

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**PUBLIC SECTOR MANAGEMENT AMENDMENT BILL 2000**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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CHIEF MINISTER**

## OUTLINE

This Bill amends the *Public Sector Management Act 1994* (the Act) to set in place new discipline and inefficiency arrangements and new rights of review in relation to discipline and inefficiency, promotions and other employment decisions in the ACT Public Service. This Bill also amends the *Fire Brigade (Administration) Act 1974* to apply the new discipline and inefficiency arrangements and new rights of review in relation to discipline and inefficiency, promotions and other employment decisions to staff employed under the *Fire Brigade (Administration) Act 1974*.

The Bill features a simplified system of managing misconduct and inefficiency that is focused on resolving matters in the workplace. The amendments set in place the rights of ACT Public Service employees to seek reviews by the Chief Executive of employment related decisions, with a second tier procedural review by the Commissioner for Public Administration.

Since the creation of the separate ACT Public Service in 1994, the Act has tied the ACT Public Service to review of employment related decisions under the *Commonwealth Merit Protection (Australian Government Employees) Act 1984* (the Merit Protection Act). The Commonwealth has repealed the Merit Protection Act, providing new arrangements with a greater emphasis on agency specific procedures.

The *Public Sector Legislation Amendment Act 1989* preserved the old arrangements for the ACT Public Service until 31 December 2000. Therefore, new arrangements for the ACT Public Service are required by that date.

The arrangements proposed by this Bill remove links to repealed Commonwealth legislation and set in place procedures better suited to the ACT Public Service. Most ACT Public Service agencies have already introduced new arrangements through Certified Agreements that reflect the approach preferred by staff and unions in particular agencies. As Certified Agreement provisions will in most cases, override inconsistent ACT laws, the rights and procedures in this Bill will apply only in the absence of specific arrangements in Certified Agreements.

The Bill provides a broad framework of rights and principles with minimal procedural prescription. The procedural framework will be established under the Public Sector Management Standards and agency level procedures.

The Bill also provides that Chief Executives have decision-making responsibility in relation to discipline and inefficiency matters. This is supported by appropriate natural justice protection for employees and a new requirement that action taken must be proportionate to the degree of misconduct or inefficiency concerned.

The new discipline arrangements link, as now, to breaches of section 9 of the Act (code of ethics). Wilful inefficiency is introduced as a further ground for misconduct.

The new review arrangements replace the existing tri-partite appeal panels (discipline, inefficiency, redundancy, retirement and promotion) and external grievance review with a simplified two tiered review process.

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ACT Public Service employees will have the right to seek review of employment-related decisions by Chief Executives. A second stage review is available through the Commissioner for Public Administration on procedural grounds. The powers of the Commissioner will be recommendatory. The primary responsibility for determining employment-related matters rests with Chief Executives, with the Commissioner supporting fair decision making.

The Bill maintains a three person panel for review of promotion decisions. The panel will provide recommendations to Chief Executives on the relative merits of promotion decisions. The panel will be comprised of a convenor nominated by the Commissioner, a person nominated by the Chief Executive and an independent employee. The Public Sector Management Standards will provide a process for maintaining appropriately qualified panel members.

Staff employed under the *Fire Brigade (Administration) Act 1974* have different discipline and review arrangements. It is now proposed to extend the disciplinary and inefficiency and review framework for the rest of the ACT Public Service to those staff. As with other agencies, there would be potential to reflect local operational issues through enterprise bargaining arrangements.

Technical changes to the temporary employment provisions under the Act are also made to allow a Chief Executive to engage part-time apprentices for periods longer than the usual limit of five years. Changes are also made to allow a Chief Executive to re-engage a former temporary employee for the specific purpose of undertaking a compensation rehabilitation program without the need to first consider permanent officers.

### **Financial implications**

New arrangements adopted under Certified Agreements have already streamlined procedures in many agencies. Resources that are currently directed by agencies toward meeting the costs of Merit Protection Agency services would meet the future costs of reviews by the Commissioner for Public Administration.

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PART 1 – PRELIMINARY

<b>Introduction</b>	The clause sets out the Bill's title, date of commencement and operations.
<b>Name of Act and commencement</b> Clauses 1 and 2	These clauses are formal requirements. They refer to the name of the Act, and the commencement of the Bill, which is to be on 1 January 2001.
<b>Act amended</b> Clause 3	This Act amends the <i>Public Sector Management Act 1994</i> .
<b>Interpretation</b> Clause 4	<p>Clause 4 is an interpretation clause.</p> <p>Section 3 of the Act is amended by inserting in subsection 3(1) the following definitional links.</p> <p><i>disciplinary action</i> is defined in subsection 183(1); <i>inefficiency action</i> is defined in subsection 182(1); <i>inefficient</i> is defined subsections 178(1), (2); <i>misconduct</i> is defined in section 179; <i>promotion decision</i> is defined in subsection 234(3); <i>relevant classifications</i> is defined in section 234(2); <i>relevant offence</i> is defined in section 188; and <i>request for review</i> is defined in subsection 226(1).</p> <p>Section 3 is also amended by inserting the following definition of a <i>detached officer</i>. A <i>detached officer</i> is defined as an officer who is not performing the duties of an office, and is either employed by the Territory, employed by another person or body, or engaged in autonomous employment or in partnership with other person/s. A detached officer is also an officer who has taken a leave of absence, (other than recreational or sick leave) and is not performing the duties of an office.</p>
<b>Repeal</b> Clause 5	Sections 84 to 87, 92, 102 to 105 and 147 are repealed.
<b>Substitution</b> Clause 6	Part 9 dealing with <i>Discipline Arrangements</i> is repealed and substituted with a new <i>Part 9 – Inefficiency and Misconduct</i> .

