administrative units

s 94 sub A2011-1 s 13

Management initiated transfer—within administrative unit

s 95 sub A2011-1 s 13

Management initiated transfer—between administrative units

s 96 sub A2011-1 s 13

Management initiated transfer—additional consultation if transfer of 2 or more officers

s 96A ins A2011-1 s 13

Transfer on advice of joint selection committee

s 96B ins A2011-1 s 13

How transfer takes effect

s 96C ins A2011-1 s 13

Cancellation of transfer

s 96D ins A2011-1 s 13

Endnotes

4 Amendment history

Transfers and promotions to specified offices may be made in accordance with order of passing examinations

s 97 am 1999 No 55 sch; 2001 No 44 amdts 1.3487-1.3489;
A2009-49 amdt 3.142

Promotion of officers who complete courses of training for special positions

s 98 am 1999 No 55 sch; A2011-1 s 14

Definitions for div 5.6

s 99 om A2011-1 s 16
def **appellable promotion** om A2011-1 s 16
def **direction** om A2011-1 s 16
def **notified** om A2011-1 s 16
def **office** am 1995 No 51 s 28
om A2011-1 s 16
def **specified** om A2011-1 s 16

Temporary transfer

s 100 sub A2011-1 s 17

Notification of certain temporary transfers to higher office

s 101 sub A2011-1 s 17

Appeal against temporary transfer to higher office

s 102 sub A2011-1 s 17

Lapsing or discontinuing of appeal

s 103 sub A2011-1 s 17

Temporary transfer if appeal successful

s 104 sub A2011-1 s 17

Temporary employment

div 5.7 hdg (prev pt 5 div 7 hdg) renum R3 LA
sub A2011-1 s 18

Meaning of office—div 5.7

s 105 sub A2011-1 s 18

Power to engage temporary employee

s 106 am 1995 No 51 s 29
sub A2011-1 s 18

Temporary employment—fixed term less than 12 months

s 107 sub A2011-1 s 19

Temporary employment—fixed term not more than 5 years

s 108 sub A2011-1 s 19

Termination of temporary employment

s 112 sub A2011-1 s 20

Temporary employee on maternity leave

s 112A ins A2011-1 s 20

Engagement of certain former officers as employees, and contracts with certain former officers, prohibited

s 114 am 1995 No 51 s 30; A2009-49 amdt 3.143

Miscellaneous

div 5.8 hdg (prev pt 5 div 8 hdg) renum R3 LA

Officers of Australian Public Service to have certain rights of entry to ACT Public Service

s 115 am 1995 No 51 s 31; 1999 No 55 sch
om A2011-1 s 21

Mobility rights of certain employees of ACTEW Corporation Limited

s 115A hdg am 1996 No 33 note
s 115A ins 1995 No 7 sch
om A2011-1 s 21

Officers of Australian Public Service engaged to perform the duties of chief executive or executive offices

s 116 sub 1995 No 51 s 32
am 1999 No 55 s 6
om A2011-1 s 21

Reappointment of retired officers

s 117 am 1995 No 51 s 33; A2009-49 amdt 3.144

Reappointment of unsuccessful election candidates

s 118 am 1995 No 51 s 34; ss renum R4 LA

Quashing etc of conviction

s 118A ins A2011-1 s 22

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s 122 om 1995 No 51 s 35
ins A2011-1 s 23

Retirement—minimum retiring age

s 123 om 1995 No 51 s 35

Retirement—maximum retiring age

s 124 om 1995 No 51 s 35

Retirement of chief executives on the ground of incapacity

s 125 om 1995 No 51 s 35

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s 126 om 1995 No 51 s 35

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s 127 om 1995 No 51 s 35

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Special benefits available to retiring unattached chief executives

s 128 om 1995 No 51 s 35

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s 129 om 1995 No 51 s 35

Retirement—minimum retiring age

s 130 om 1995 No 51 s 35

Retirement—maximum retiring age

s 131 om 1995 No 51 s 35

Preliminary steps in relation to officers whose services cannot reasonably be used in an SES office at the same or equal classification

