

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Osborne)

Public Sector Management Amendment Bill 2001

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(As presented)

(Mr Osborne)

Public Sector Management Amendment Bill 2001

A Bill for

An Act to amend the Public Sector Management Act 1994

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Public Sector Management Amendment Act 2001*.

2 Commencement

This Act commences on the day it is notified in the Gazette.

3 Act amended

This Act (except section 19, which amends the *Remuneration Tribunal Act 1995*) amends the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994* is amended in the body of the Act and in sch 1.

4 Interpretation

Section 3 (1), new definition

insert

appropriate Legislative Assembly committee, for a purpose under this Act, means—

- (a) a committee of the Legislative Assembly nominated for the purpose by the Speaker of the Legislative Assembly; or
- (b) if no committee has been nominated—the public accounts committee of the Legislative Assembly.

5 Section 3 (1), definition of *Chief Executive*

substitute

chief executive means a person appointed under section 62G (Selection step 4—Ministerial appointment of chief executive).

6 Section 3 (1), definition of *employee*, paragraphs (a) and (b)

omit

7 Section 3 (1), definition of *Executive*

substitute

executive means a person appointed under section 63C (Executives—appointment by chief executive).

8 Section 3 (1), definition of *officer*, paragraph (a)

after

1994;

insert

or

9 Section 3 (1), definition of *officer*

insert

(b) a chief executive; or

(ba) an executive; or

10 Section 3 (1), definition of *part-time office*

omit

33 or

11 Section 3 (1), new definitions

insert

primary chief executive—see section 63M (Redeployment of unattached executives).

responsible Minister, for an administrative unit, means the Minister to whom responsibility for the unit is allocated by notice under section 14 (Ministerial responsibility and functions of administrative units).

SAC means the senior appointments commissioner appointed under section 23A.

senior executive service—see section 62Z (Senior executive service—objects).

unattached chief executive means a chief executive declared to be unattached under section 62Q (2).

5 *unattached executive* means an executive declared to be unattached under section 63L (2).

working days, of a Legislative Assembly committee, means days during which the committee is in session.

12 Part 3, new division 2A

10 *insert*

Division 2A Senior appointments commissioner

23A SAC—appointment

- 15 (1) The Chief Minister may, by notice published in the Gazette, appoint a person to be the senior appointments commissioner (the **SAC**).
- (2) The Chief Minister may appoint the commissioner for public administration (the **CPA**) to be the SAC.
- (3) The SAC holds office for 7 years.
- 20 (4) If the CPA is appointed as the SAC, he or she holds office as SAC for 7 years even if the appointment as CPA ends before that time.
- (5) The SAC is eligible for reappointment for a further term or terms, unless removed from office under section 23H.
- 25 (6) The appointment is subject to the conditions set out in the notice, except as provided in an applicable determination of the remuneration tribunal, or as expressly provided by this Act.

Note SAC remuneration and allowances, and related conditions, are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (i)).

23B SAC appointment—endorsement by Legislative Assembly committee

- 5 (1) Before making an SAC appointment, the Chief Minister must refer the proposed appointment to the appropriate Legislative Assembly committee for endorsement.
- (2) The Chief Minister must not make the appointment—
- (a) unless the appropriate Legislative Assembly committee presents a majority or unanimous report to the Legislative Assembly endorsing the appointment; or
- 10 (b) except on conditions approved in that report (which may differ from those proposed by the Chief Minister).
- (3) The *Statutory Appointments Act 1994* does not apply to the appointment.

23C SAC—functions

- 15 The functions of the SAC are as follows:
- (a) to exercise the responsibilities in relation to chief executives and the senior executive service given to the SAC by this Act;
- (b) to exercise any other responsibilities given to the SAC by this or any other Act;
- 20 (c) to do anything reasonable in relation to the exercise of the responsibilities mentioned in paragraphs (a) and (b).

23D SAC—independence

- (1) In exercising the functions of office, the SAC—
- (a) is not responsible to the Chief Minister or any other Minister;
- 25 and
- (b) must act independently of the Chief Minister and any other Minister.

- (2) However, subsection (1) is subject to—
- (a) section 23F (which makes the SAC responsible to Ministers for the review of the exercise of chief executive functions); and
 - 5 (b) section 23G (which requires the SAC to report to the Legislative Assembly on matters directed by the Chief Minister); and
 - (c) section 62C (4) (which requires the SAC to give proper consideration to advice by a Minister about filling a vacant chief executive office); and
 - 10 (d) any other express provision to the contrary in this or any other Act.