**PART 9 - INEFFICIENCY AND MISCONDUCT**

***Division 9.1 – Interpretation***

<b>Introduction</b>	<p>This Part provides interpretations and new arrangements in relation to misconduct and inefficiency in the ACT Public Service.</p> <p>A Chief Executive should apply action under this Part to officers and temporary employees engaged under Division 7 of Part V for a fixed term of not less than 12 months under the new section 192. A Chief Executive has the discretion to apply this part to probationary officers, casual and temporary employees engaged for less than 12 months.</p>
<b>Inefficiency Section 178</b>	<p>New section 178 defines the term inefficiency as failing to attain or maintain the appropriate work standard. It also sets out the material that would be considered when determining whether an officer is inefficient. This section requires that an assessment of inefficiency must take into account the nature of the job specifications and duty statement. It is also preferable, but not necessary to look at requirements for similar jobs.</p>
<b>Misconduct Section 179</b>	<p>New section 179 defines the term misconduct as being a breach of Section 9 of the Act (code of ethics).</p> <p>This section includes wilful inefficiency as a ground for misconduct. Wilful inefficiency may arise where an officer fails to attain or maintain the appropriate standard and the failure is considered to be within the control of the officer. There may be evidence of wilful inefficiency where a person has attained and maintained the appropriate standards of efficiency for a reasonable period, following earlier inefficiency processes, but their performance subsequently declines again without significant mitigating circumstances.</p>
<b>Meaning of relevant chief executive Section 180</b>	<p>New section 180 defines the term <i>relevant chief executive</i> for the purposes of this Part.</p> <p>For the purposes of action under this Part, a <i>relevant chief executive</i> is the Chief Executive employed at the time when the disciplinary or inefficiency action is taken.</p>
<b>Presumption that an action is not taken under this Part Section 181</b>	<p>New section 181 deals with an action taken by a Chief Executive, which could have been taken under this Part, but could also have occurred under another law or agreement. If a Chief Executive does not specify that an action is being taken under this Part, it is presumed that it was actioned under the other law or agreement.</p>

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*Division 9.2 – Powers of the chief executive*

<b>Inefficiency action Section 182</b>	New section 182 sets out the range of actions available to Chief Executives upon determining that an officer is inefficient. Subsection 182(2) requires Chief Executives to ensure that action taken in relation to officers is reasonable and proportionate to the degree of inefficiency. Under subsection 182(3) Chief Executives are also required to comply with this Act, the Management Standards, any relevant procedural directive of the Commissioner and the principles of natural justice when taking action.
<b>Disciplinary action Section 183</b>	New section 183 sets out the range of actions available to Chief Executives upon determining that an officer is guilty of misconduct. Subsection 183(2) requires Chief Executives to ensure that action taken in relation to officers is reasonable and proportionate to the degree of misconduct. Under subsection 183(3) Chief Executives are also required to comply with this Act, the Management Standards, any relevant procedural directive of the Commissioner and the principles of natural justice when taking action.
<b>Investigations into misconduct Section 184</b>	<p>New section 184 deals with who may conduct investigations into misconduct under this Part. In particular, subsection 184(1) requires that the investigation not be conducted by individuals who made the allegation or were otherwise involved in the allegation.</p> <p>Subsection 184(2) provides that a Chief Executive may appoint any individual or body to conduct the investigation if that is desirable to avoid conflicts of interest or for any other reason, provided that confidentiality can be maintained.</p> <p>Subsection 184(3) limits the liability of individuals and bodies, appointed under subsection 184(2), for actions undertaken in good faith by the person who requested the review.</p>
<b>Suspension from duties during investigation Section 185</b>	<p>New section 185 provides the authority for a Chief Executive to suspend an officer charged with a criminal offence or suspected of misconduct during an investigation if it is in the overall interests of the Service. This section also deals with the terms of the suspension and the obligations of Chief Executives to review suspensions at reasonable intervals.</p> <p>In particular, subsections 185(3) and 185(5) allow flexibility for the Chief Executive to suspend officers on full salary or reduced salary (including without salary) or approve periods of leave for an officer from available entitlements. Reduction in salary does not affect accrual of entitlements and leave granted is at the normal rate of pay for the leave.</p>

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**Suspension from  
duties during  
investigation  
Section 185  
(Cont)**

Subsection 185(4) requires that if an officer is subsequently found not guilty of misconduct or a criminal offence, and they have been granted leave during suspension, the officer is entitled to have this leave re-credited. The re-crediting would not apply to sick leave since the officer's fitness for duty is not contingent upon the outcomes of disciplinary action.