s 132 om 1995 No 51 s 35

Officers whose services cannot reasonably be used in an SES office at the same or equal classification

s 133 om 1995 No 51 s 35

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s 134 om 1995 No 51 s 35

Retirement with consent of officer on grounds of incapacity

s 135 om 1995 No 51 s 35

Unattachment of senior executive service officers

s 136 om 1995 No 51 s 35

Special benefits available to retiring officers

s 137 om 1995 No 51 s 35

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s 138 om 1995 No 51 s 35

Retirement and redeployment of officers

pt 6 hdg sub A2011-1 s 24

Retirement and redeployment of chief executives

pt 6 div 1 hdg om 1995 No 51 s 35

Retirement and redeployment of senior executive service officers

pt 6 div 2 hdg om 1995 No 51 s 35

Retirement and redeployment of officers other than chief executives and executives

div 6.3 hdg (prev pt 6 div 3 hdg) am 1995 No 51 s 36
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om R4 LA

Definitions—pt 6

s 139 sub A2011-1 s 25
def **essential qualification** ins A2011-1 s 25
def **excess officer** ins A2011-1 s 25

def **not qualified to perform duties** ins A2011-1 s 25
 def **officer** sub 1995 No 51 s 37; A2011-1 s 25
 def **underperformance** ins A2011-1 s 25

Retirement—maximum retiring age

s 142 hdg om R3 LA
 s 142 (1)-(4) exp 4 March 1996 (s 142 (5))
 (5) om R3 LA

Redeploy or retire officer from service

s 143 sub A2011-1 s 26

Date of effect of redeployment or retirement

s 144 sub A2011-1 s 26

Limitation on retirement on ground of invalidity

s 145 sub A2007-3 amdt 1.5

Unattachment of officers

s 146 am A2004-39 amdt 5.25

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s 147 sub A2011-1 s 27

Long service leave

pt 7 hdg om A2011-1 s 28

Interpretation for pt 7

s 148 am 1995 No 51 s 38
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 def **redundancy** am 1995 No 51 s 38
 om A2011-1 s 28

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s 149 om A2011-1 s 28

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s 150 om A2011-1 s 28

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s 151 om A2011-1 s 28

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s 152 om A2011-1 s 28

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s 153 om A2011-1 s 28

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s 154 om A2011-1 s 28

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s 155 om A2011-1 s 28

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s 156 am A2005-20 amdt 3.331
om A2011-1 s 28

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s 157 om A2011-1 s 28

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s 158 om A2011-1 s 28

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s 159 om A2011-1 s 28

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s 160 om A2011-1 s 28

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s 161 om A2011-1 s 28

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s 162 om A2011-1 s 28

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s 163 om A2011-1 s 28

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s 164 om A2011-1 s 28

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s 165 om A2011-1 s 28

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s 166 om A2011-1 s 28

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pt 8 hdg om A2011-1 s 29

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s 167 om A2011-1 s 29
def **confinement** om A2011-1 s 29
def **leave officer** om A2011-1 s 29
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def **officer** om A2011-1 s 29
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s 168 om A2011-1 s 29

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s 169 om A2011-1 s 29

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s 170 om A2011-1 s 29

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pt 9 hdg om A2011-1 s 30

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om A2011-1 s 30**Interpretation for pt 9**s 178 om A2011-1 s 30
def **disciplinary appeal committee** om A2011-1 s 30
def **eligible public employment** om A2011-1 s 30
def **employment** om A2011-1 s 30
def **misconduct** om A2011-1 s 30
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om A2011-1 s 30**Chief executives and certain unattached officers**

pt 9 div 2 hdg om 1995 No 51 s 40

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s 180 om 1995 No 51 s 40

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s 181 om 1995 No 51 s 40

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s 183 om 1995 No 51 s 40

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s 184 om 1995 No 51 s 40

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div 9.3 hdg (prev pt 9 div 3 hdg) am 1995 No 51 s 41
renum R3 LA
om A2011-1 s 30

Interpretation

s 185 om 1995 No 51 s 42

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s 186 am 1995 No 51 s 43; A2005-20 amdt 3.332
om A2011-1 s 30