23E SAC—staff

- (1) The SAC may be assisted in the exercise of the functions of office by staff employed under this Act.
- 15 (2) The SAC has the powers of a chief executive in relation to the SAC staff as if the staff were employed in an administrative unit under the SAC's control.
- (3) This Act applies to the SAC and the SAC staff as if references in this Act to an administrative unit included references to the SAC and the SAC staff.
- 20

23F SAC—review of chief executive performance

- (1) The SAC is responsible to the responsible Ministers for the review (either general or specific) of the exercise of the functions of each chief executive under this Act or any other Act.
- 25 (2) The SAC must report on the outcome of any review of a chief executive of an administrative unit to the responsible Minister.

23G SAC—reports

- (1) Within 10 weeks after the end of each financial year, the SAC must give the Chief Minister a report about the exercise of the SAC's

functions during that financial year, including any information the Chief Minister directs (by notice published in the Gazette) .

- 5 (2) Within 6 sitting days after the report is received, the Chief Minister must, present a copy of the report, and any notice of the Chief Minister mentioned in subsection (1), to the Legislative Assembly for reference to the appropriate Legislative Assembly committee.
- 10 (3) If required by reasonable written notice from the appropriate Legislative Assembly committee, the SAC must report to the committee on any issue relating to the exercise of the SAC's functions.

23H SAC—removal from office

- (1) The Legislative Assembly may, by resolution, refer the possible removal from office of the SAC to the appropriate Legislative Assembly committee for inquiry.
- 15 (2) The committee must—
- (a) complete the inquiry within 15 working days after the reference; and
- (b) present a report to the Legislative Assembly on the next sitting day of the Legislative Assembly after the completion of the inquiry.
- 20 (3) The committee must observe the principles of natural justice in the conduct of the inquiry.
- (4) An inquiry report must include a fair record of the SAC's participation in the inquiry and response to the matters raised during the inquiry.
- 25

- (5) The only ground for a recommendation that the SAC be removed from office is if the committee considers that there is just cause.

Examples of just cause for removal

- 5 1 The SAC becomes physically or mentally incapable of exercising the functions of office.
- 2 The SAC is convicted (in Australia or elsewhere) of an offence punishable by imprisonment for 1 year or longer.

Note The examples are fully effective as part of the Act, but they are not exhaustive. See *Interpretation Act 1967*, s 11D.

- 10 (6) If a majority or unanimous inquiry report recommends removal from office, the Legislative Assembly may, by resolution within 3 sitting days after the report is presented to the Legislative Assembly, remove the SAC from office.

23J SAC—suspension pending outcome of removal inquiry

- 15 (1) This section applies if the Legislative Assembly, by resolution, refers the possible removal from office of the SAC to a Legislative Assembly committee for inquiry (under section 23H).

- 20 (2) Unless the reference provides that the SAC is not suspended from office, the SAC is suspended from office from the date of the reference until the earlier of the following days:

- (a) the day the SAC is removed from office; or
- (b) if the SAC is not removed from office—the earlier of the following days:
- 25 (i) the day the committee presents a majority or unanimous report to the Legislative Assembly refusing to recommend removal; or
- (ii) the latest day on which the SAC could have been removed from office.

- 30 (3) The Chief Minister must—
- (a) give a copy of the reference to the SAC, together with a statement of the effect of section 23H and this section; and

- (b) if the SAC is removed from office—give written notice of removal to the SAC; and
 - (c) if the SAC is not removed from office—give written notice of reinstatement to the SAC.
- 5 (4) The Chief Minister must publish the following in the Gazette:
- (a) notice of the reference;
 - (b) a notice of removal from office (under paragraph (3) (b));
 - (c) a notice of reinstatement (under paragraph (3) (c)).

13 Part 3, division 4, heading

10 *omit*

14 Section 27

relocate before section 54A, as section 54AA

15 Sections 28 to 35

omit

15 16 New parts 4A and 4B

insert

Part 4A Employment of chief executives

Division 4A.1 Relationship to Minister

20 62A Chief executives—responsibilities

A chief executive is responsible to the responsible Minister for the following:

- (a) the exercise of the functions of the administrative unit;

- (b) giving advice to the responsible Minister (and other Ministers, if relevant) on matters relating to those functions;
- (c) the conduct of the administrative unit;
- (d) the efficient, effective and economical management of the administrative unit.