Subsection 185(6) authorises an officer who has salary reduced to engage in paid employment outside the ACT Public Service. Subsection 185(7) requires the return to an officer of salary deducted during suspension, if the officer is subsequently found not to be guilty of misconduct or an offence.

Subsection 185(8) sets out that unless otherwise determined by the relevant Chief Executive, time on suspension does not count as service for any purposes if an officer is found guilty of misconduct or a criminal offence and subsequently dismissed as a result of the misconduct or criminal offence.

**Procedure for  
action under this  
Part  
Section 186**

New section 186 requires that a Chief Executive give an officer written notice of the decision to suspend, or to take disciplinary or inefficiency action. This section also requires the Chief Executive to advise the officer in writing of the reasons for the suspension, or action, and the date on which the suspension or action will take effect, and also provide the officer with an opportunity to be heard. This procedure must apply unless the Chief Executive considers it impracticable or otherwise inappropriate in the circumstances.

**Reinstatement  
after dismissal  
Section 187**

New section 187 allows the relevant Chief Executive to reinstate an officer after dismissal (including retirement for inefficiency) and also sets out the terms under which the reinstatement should occur.

In particular, subsection 187(1) provides the authority for the relevant Chief Executive to effect the reinstatement. Subsection 187(2) provides for the minimum terms of the reinstatement unless otherwise ordered by a court or tribunal or agreed with an officer (such as in an out of court settlement). In the absence of any order or agreement, the Chief Executive must reinstate the officer on the same terms as before the dismissal. The Chief Executive must also consider the officer to have been on leave without pay (to count as service) in the period between the dismissal and the reinstatement.

Subsection 187(3) provides for reinstatement where ordered by a court or tribunal.

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**Reinstatement after dismissal**  
**Section 187**  
**(Cont)**

Subsection 187(4) defines the terms *dismiss*, *dismissed officer* and *relevant chief executive*. For the purposes of this section, *dismiss* means the action of dismissal or retirement for misconduct or inefficiency and *dismissed officer* means a former officer who was dismissed. The term *relevant chief executive* means that for a dismissed officer, it is the Chief Executive who dismissed the officer who has the power and responsibility to reinstate.

***Division 9.3 – Effect of criminal charges and imprisonment***

**When an offence is relevant**  
**Section 188**

New section 188 defines the term *relevant offence* as being an alleged offence which may reasonably be expected to adversely impact upon the interests of the Service, taking into account the circumstances and seriousness of the offence, and its relevance to the duties of the officer.

**Officer must report relevant criminal charges**  
**Section 189**

New section 189 requires that officers inform their Chief Executive if they are charged in relation to a relevant offence.

**Effect of conviction of an officer**  
**Section 190**

New section 190 sets out that if an officer is subsequently found guilty of the offence, regardless of whether a conviction is recorded or not, an officer must provide to the Chief Executive a written statement about the offence within 5 working days of the finding. The Chief Executive may take disciplinary action as if the officer were guilty of misconduct.

**Effect of imprisonment of an officer**  
**Section 191**

New section 191 sets out the arrangements to apply where an officer is imprisoned. Subsection 191(7) defines the term *custody* as awaiting trial for an offence, or following conviction for an offence, so that the officer is prevented from attending work. This section also sets out the treatment of officers while in custody.

In particular subsections 191(1) – 191(3) require that where the officer has not been dismissed in relation to an offence, they should be taken to be on leave without pay not to count as service while in custody unless the Chief Executive determines that the period should count as service. However, this period in custody does not break their continuity of service.

Subsections 191(4) and 191(5) require that an officer may not be suspended from duty while in custody and that suspension will cease during any period where the officer is in custody and resume (unless suspension is lifted) upon release from custody.

Subsection 191(6) allows a Chief Executive to approve salary payments or paid leave to an officer in custody, on the grounds of financial hardship, subject to any requirements of the Management Standards.



***Division 9.4 – Application of Part to certain individuals***

**Application of Part 9 to certain employees**  
Section 192

New section 192 sets out that action taken under this Part may be applied to long term temporary employees (persons engaged under Division 7 of Part 5 for a fixed term of at least 12 month) as if they were officers.

**Application of Part to detached officers**  
Section 193

New section 193 sets out that a Chief Executive may take disciplinary action under this Part against a detached officer as if the detached officer were an officer. This section allows a Chief Executive to take disciplinary action in relation to misconduct that occurred before the officer became detached. It also allows a Chief Executive to take disciplinary action in relation to conduct that brings the Service into disrepute, after the officer became detached, as if it were misconduct.

Subsection 193(3) applies the provisions of Division 9.3 – “Effect of criminal charges and imprisonment” to detached officers as if they were officers. It also provides Chief Executives with the power to reinstate a dismissed detached officer if action was taken under this Part.