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s 187 am 1995 No 51 s 44
om A2011-1 s 30

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s 188 om A2011-1 s 30

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s 189 am 1995 No 51 s 45
om A2011-1 s 30

Removal and variation of suspension

s 190 am 1995 No 51 s 46
om A2011-1 s 30

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s 191 om A2011-1 s 30

Nullification of conviction

s 192 om A2011-1 s 30

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s 193 om A2011-1 s 30

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div 9.4 hdg (prev pt 9 div 4 hdg) renum R3 LA
om A2011-1 s 30

Interpretation for div 9.4

s 194 om A2011-1 s 30
def **detached officer** om A2011-1 s 30
def **misconduct** om A2011-1 s 30

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s 195 om A2011-1 s 30

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s 196 om A2011-1 s 30

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s 197 om A2011-1 s 30

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s 199 om A2011-1 s 30

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s 200 om A2011-1 s 30

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om A2011-1 s 30**Definitions for div 9.5**s 201 om A2011-1 s 30
def **authorised officer** am 1995 No 51 s 48
om A2011-1 s 30
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s 202 om A2011-1 s 30

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def **board of inquiry** om 1995 No 51 s 50
def **chief executive** om A2011-1 s 30
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om A2011-1 s 30
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s 204 om A2011-1 s 30

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s 206 am 1995 No 51 s 51; ss renum R4 LA; A2004-39 amdt 5.25
om A2011-1 s 30

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s 207 om 1995 No 51 s 52

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s 208 om 1995 No 51 s 52

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s 209 om 1995 No 51 s 52

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s 210 om 1995 No 51 s 52

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s 211 om 1995 No 51 s 52

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s 212 om 1995 No 51 s 52

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s 213 om 1995 No 51 s 52

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s 214 om 1995 No 51 s 52

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s 215 am 1995 No 51 s 53
om A2011-1 s 30

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s 216 om A2011-1 s 30

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s 217 am A2007-3 amdt 3.434
om A2011-1 s 30

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div 9.7 hdg (prev pt 9 div 7 hdg) renum R3 LA
om A2011-1 s 30

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s 218 am 1995 No 51 s 54
om A2011-1 s 30

Application to unattached officers performing duty in an administrative unit

s 219 am 1995 No 51 s 55; pars renum R4 LA
om A2011-1 s 30

Deduction of pecuniary penalty from salary

s 220 am 1996 No 26 sch pt 28
om A2011-1 s 30

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s 222 sub A2011-1 s 31

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om A2011-1 s 32**Investigation of grievances by merit protection agency**div 11.3 hdg (prev pt 11 div 3 hdg) renum R3 LA
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def **action** om A2011-1 s 32
def **appellable decision** ins A2011-1 s 32
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def **decision** om A2011-1 s 32
def **employee** sub 1995 No 51 s 56
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def **internal appeal officer** am 1995 No 51 s 56
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s 224 sub A2011-1 s 32

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s 225 sub A2011-1 s 32

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s 229 om A2011-1 s 32

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s 230 om A2011-1 s 32

Investigation by internal appeal officer

s 231 om A2011-1 s 32

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s 232 om A2011-1 s 32

Documents to be given by internal appeal officer

s 233 om A2011-1 s 32

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s 234 om A2011-1 s 32

Application of Merit Protection Act

s 235 am 1995 No 51 s 57; 1999 No 70 s 3;
2000 No 77 s 3
om A2011-1 s 32

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pt 12 hdg om 1994 No 108 s 40

Interpretation

s 236 om 1994 No 108 s 40

Disclosure of information to auditor-general or ombudsman

s 237 om 1994 No 108 s 40

Disclosure of information to authorised official

s 238 om 1994 No 108 s 40

Disclosure of information in certain circumstances

s 239 om 1994 No 108 s 40

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s 240 om 1994 No 108 s 40

Personation etc at examinations

s 247 am 1998 No 54 sch

Engagement of certain former officers and employees prohibited

s 248A ins 1995 No 51 s 58
am 1999 No 55 s 7

Engagement of certain former chief executives and executives prohibited

s 248B ins A2005-44 s 35

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s 249 sub A2004-29 amdt 3.1
om A2009-28 amdt 2.23
ins A2011-1 s 33