62B Chief executives—independence in employment matters

Despite section 62A, a chief executive—

- (a) is not responsible to the responsible Minister in any matter relating to the employment of individuals in the administrative unit, including the making of certified agreements and Australian Workplace Agreements under the *Workplace Relations Act 1996* (Cwlth); and
- (b) must act independently of the Chief Minister and any other Minister in such a matter.

Division 4A.2 Selection principles

62C Chief executive appointments—selection principles

- (1) The SAC, any responsible Minister and the appropriate Legislative Assembly committee must have regard to the considerations mentioned in this section in a decision relating to the filling of a vacancy in an office of chief executive.

Note The different ways in which a vacancy may be filled are as follows:

- reappointment (see s 62K and ss 62E, 62F and 62G)
- appointment of a new chief executive (see div 4A.3)
- transfer (see div 4A.6)
- concurrent appointment of another chief executive (see s 62M).

- (2) A chief executive of an administrative unit must be able to do all of the following:
 - (a) manage the exercise of the functions of the administrative unit;
 - (b) imbue the executives and other employees in the administrative unit with a spirit of service to the public;

- (c) promote efficiency in the administrative unit;
- (d) manage the administrative unit responsibly;
- (e) maintain appropriate standards of integrity and conduct among the employees of the administrative unit;
- 5 (f) administer the administrative unit in accordance with the principles mentioned in section 8 (General principles of management in employment matters).
- (3) Section 65 (Application of merit principle) applies to the filling of a vacancy, but section 65 (1) does not apply to a reappointment, transfer or concurrent appointment.
- 10
- Note* Section 65 provides as follows for all employment in the service (except short-term temporary transfers and transfers at or below level):
- s 65 (1)—all eligible people are to have a reasonable opportunity to apply for vacant positions, and selection is on merit
 - 15 • s 65 (2)—selection is to be without patronage, favouritism or discrimination
 - s 65 (3) and (4)—affirmative action programs are not unlawful under the *Discrimination Act 1991*.
- (4) Any advice given by a responsible Minister to the SAC about the following matters must be given proper consideration, subject to subsection (2), section 65 and the management standards:
- 20
- (a) the filling of a vacancy in an administrative unit;
- (b) a proposal to transfer or concurrently appoint another chief executive (or an unattached chief executive) to the vacant office.
- 25
- (5) A vacancy must not be filled by a former chief executive if the former chief executive was removed from office under section 62N.
- (6) A vacancy must otherwise be filled in accordance with the management standards.

Division 4A.3 Selection process

62D Selection step 1—SAC recommendation of chief executive

- 5 (1) This section applies if there is a vacancy or impending vacancy in an office of chief executive in an administrative unit, unless the vacancy is to be filled by reappointment, transfer or a concurrent appointment.
- Note* This section applies in the following situations:
- 10 • an initial SAC recommendation to fill the vacancy
- if the Minister directs the SAC to reconsider a previous SAC recommendation for appointment or reappointment (see s 62E (4) (Selection step 2—Ministerial approval of chief executive))
- 15 • if the appropriate Legislative Assembly committee refuses to endorse an SAC recommendation approved by the Minister, and the Minister directs the SAC to reconsider the recommendation (see s 62F (4) (b) (Selection step 3—Legislative Assembly committee endorsement of chief executive) and s 62E (4)).
- (2) The SAC must (unless reconsidering a previous recommendation)—
- (a) give the responsible Minister notice of the vacancy; and
- 20 (b) ask the responsible Minister to tell the SAC about anything the responsible Minister wishes the SAC to consider in recommending an appointment to the office (including any potential candidates for the office).
- (3) The SAC may make a written recommendation to the responsible Minister for an appointment to the office, including a report on the selection process and reasons for the recommendation.
- 25 (4) The SAC may recommend a single candidate for appointment, or recommend a number of candidates, in an order or merit, as suitable for appointment.
- 30 (5) The SAC may recommend that 2 or more vacant chief executive offices be concurrently filled by the appointment of a single chief executive.