Subsection 193(4) defines the term *relevant chief executive* in relation to a detached officer for this section. The *relevant chief executive* is the Chief Executive immediately before the officer became detached.

**Substitution**  
Clause 7

Part 11 dealing with the *Review of Certain Decisions and Investigations of Grievances* is repealed and the following part *Review of Employment Decisions* is substituted.

**PART 11 – REVIEW OF EMPLOYMENT DECISIONS**

***Division 11.1 – Interpretation***

**Introduction**

This Part provides interpretations and new arrangements in relation to the review of employment decisions.

**Definitions for Part 11**  
Section 223

New section 223 defines the terms *relevant chief executive* and *public employee* for the purposes of this Part.

For the purposes of action under this Part, the *relevant chief executive* in relation to an employee who is seeking review of a decision means the Chief Executive with responsibility for making the decision.

For the purposes of this Part, a *public employee* does not include a Chief Executive or Executive. This means that all officers and non-Executive temporary and casual employees may have rights of review under this Part unless otherwise specifically restricted to officers.

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**Failure to decide in a reasonable time treated as a decision to refuse**  
Section 224

New section 224 provides that a failure to respond to a request within a reasonable time frame may be considered a refusal of that request. For example, a failure by a Chief Executive to undertake a review (other than in relation to an excluded matter under section 228) at the request of an employee within a period that is reasonable in the circumstances would be considered a refusal to review the decision.

### ***Division 11.2 - Internal review of decisions by chief executive***

**Statement of reasons for a decision**  
Section 225

New section 225 requires the Chief Executive to provide an employee, on request, with a statement of reasons in relation to a decision affecting the employee's employment as soon as practicable.

**Right of internal review**  
Section 226

New section 226 sets out the rights of employees to seek review of decisions in relation to their employment following a written request to the Chief Executive that addresses the statement of reasons for the decision. This means that employees must first obtain a statement of reasons before requesting a review unless the reasons were provided as part of the original decision. This section also requires that Chief Executives review decisions and confirm, vary or rescind the decisions subject to section 228 and section 231.

**Decision has effect while under review**  
Section 227

New section 227 requires that an employee comply with the decision pending the outcome of review unless the Chief Executive temporarily sets aside the decision until the review is completed.

**Excluded decisions**  
Section 228

New section 228 sets out employment related decisions that are not subject to review under this Division, including those decisions which are not subject to review for certain categories of employees.

Subsection 228(1) provides that people who unsuccessfully apply to be appointed or engaged as public employees do not have a right to review under this Division.

Subsection 228(2) provides that a Chief Executive may decline a request for review, if an employee has previously requested a review.

Subsection 228(3) sets out the employment related decisions for which an employee may not seek review. However, where a further decision arises from the initial excluded decision that directly relates to the employee's employment this may be subject to review.

For example, a decision to abolish an administrative unit is not subject to review, but actions subsequent to that change may be subject to review.

Subsection 228(3) also excludes review of the nature of conditions of employment set out under workplace agreements. However, decisions made pursuant to those conditions may be reviewable.

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**Excluded  
decisions**  
Section 228  
(Cont)

Subsection 228(4) defines the term *workplace agreements* as an industrial agreement such as a Certified Agreement, Australian Workplace Agreement or Award under the *Workplace Relations Act 1996* (Cwlth).

Subsection 228(5) requires a Chief Executive who refuses a review request because the decision is excludable must give reasons why the decision is considered excludable.

**The person who  
conducts a  
review**  
Section 229

New section 229 deals with who may conduct a review under this Part. In particular, subsection 229(1) requires that a review must not be undertaken by the original decision maker, or by a person who made a recommendation to the individual who made the original decision.

Despite subsection (1), subsection 229(2) allows that the person who made the original decision may confirm, vary or rescind the decision following a review.

Subsection 229(3) provides that a Chief Executive may appoint any individual or body to conduct the review to avoid a conflict of interest or for any other reason as long as confidentiality can be maintained.

Subsection 229(4) limits the liability of individuals and bodies, appointed under subsection 229(3), for actions undertaken in good faith by the person who requested the review.

**Procedure for  
review**  
Section 230

New section 230 sets out the minimum procedural arrangements which apply to reviews by the Chief Executive, while allowing flexibility for Chief Executives to develop agency level procedures.

In particular, subsections 230(5) and 230(6) require the Chief Executive conduct the review as informally as possible and in a manner consistent with a fair and proper consideration of the issues. The Chief Executive must also comply with this Act, the Management Standards, any procedural directive issued by the Commissioner and the principles of natural justice in conducting the review.

Subsection 230(3) sets out the time limit available to employees to provide information required by the Chief Executive, following a request for review of a decision. The period available to provide information is 14 days, unless the Chief Executive otherwise agrees to another timeframe.

Subsection 230(4) provides that employees who, in the opinion of the Chief Executive, would be affected by the outcome of a review should be involved in the review.

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**When the chief executive may refuse to review a decision**  
Section 231

New section 231 sets out the circumstances where a Chief Executive may refuse to review a decision.