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s 250A ins A2011-1 s 34

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s 251 am 1995 No 51 s 59; 1996 No 33 sch 1; 1999 No 55 s 8; 2001
No 44 amdts 1.3490-1.3494; pars renum R4 LA; A2011-1
s 35

Totalcare

pt 14 hdg ins A2003-62 s 5
exp 31 December 2005 (s 263)

Definitions for pt 14

s 252 om 2001 No 44 amdt 1.3495
def **employee** ins A2003-62 s 5
def **Totalcare** ins A2003-62 s 5
def **transfer** ins A2003-62 s 5
exp 31 December 2005 (s 263)

Transfer of employees

s 253 am 1999 No 55 sch
om 2001 No 44 amdt 1.3495
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exp 31 December 2005 (s 263)

How rest of Act applies

s 254 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 255 ins 2001 No 44 amdt 1.3496 (amdt 1.3496 om 2002 No 30
amdt 3.577 before commencement)
ins A2003-62 s 5
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Entitlements of transferred employees

s 256 ins A2003-62 s 5
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s 257 ins A2003-62 s 5
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s 258 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 259 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 260 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 261 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 262 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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s 263 ins A2003-62 s 5
exp 31 December 2005 (s 263)

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exp 30 June 2006 (s 273)

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s 264 **chief officer** ins A2004-28 amdt 3.56
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exp 30 June 2006 (s 273)

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s 265 ins A2004-28 amdt 3.56
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s 266 ins A2004-28 amdt 3.56
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s 267 ins A2004-28 amdt 3.56
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s 268 ins A2004-28 amdt 3.56
am A2005-20 amdt 3.333, amdt 3.334
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s 269 ins A2004-28 amdt 3.56
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s 270 ins A2004-28 amdt 3.56
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Transfer of personnel files

s 271 ins A2004-28 amdt 3.56
exp 30 June 2006 (s 273)

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s 272 ins A2004-28 amdt 3.56
exp 30 June 2006 (s 273)

Expiry of pt 15

s 273 ins A2004-28 amdt 3.56
exp 30 June 2006 (s 273)

Transitional

pt 16 hdg ins A2005-44 s 36
exp 8 September 2006 (s 275)

Application of certain amendments—Public Sector Management Amendment Act 2005 (No 2)

s 274 ins A2005-44 s 36
exp 8 September 2006 (s 275)

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s 275 ins A2005-44 s 36
exp 8 September 2006 (s 275)

Reviewable decisions

sch 1 am R3 (LA s 116 (1) (k) (iii))
sub A2011-1 s 36

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sch 2 am A2005-20 amdt 3.335
sub A2011-1 s 37

Modifications of Occupational Health and Safety Act 1989

sch 3 hdg sub A2004-29 amdt 3.2
sch 3 am 1998 No 54 sch; 1999 No 82 sch pt 2; 2001 No 44
amds 1.3497-1.3500; R3 (LA s 116 (1) (k) (iii)); 2002 No 11
amdt 2.84, amdt 2.85; A2003-56 amdt 3.177; A2004-9
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R12 LA (see A2004-29 amdt 3.18); A2005-53
amds 1.126-1.130; A2007-31 amds 1.5-1.9
om A2009-28 amdt 2.24