62E Selection step 2—Ministerial approval of chief executive

- (1) This section applies if the SAC gives the responsible Minister a recommendation—
- 5 (a) for the appointment of a chief executive (under section 62D (Selection step 1—SAC recommendation of chief executive); or
- (b) for the reappointment of a chief executive (under section 62K).
- (2) The responsible Minister may—
- (a) approve the SAC recommendation; or
- 10 (b) if the SAC gives an order of merit—approve the appointment of any of the applicants listed in the order of merit (irrespective of the order given by the SAC); or
- (c) reject the SAC recommendation.
- (3) If the responsible Minister approves the SAC recommendation (under subsection (1) (a) or (b)), the responsible Minister must—
- 15 (a) refer the recommendation to the appropriate Legislative Assembly committee for endorsement, together with notice of the applicant recommended; and
- (b) give written notice of approval to the SAC, together with
- 20 notice of the applicant recommended.
- (4) If the responsible Minister rejects the SAC recommendation, the responsible Minister must give a written direction to the SAC requiring the SAC to reconsider the recommendation under section 62D, indicating anything the responsible Minister wishes the SAC to consider (including any potential candidates for appointment).
- 25

Note The SAC would then be required to consider making a new recommendation to the responsible Minister under s 62D.

62F Selection step 3—Legislative Assembly committee endorsement of chief executive

- 5 (1) This section applies if an SAC recommendation for appointment or reappointment of a chief executive is approved by the responsible Minister (under section 62E (2) or subsection (4) (a) of this section).
- (2) On the reference of the SAC recommendation by the responsible Minister, the appropriate Legislative Assembly committee may, by majority or unanimous report presented to the Legislative Assembly—
- 10 (a) endorse the recommendation as approved by the responsible Minister; or
- (b) refuse to endorse the recommendation as so approved.
- (3) If the committee endorses the recommendation, the responsible Minister must appoint or reappoint the recommended individual under section 62G.
- 15 (4) If the committee refuses to endorse the recommendation, the responsible Minister may—
- (a) if the SAC gave an order of merit, and the responsible Minister initially approved the appointment of an applicant other than that listed as first in the order—approve the appointment of any other applicant listed in the order of merit (irrespective of the order given by the SAC) and refer the revised recommendation back to the Legislative Assembly committee for endorsement under this section; or
- 20 (b) give a written direction to the SAC requiring the SAC to reconsider the recommendation under section 62D, indicating anything the responsible Minister wishes the SAC to consider (including any potential candidates for appointment).
- 25
- 30 *Note* The SAC would then be required to consider making a new recommendation to the responsible Minister under s 62D.

62G Selection step 4—Ministerial appointment of chief executive

- 5 (1) A Minister responsible for an administrative unit may, by notice published in the Gazette, appoint or reappoint a person to a chief executive office, or more than 1 chief executive office.
- (2) The Minister may make an appointment or reappointment only with the endorsement of the appropriate Legislative Assembly committee (under section 62F).
- 10 (3) The *Statutory Appointments Act 1994* does not apply to the appointment.

Division 4A.4 Conditions of employment

62H Chief executives—term of office

- (1) A chief executive holds office for a term of not longer than 5 years stated in the notice of appointment.
- 15 (2) A chief executive is eligible for reappointment (under section 62K) for a further term of not longer than 5 years (stated in the notice of reappointment) at the end of the term of office, and at the end of any further term, unless removed from office under section 62O.

20 *Note* A chief executive may be reappointed only on the recommendation of the SAC (under s 62K). The recommendation must also be approved by the Minister (under s 62E) and endorsed by the appropriate Legislative Assembly committee (under s 62F).

62I Chief executives—other conditions of employment

- 25 (1) The conditions of employment of a chief executive are as agreed between the SAC and the chief executive, except as provided in an applicable determination of the remuneration tribunal, or as expressly provided by this Act (including the management standards).
- 30 (2) However, the Chief Minister must approve the agreed conditions of employment before the chief executive is appointed or reappointed.

Examples of conditions that may be agreed

- hours of work
- annual leave allocation
- discipline procedures
- grievance procedures

Note Chief executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (j)).

Division 4A.5 End of term of office

62J Chief executives—end of term of office

- (1) At the end of a chief executive's term of office, the SAC must—
- (a) recommend the chief executive for reappointment for a further term (under section 62K); or
 - (b) transfer the chief executive to another chief executive office (under section 62L); or
 - (c) declare the chief executive to be unattached (under section 62Q).
- (2) If an SAC recommendation for the reappointment of a chief executive is rejected by the Minister (under section 62E (4)), or the appropriate Legislative Assembly committee refuses to endorse the reappointment (under section 62F (4) (b)), the SAC must—
- (a) transfer the chief executive to another chief executive office (under section 62L); or
 - (b) declare the chief executive to be unattached (under section 62Q).