In particular, the Chief Executive may refuse a request where it falls outside the prescribed timeframes. The prescribed timeframes are after 14 days (for promotional decisions and directions to act in higher classifications) and 28 days (for all other decisions).

Paragraphs 231(1)(b), (c), (d) and (e) provide that a Chief Executive may refuse to review a decision in certain circumstances. These circumstances include if the employee has applied to a court or tribunal in relation to the decision, or if the matter may be more appropriately dealt with by another forum. Requests that do not sufficiently relate to, or impact upon the individual who requested the review, and requests that lack substance or are otherwise unreasonable may also be refused.

Subsection 231(2) requires that if a request for review is refused, the Chief Executive must provide the employee with a written statement of reasons for refusing to review the decision.

**Withdrawal of request for review**  
Section 232

New section 232 sets out the rights of an employee to withdraw a request for review at any time before the matter is determined by the Chief Executive.

**Lapse of request for review**  
Section 233

New section 233 sets out circumstances where a request for a review will lapse, unless otherwise determined by the Chief Executive.

In particular, paragraph 233(1)(a) provides that a review request will lapse if the employee does not provide information required by the Chief Executive under section 230, within 14 days.

Paragraphs 233(1)(b) and (c) also provide that a review will lapse if the employee's employment is terminated, unless the request relates directly to a decision to terminate the employee's employment. Unless otherwise determined by the Chief Executive, review requests also lapse on the employee's death.

Subsection 233(2) defines the term *termination decision* as a decision that relates to, or is part of the circumstances of, a public employee's termination of employment.

### ***Division 11.3 – Review of certain promotion decisions***

**Introduction**

This Division sets out the rights of officers, Chief Executive responsibilities and related administrative arrangements in relation to the review of certain promotion decisions.

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**Application of  
Division 11.2  
Section 234**

New section 234 varies the general review right in relation to promotion decisions under Division 11.2 with a specific review right for certain promotion decisions. In particular, employees who wish to seek a review of a certain decision to promote an officer to a prescribed classification may seek a review under this Division. The decisions dealt with under this Division are those to promote an officer to a prescribed classification, where the officer seeking the review had also sought to be promoted to the classification. Where the decision relates to an un-advertised position at a relevant classification, an officer may seek a review without having sought the original promotion.

Subsection 234(2) provides that the Management Standards may set the relevant classifications to apply to this section which may differ according to agency. It is proposed that the current threshold for these decisions (up to ASO 6 or equivalent) will be reflected in the Public Sector Management Standards. This means promotions up to and including ASO 6 or equivalent will be reviewed by promotion review panels. Promotions above this level (excluding Executives) are reviewable by Chief Executives.

Subsection 234(3) defines the term *promotion decision* as a decision to promote an officer to employment at a relevant classification, or to appoint a Commonwealth officer at a higher classification than their classification as a Commonwealth officer.

**Grounds for  
review of a  
promotion  
decision  
Section 235**

New section 235 requires that a Chief Executive must review a promotion decision under this Part only on the basis of the relative efficiency of the officers involved in the disputed decision.

**Appointment of  
review panel  
Section 236**

New section 236 sets out the requirement for a Chief Executive to appoint a review panel to make recommendations regarding the relative efficiency of the officers involved in the disputed decision.

Subsection 236(2) and 236(3) set out the required composition of review panel and the requirement to comply with guidelines set by the Management Standards in appointing the review panel members.

**Conduct of  
review panel  
Section 237**

New section 237 sets out the minimum procedural requirements for review panels in determining the relative efficiency of the officers involved in the disputed promotion decision, including a requirement to comply with the Act, the Management Standards, any procedural directive of the Commissioner and the principles of natural justice.

Subsection 237(1) gives the review panel the authority to seek evidence from employees and interview them if necessary.

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**Conduct of  
review panel  
Section 237  
(Cont)**

Subsection 237(2) establishes that only those parties who requested a review of the promotion decision are considered relevant applicants for the purposes of review. This section also requires the panel to advise the Chief Executive of a recommendation, based upon the relative efficiency of the officers involved, as to whether the decision should be upheld or overturned, or that the selection process should be started anew. The panel should conduct the review as informally as possible and in a manner consistent with a fair and proper consideration of the issues.

**Commissioner  
and panel  
members not  
liable to the  
employee  
Section 238**

New section 238 attaches the liability to the Chief Executive's agency, and excludes any liability attaching to the Commissioner and panel members for actions in good faith and without negligence.

### ***Division 11.4 – Procedural review by the commissioner***

**Right of  
procedural  
review  
Section 239**

New section 239 sets out the rights of an employee to seek a review by the Commissioner on procedural grounds if the employee is dissatisfied with the outcome of an internal review or if an internal review is refused (including a failure to act on a request for internal review within a reasonable period).

Upon seeking a review by the Commissioner, the employee must outline why the procedure of the internal review, or the decision arising from the internal review, was not fair.

Subsections 239(4) and 239(5) require the Commissioner to review the procedure by which the original review was conducted and the decision was made. If the Commissioner considers the procedure was not fair, and the decision should be reconsidered in whole or in part, he or she must make appropriate recommendations to the Chief Executive.