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Dictionary

dict

ins A2007-3 amdt 3.435
def **Aboriginal person or Torres Strait Islander** ins A2011-1 s 38
def **access and equity principle** ins A2007-3 amdt 3.435
def **access and equity program** ins A2007-3 amdt 3.435
def **action** ins A2007-3 amdt 3.435
om A2011-1 s 39
def **administering chief executive** ins 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
def **administrative unit** reloc from s 3 A2007-3 amdt 3.428
def **appeal** ins A2011-1 s 40
def **appeal committee** ins A2007-3 amdt 3.435
def **appellable decision** ins A2011-1 s 41
def **appellable level position** ins A2011-1 s 41
def **appellable promotion** ins A2007-3 amdt 3.435
om A2011-1 s 42
def **approving authority** ins A2007-3 amdt 3.435
om A2011-1 s 42
def **auditor-general's office** ins 1996 No 24 s 4
reloc from s 3 A2007-3 amdt 3.428
def **authorised doctor** am A2004-39 amdt 5.25
reloc from s 3 A2007-3 amdt 3.428
def **authorised officer** ins A2007-3 amdt 3.435
def **authorised person** ins A2007-3 amdt 3.435
om A2011-1 s 43
def **autonomous instrumentality** sub 1995 No 7 sch; 1996 No 24 s 4
reloc from s 3 A2007-3 amdt 3.428
def **category A officer** ins A2007-3 amdt 3.435
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def **category B officer** ins A2007-3 amdt 3.435
om A2011-1 s 44
def **chief executive** am 1995 No 51 s 4
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reloc from s 3 A2007-3 amdt 3.428
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def **chief executive officer** ins 1996 No 24 s 4
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def **classification** am 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
def **clerk** ins A2005-42 s 4
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- def **Commonwealth Long Service Leave Act** ins A2007-3
amdt 3.435
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- def **Commonwealth officer** am A2007-3 amdt 3.424
reloc from s 3 A2007-3 amdt 3.428
- def **confinement** ins A2007-3 amdt 3.435
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- def **criminal offence** am 1999 No 55 s 4; pars renum R4 LA
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- def **decision** ins A2007-3 amdt 3.435
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- def **designated group** ins A2007-3 amdt 3.435
- def **detached officer** ins A2007-3 amdt 3.435
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- def **direction** ins A2007-3 amdt 3.435
- def **director** reloc from s 3 A2007-3 amdt 3.428
om A2011-1 s 50
- def **disability** ins A2007-3 amdt 3.435
- def **disciplinary appeal committee** ins A2007-3 amdt 3.435
om A2011-1 s 51
- def **discrimination** ins A2007-3 amdt 3.435
- def **eligible public employment** ins A2007-3 amdt 3.435
- def **employee** sub 1995 No 51 s 4; A2007-3 amdt 3.425
reloc from s 3 A2007-3 amdt 3.428
am A2007-16 amdt 3.138; A2011-1 s 52
- def **employment** ins A2007-3 amdt 3.435
om A2011-1 s 53
- def **employment matters** ins A2007-3 amdt 3.435
- def **equal employment opportunity program** ins A2007-3
amdt 3.435
- def **essential qualification** ins A2011-1 s 54
- def **excess officer** ins A2007-3 amdt 3.435
sub A2011-1 s 55
- def **executive** ins 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **executive office** ins 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **government agency** reloc from s 3 A2007-3 amdt 3.428
- def **industrial award** am A2005-20 amdt 3.328; A2007-3
amdt 1.1
reloc from s 3 A2007-3 amdt 3.428
om A2011-1 s 56
- def **industrial democracy program** ins A2007-3 amdt 3.435
- def **industrial instrument** ins A2011-1 s 57
- def **internal appeal officer** ins A2007-3 amdt 3.435
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- def **leave** ins A2007-3 amdt 3.435
om A2011-1 s 60
- def **leave officer** ins A2007-3 amdt 3.435
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- def **Legislative Assembly secretariat** ins A2005-42 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **long service leave** ins A2007-3 amdt 3.435
om A2011-1 s 61
- def **management standards** reloc from s 3 A2007-3
amdt 3.428
- def **maternity leave** ins A2007-3 amdt 3.435
om A2011-1 s 62
- def **Merit Protection Act** reloc from s 3 A2007-3 amdt 3.428
om A2011-1 s 63
- def **merit protection agency** reloc from s 3 A2007-3
amdt 3.428
om A2011-1 s 63
- def **misconduct** ins A2007-3 amdt 3.435
sub A2011-1 s 64
- def **non-appellable promotion** reloc from s 3 A2007-3
amdt 3.428
am A2009-49 amdt 1.24
- def **notified** ins A2007-3 amdt 3.435
- def **not qualified to perform duties** ins A2011-1 s 65
- def **office** ins A2007-3 amdt 3.435
am A2011-1 s 66
- def **office of chief executive** ins 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **officer** am 1995 No 7 sch; 1995 No 51 s 4; pars renum
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reloc from s 3 A2007-3 amdt 3.428
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- def **original office** ins A2007-3 amdt 3.435
om A2011-1 s 68
- def **overseas** reloc from s 3 A2007-3 amdt 3.428
- def **part-time office** am A2007-3 amdt 3.427
reloc from s 3 A2007-3 amdt 3.428
- def **prescribed** reloc from s 3 A2007-3 amdt 3.428
- def **principal union** ins A2011-1 s 69
- def **proceeding** ins A2007-3 amdt 3.435
om A2011-1 s 70
- def **promotion** reloc from s 3 A2007-3 amdt 3.428
- def **promotion appeal committee** reloc from s 3 A2007-3
amdt 3.428
om A2011-1 s 71