**When the  
commissioner  
may refuse  
procedural  
review  
Section 240**

New section 240 sets out the circumstances where the Commissioner may refuse to review a decision. The Commissioner may refuse a request where the Commissioner or a person nominated by the Commissioner has conducted any part of the original review. The Commissioner should not refuse a request by reason of involvement by nominating a convenor or independent employee.

The Commissioner may also refuse to review a decision if it falls outside the prescribed timeframe. The prescribed timeframe is 28 days after the employee was notified of the decision.

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<b>When the commissioner may refuse procedural review</b> Section 240 (Cont)	Paragraphs 240(1)(c), (d) and (e) provide that a Commissioner may refuse a review request if the employee has applied to a court or tribunal in relation to the decision or if the matter may be more appropriately dealt with by another forum. Requests that are considered frivolous, vexatious, lacking substance or should not be heard for some other compelling reason may also be refused.  Subsection 240(2) requires that if a request for review is refused, the Commissioner must provide the employee with a written statement of reasons outlining the refusal to review the decision.
<b>Further amendments</b> Clause 8	The Act is further amended as set out in Schedule 1.
<b>Consequential amendments to the Fire Brigade (Administration) Act</b> Clause 9	Schedule 2 makes consequential amendments to the <i>Fire Brigade (Administration) Act 1974</i> to apply the provisions of new Parts 9 and 11 to staff employed under that Act including relevant repeal and modifications.

SCHEDULE 1

FURTHER AMENDMENTS

<b>Introduction</b>	This Schedule contains additional amendments to the <i>Public Sector Management Act 1994</i> incidental to new Parts 9 and 11. The Schedule also contains amendments to temporary employment provisions in sections 106 and 108 of the Act. The items number refer to the amendments in the Schedule.
<b>Subsection 3(1)</b> Item 1.1	The definition of <i>unattached officer</i> is amended to remove an unnecessary reference. A definition of a detached officer is now provided in section 3.
<b>Subsection 3(1)</b> Item 1.2	This repeals the definition of <i>non-appealable promotions</i> subject to the rights of review of promotion decisions under new Part 11. Definitions of <i>director</i> , <i>Merit Protection Act</i> , <i>Merit Protection Agency</i> and <i>Promotion Appeal Committee</i> are also repealed.
<b>Subsections 63(3) and (4)</b> Item 1.3	This removes reference to the repealed section 85 and Part 11, and arrangements in relation to when an appeal lapses. New appeal lapsing arrangements are now contained in section 233.
<b>Paragraph 88(6)(a)</b> Item 1.4	This removes reference to the Merit Protection Agency and instead reflects new roles for the Commissioner for Public Administration and Chief Executive in convening Joint Selection Committees.

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<b>Paragraph 88(7)(a)</b> Item 1.5	This reflects new roles for the Commissioner for Public Administration and the Chief Executive in convening Joint Selection Committees for teachers.
<b>Paragraph 88(9)(b)</b> Item 1.6	This removes references to the repealed sections 84 and 87 and reflects the decisions excluded from review under the new Part 11.
<b>Paragraph 89(4)(a)</b> Item 1.7	This removes references to the Merit Protection Agency and instead reflects new roles for the Commissioner for Public Administration and Chief Executive in convening Joint Selection Committees.
<b>Subsection 89(5)</b> Item 1.8	This removes references to appeal under the repealed sections 84 and 87 and instead reflects the review rights under the new Part 11.
<b>Subsection 89(6)</b> Item 1.9	As above.
<b>Subsection 89(7)</b> Item 1.10	As above.
<b>Subsection 89(9)</b> Item 1.11	This removes references to the Merit Protection Agency and instead reflects new roles for the Commissioner for Public Administration and Chief Executive in convening Joint Selection Committees.
<b>Subsections 91(2) and (3)</b> Item 1.12	This removes reference to prescribed periods for the taking effect of promotion decisions.
<b>Subsection 93(3)</b> Item 1.13	This removes references to the repealed section 84 and reflects circumstances where a request for a review lapses under the new Part 11.
<b>Subsections 98(2), (3) and (11)</b> Item 1.14	This reflects rights of review of decisions under the new Part 11 regarding decisions to transfer or promote an officer to a training office.
<b>Section 99</b> Item 1.15	This removes references to definitions no longer required under the new Part 11. The definition of <i>office</i> has been relocated to new subsection 100(1).
<b>Subsection 100(1)</b> Item 1.16	The definition of <i>office</i> has been relocated from repealed section 99.
<b>Subsection 100(3)</b> Item 1.17	This reflects new arrangements in relation to the review of directions to act in higher classifications under the amended section 101.
<b>Subsection 100(8)</b> Item 1.18	This reflects simplified arrangements for directions to act in higher classifications for 3 months or more.



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<b>Section 101</b> Item 1.19	As above.
<b>Paragraph 106(1)(b)</b> Item 1.20	This allows for a temporary employee injured in the workplace to be re-engaged for the purposes of facilitating an appropriate rehabilitation program. This resolves a current barrier to implementing some rehabilitation programs in accordance with the <i>Safety, Rehabilitation and Compensation Act 1989</i> (Commonwealth).
<b>Subsection 106(1)</b> Item 1.21	As above.
<b>Subsection 108(1)</b> Item 1.22	This allows persons engaged under a prescribed scheme of part-time apprenticeships to be employed for the length of the apprenticeships, which may be longer than 5 years. This implements new part-time apprenticeship arrangements in line with a recent Award.
<b>Paragraph 115(7)(a)</b> Item 1.23	This removes reference to the Merit Protection Act and instead reflects the new Part 11.
<b>Paragraph 115(7)(b)</b> Item 1.24	This removes references to rules of promotions taking effect. The Management Standards will prescribe the taking effect of promotions under the existing section 91(1).
<b>Paragraph 115(7)(c)</b> Item 1.25	This refers to the taking effect of promotions subject to the Management Standards as prescribed under the existing section 91(1).
<b>Subsection 139(1)</b> Item 1.26	This removes the definition of ' <i>appeal committee</i> ' under the Merit Protection Act.
<b>Subsections 139(3), (4) and (5)</b> Item 1.27	This removes references to inefficiency definitions and measures to determine an employee's inefficiency subject to new definitions and measures under new Part 11.
<b>Section 143, heading</b> Item 1.28	This amends the heading of section 143 to specify that action to retire or reduce an officer's classification under this Part is other than in relation to the taking of inefficiency action.
<b>Paragraph 143(1)(b)</b> Item 1.29	This removes reference to the Chief Executive's authority in relation to retiring an officer or reducing an officer's classification because of inefficiency. New Part 11 provides this authority.
<b>Paragraph 143(7)(a)</b> Item 1.30	This removes references to appeals under repealed section 147. New Part 11 provides the review mechanism.

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<b>Paragraphs</b> <b>143(7)(c) and (d)</b> Item 1.31	As above.
<b>Subparagraph</b> <b>144(1)(a)(ii)</b> Item 1.32	This removes reference to the Commissioner's authority in relation to retiring an officer or reducing an officer's classification because of inefficiency. This will not be required under the new Part 11.
<b>Paragraph</b> <b>144(6)(a)</b> Item 1.33	This removes references to appeals under repealed section 147. New Part 11 provides the review mechanism.
<b>Paragraphs</b> <b>144(6)(c) and (d)</b> Item 1.34	As above.
<b>Paragraph</b> <b>222(3)(b)</b> Item 1.35	As above.
<b>Subsection</b> <b>222(4)</b> Item 1.36	This removes a reference to the Merit Protection Act. This will not be required under the new Part 11.
<b>Paragraph</b> <b>251(2)(m)</b> Item 1.37	This removes reference to the old 'grievance and appeal arrangements' and replaces with the new 'dealing with requests for review' in relation to the making of Management Standards.
<b>New Part 14</b> Item 1.38	This inserts the following transitional provisions in the new Part 14 after section 253.

### PART 14 – TRANSITIONAL PROVISIONS

<b>Introduction</b>	This new Part provides transitional arrangements in relation to misconduct and inefficiency processes commenced but not completed at the commencement of this Act and related review rights.
<b>Definitions</b> Section 254	<p>New section 254 defines the terms <i>commencement</i>, <i>former Part 9</i> and <i>former Part 11</i>.</p> <p>Commencement is defined as the time immediately before the commencement of the Public Sector Management Amendment Act 2000, which is to be on 1 January 2001.</p> <p>Former Part 9 and former Part 11 are taken to be as they existed before the commencement of the Public Sector Management Amendment Act 2000.</p>

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<b>Division 3.6 of the Interpretation Act modified</b> Section 255	This Part applies despite repeal, expiry, amendment and modification provisions of the <i>Interpretation Act 1967</i> under Division 3.6.
<b>Limits of the continued application of the former Part 9</b> Section 256	If an investigation has commenced, or disciplinary or inefficiency action has been taken before 1 January 2001 in relation to an officer's conduct, the process must be completed under the former Part 9. If no action or investigation has commenced under the old Part 9, the old Part 9 ceases to apply in relation to the officer's conduct.
<b>Application of new Part 9 to earlier conduct</b> Section 257	Action may be taken under the new Part 9 in relation to conduct occurring before 1 January 2001 only if equivalent grounds existed under the old Part 9. For example, as the requirement to report relevant offences under section 188 is a new requirement, officers are not required to report offences occurring before 1 January 2001, although all other provisions under Division 9.3 will apply in relation to the offence.
<b>Limits of the continued application of the former Part 11</b> Section 258	The appeal rights under the former Part 11 apply only to officers if they have lodged a request for review before 1 January 2001 under the former Part 11, and further action (eg. an appeal) is still available. Access to options under the former Part 11 cease when appeals have been completed and no further right of appeal exists.
<b>Application of new Part 11 to earlier decisions</b> Section 259	Subject to the provisions of section 258, new Part 11 applies to employment decisions made before 1 January 2001. In some circumstances, Chief Executives may have to rescind or vary decisions to ensure compliance with the new provisions.
<b>Schedule 1 and 2</b> Item 1.34	Schedule 1 dealing with modifications and adaptations of the discipline provisions under the former Part 9 in their application to employees is omitted. Schedule 2 dealing with modifications to the Merit Protection Act is omitted.
<b>Renumbering</b>	The numbering system used in the new Parts 9 and 11 is in accordance with the <i>Legislation (Republication) Act 1996</i> but has not been applied to existing Parts of the Act. In the next republication of the Act the numbering system must be adopted throughout.