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- def **public employee** reloc from s 3 A2007-3 amdt 3.428
- def **public office** ins A2007-3 amdt 3.435
om A2011-1 s 72
- def **public sector** reloc from s 3 A2007-3 amdt 3.428
- def **redundancy** ins A2007-3 amdt 3.435
om A2011-1 s 73
- def **relevant chief executive** sub A2005-44 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **relevant staff organisation** am A2005-20 amdt 3.328
reloc from s 3 A2007-3 amdt 3.428
om A2011-1 s 75
- def **relevant union** ins A2011-1 s 74
- def **review** ins A2007-3 amdt 3.435
sub A2011-1 s 76
- def **reviewable decision** ins A2011-1 s 77
- def **salary** ins A2007-3 amdt 3.435
om A2011-1 s 78
- def **secretariat** ins A2005-42 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **service** am 1995 No 51 s 4
reloc from s 3 A2007-3 amdt 3.428
- def **specified** ins A2007-3 amdt 3.435
- def **statutory office-holder** reloc from s 3 A2007-3
amdt 3.428
- def **study bank** ins A2007-3 amdt 3.435
om A2011-1 s 79
- def **territory instrumentality** am 2001 No 44 amdt 1.3480;
A2003-56 amdt 3.176
reloc from s 3 A2007-3 amdt 3.428
- def **unattached officer** reloc from s 3 A2007-3 amdt 3.428
- def **unauthorised absence** ins A2007-3 amdt 3.435
om A2011-1 s 80
- def **underperformance** ins A2011-1 s 81

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

| Republication No and date | Effective | Last amendment made by | Republication for |
|----------------------------------|-------------------------------|-------------------------------|--|
| R0A 27 Feb 2008 | 21 June 1995– 30 June 1995 | A1994-108 | amendments by A1994-108 |
| R0B 27 Feb 2008 | 1 July 1995– 20 Dec 1995 | A1995-7 | amendments by A1995-7 |
| R1 1 Jan 1996 | 21 Dec 1995– 30 June 1996 | A1995-56 | amendments by A1995-51 and A1995-56 |
| R1 (RI) 27 Feb 2008 | 21 Dec 1995– 30 June 1996 | A1995-56 | reissue of printed version |
| R1A 27 Feb 2008 | 1 July 1996– 18 Aug 1996 | A1996-33 | amendments by A1996-24, A1996-26 and A1996-33 |
| R2 30 June 1997 | 30 June 1997– 30 Nov 1997 | A1996-39 | amendments by A1996-39 |
| R2 (RI) 27 Feb 2008 | 30 June 1997– 30 Nov 1997 | A1996-39 | reissue of printed version |
| R2A 27 Feb 2008 | 9 Dec 1998– 16 Sept 1999 | A1998-54 | amendments by A1997-74 and A1998-54 |
| R2B 27 Feb 2008 | 17 Sept 1999– 4 Dec 1999 | A1999-55 | amendments by A1999-55 |
| R2C 27 Feb 2008 | 1 Jan 2000– 22 June 2000 | <u>A1999-82</u> | amendments by A1999-55 and A1999-70 |

| Republication No and date | Effective | Last amendment made by | Republication for |
|----------------------------------|-------------------------------|-------------------------------|--|
| R2D 27 Feb 2008 | 23 June 2000– 30 Dec 2000 | A1999-82 | amendments by A1999-82 |
| R2E 27 Feb 2008 | 31 Dec 2000– 11 Sept 2001 | A2000-77 | amendments by A2000-77 |
| R3 12 Sept 2001 | 12 Sept 2001– 12 Sept 2001 | A2001-44 | amendments by A2001-44 |
| R4 24 Apr 2002 | 13 Sept 2001– 27 May 2002 | A2001-57 | amendments by A2001-57 |
| R5 29 May 2002 | 28 May 2002– 16 Sept 2002 | A2002-11 | amendments by A2002-11 |
| R6 17 Sept 2002 | 17 Sept 2002– 30 June 2003 | A2002-30 | amendments by A2001-44 as amended by A2002-30 |
| R7* 1 July 2003 | 1 July 2003– 11 Dec 2003 | A2003-30 | amendments by A2003-30 |
| R8 12 Dec 2003 | 12 Dec 2003– 18 Dec 2003 | A2003-62 | amendments by A2003-62 |
| R9 19 Dec 2003 | 19 Dec 2003– 12 Apr 2004 | A2003-62 | amendments by A2003-56 |
| R10 13 Apr 2004 | 13 Apr 2004– 30 June 2004 | A2004-9 | amendments by A2004-9 |
| R11 1 July 2004 | 1 July 2004– 4 Aug 2004 | A2004-28 | amendments by A2004-28 |
| R12 5 Aug 2004 | 5 Aug 2004– 1 June 2005 | A2004-29 | amendments by A2004-29 |
| R13 2 June 2005 | 2 June 2005– 6 July 2005 | A2005-20 | amendments by A2005-20 |
| R14 7 July 2005 | 7 July 2005– 31 Aug 2005 | A2005-20 | amendments by A2004-39 |
| R15 1 Sept 2005 | 1 Sept 2005– 7 Sept 2005 | A2005-42 | amendments by A2005-42 |

Endnotes

6 Uncommenced amendments

| Republication No and date | Effective | Last amendment made by | Republication for |
|--------------------------------------|------------------------------|---------------------------------------|------------------------------|
| R16 8 Sept 2005 | 8 Sept 2005– 22 Nov 2005 | A2005-44 | amendments by A2005-44 |
| R17 23 Nov 2005 | 23 Nov 2005– 31 Dec 2005 | A2005-53 | amendments by A2005-53 |
| R18 1 Jan 2006 | 1 Jan 2006– 30 June 2006 | A2005-53 | commenced expiry |
| R19 1 July 2006 | 1 July 2006– 8 Sept 2006 | A2005-53 | commenced expiry |
| R20 9 Sept 2006 | 9 Sept 2006– 11 Apr 2007 | A2005-53 | commenced expiry |
| R21 12 Apr 2007 | 12 Apr 2007– 10 July 2007 | A2007-3 | amendments by A2007-3 |
| R22 11 July 2007 | 11 July 2007– 24 Oct 2007 | A2007-16 | amendments by A2007-16 |
| R23 25 Oct 2007 | 25 Oct 2007– 22 Nov 2007 | A2007-31 | amendments by A2007-31 |
| R24 23 Nov 2007 | 23 Nov 2007– 30 Sept 2009 | A2007-37 | amendments by A2007-37 |
| R25* 1 Oct 2009 | 1 Oct 2009– 16 Dec 2009 | A2009-28 | amendments by A2009-28 |
| R26 17 Dec 2009 | 17 Dec 2009– 17 Apr 2011 | A2009-49 | amendments by A2009-49 |

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

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|---|
| Public Sector Management Amendment Act 2011 A2011-1 s 29 |
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| | |
|-----------|-----------------------------------|
| 29 | Maternity leave Part 8 |
|-----------|-----------------------------------|

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