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SCHEDULE 2

AMENDMENTS TO THE FIRE BRIGADE (ADMINISTRATION) ACT 1974

- Introduction** Schedule 2 amends the *Fire Brigade (Administration) Act 1974* to apply the discipline and inefficiency arrangements under the new Part 9 of the *Public Sector Management Act 1994* (the Act) to staff employed under the *Fire Brigade (Administration) Act 1974*. Schedule 2 will also amend the *Fire Brigade (Administration) Act 1974* to apply the review arrangements under the new Part 11 of the Act to staff employed under the *Fire Brigade (Administration) Act 1974*.
- Section 3  
Item 2.1** This repeals the definition of *board*, *Merit Protection Act*, and *promotion appeal committee* because they have no application under Parts 9 and 11 of the Act.
- Paragraph  
29(3)(c)  
Item 2.2** This reflects rights of review of decisions under the new Part 11 of the Act and removes references to repealed promotion appeal rights under section 33 of the *Fire Brigade (Administration) Act 1974*.
- Paragraph  
29B(7)(b)  
Item 2.3** As above.
- Part 3,  
Division 5 -  
Obligations,  
discipline and  
review.  
Item 2.4** Division 5 of Part 3 dealing with Appeals against promotions is repealed and substituted with a new **Division 5 – Obligations, discipline and review**.
- Obligations of a  
member of the  
brigade  
Section 33  
Item 2.4** This applies section 9 of the Act (code of ethics) to staff employed under the *Fire Brigade (Administration) Act 1974* except as varied by this section.
- Paragraph 33(1)(a) varies the code of ethics so that references to a public employee under the Act are taken to be references to members of the Fire Brigade. Paragraph 33(1)(b) varies the code of ethics to require that references to compliance with the *Public Sector Management Act 1994* are taken to be references to compliance with the *Fire Brigade (Administration) Act 1974*.
- Paragraph 33(2) applies sections 6 to 8 of the Act (Values and principles, General principles of public administration and General principles of management in employment matters) to staff employed under the *Fire Brigade (Administration) Act 1974*.
- Subsection 33(3) applies sections 242 to 250 of the Act to staff employed under the *Fire Brigade (Administration) Act 1974*. These provisions deal with duties and obligations of employees including improper influence and second jobs.
- Subsection 33(4) applies an obligation to comply with the Management Standards relating to Parts 2, 9, 11 and 13 of the Act.

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<b>Inefficiency and misconduct</b> Section 34	<p>This applies new Part 9 of the Act (Inefficiency and misconduct) to staff employed under the <i>Fire Brigade (Administration) Act 1974</i>.</p> <p>Paragraph 34(b) provides that a reference to the relevant Chief Executive under the Act is taken to be a reference to the Chief Executive of the Department of Justice and Community Safety.</p> <p>Paragraph 34(c) varies section 179 of the Act (definition of misconduct) to provide a technical link to section 9 of the Act (the code of ethics) by reference directly from the <i>Fire Brigade (Administration) Act 1974</i>.</p>
<b>Review of employment decisions</b> Section 35	<p>This applies new Part 11 of the Act (Review of employment decisions) to staff employed under the <i>Fire Brigade (Administration) Act 1974</i>.</p> <p>Paragraph 35(c) requires that a reference to the relevant Chief Executive under the Act be a reference to the Chief Executive of the Department of Justice and Community Safety.</p> <p>Paragraph 35(d) varies Part 11 of the Act for staff employed under the <i>Fire Brigade (Administration) Act 1974</i> to provide that a reference to the promotion decision under new Part 11 of the Act is taken to be a reference a promotion decision by the Fire Commissioner.</p> <p>Paragraph 35(e) varies Part 11 of the Act for staff employed under the <i>Fire Brigade (Administration) Act 1974</i> to provide that a review panel assessing relative efficiency is taken to be a reference to the merit requirements under paragraph 19A(2)(b) of the <i>Fire Brigade (Administration) Act 1974</i>.</p>
<b>Parts 4, 5 and 6</b> Item 2.5	<p>Omits Parts 4 (DISCIPLINE), 5 (THE FIRE BRIGADE APPEAL BOARD) and 6 (APPEALS) of the <i>Fire Brigade (Administration) Act 1974</i>.</p>
<b>Sections 77-80</b> Item 2.6	<p>Omits sections 77-80 dealing with Supreme Court appeals, payment of fines and service of notices.</p>