62K Chief executives—reappointment

The SAC may give a written recommendation to the responsible Minister for the reappointment of a chief executive, including the reasons for the recommendation.

Note The SAC recommendation may be approved or rejected by the responsible Minister (see s 62E (2)):

- If approved, the approval must be referred to the appropriate Legislative Assembly committee for endorsement (see s 62F (3)).
- If rejected, the Minister must direct the SAC to select another candidate (see s 62E (4) and s 62D (Step 1—SAC selection of chief executive)).

Division 4A.6 Transfer

62L Chief executives—transfer

- (1) At the written request, or with the written consent, of the Ministers responsible for the relevant administrative units, the SAC may, by notice published in the Gazette—

- (a) transfer a chief executive from 1 office of chief executive to another; or
- (b) transfer an unattached chief executive into an office of chief executive.

Note Section 62R (Redeployment of unattached chief executives) requires the SAC to seek to transfer an unattached chief executive into a vacant chief executive office as the first priority option for redeploying the unattached chief executive.

- (2) Section 65 (1) (Application of merit principle) does not apply in relation to the transfer.
- (3) A transferred chief executive holds office for a term of not longer than 5 years stated in the notice of transfer.
- (4) The conditions of employment of the chief executive (other than the term of office, and subject to any applicable remuneration tribunal determination) are not affected by the transfer, unless the SAC and the chief executive agree otherwise under section 62I (Chief executives—other conditions of employment).
- (5) However, the Chief Minister must approve any change to the agreed conditions of employment before the transfer is finalised.

Note Chief executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (j)).

Division 4A.7 Concurrent employment

5 62M Chief executives—concurrent chief executive appointments

(1) At the written request, or with the written consent, of the Ministers responsible for the relevant administrative units, the SAC may, by notice published in the Gazette, make a concurrent appointment of a
10 chief executive who holds 1 chief executive office (the *first chief executive office*) to another chief executive office (the *new appointment*).

(2) The chief executive continues to hold the first chief executive office despite the new appointment.

15 (3) The new appointment is for a term of not longer than 5 years stated in the notice of concurrent appointment.

(4) The chief executive is only entitled to be paid remuneration and entitlements for 1 of the chief executive offices.

20 (5) If the remuneration and entitlements for 1 of the chief executive offices are more favourable, the chief executive is entitled to the more favourable remuneration and entitlements.

Note Chief executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (j)).

25 (6) The conditions of employment of the chief executive for the new appointment (other than the term of office, and subject to any applicable remuneration tribunal determination) are the same as for the first chief executive office, unless the SAC and the chief executive agree otherwise under section 62I (Chief executives—
30 other conditions of employment).

- (7) However, the Chief Minister must approve any change to the agreed conditions of employment before the concurrent appointment is finalised.
- (8) In this section—
- 5 (a) a reference to holding a chief executive office includes a reference to acting in a chief executive office; and
- (b) a reference to being appointed to a chief executive office includes a reference to being appointed to act in a chief executive office.
- 10 *Note* A person may be appointed to act in a chief executive office under the *Interpretation Act 1967*, s 28 and s 28A.

Division 4A.8 Removal from office

62N Chief executives—removal from office by Minister

- 15 (1) The responsible Minister may, by notice in the Gazette, remove a chief executive from office for just cause.
- Examples of just cause for removal**
- 1 A chief executive is physically or mentally incapable of exercising the functions of office.
- 20 2 A chief executive is convicted (in Australia or elsewhere) of an offence punishable by imprisonment for 1 year or longer.
- Note* The examples are fully effective as part of the Act, but they are not exhaustive. See *Interpretation Act 1967*, s 11D.
- (2) However, the responsible Minister may remove a chief executive from office only—
- 25 (a) if the SAC gives the responsible Minister a written report recommending the chief executive's removal; and
- (b) if the appropriate Legislative Assembly committee endorses the SAC recommendation by unanimous or majority report presented to the Legislative Assembly under section 62O.
- 30 (3) If the responsible Minister decides to remove a chief executive from office, the responsible Minister must publish the notice of removal

in the Gazette within 7 days after the report endorsing the SAC recommendation is presented to the Legislative Assembly.

62O Chief executives—inquiry into removal from office

- 5 (1) The SAC may give the responsible Minister a written report recommending a chief executive's removal from office.
- (2) On the first sitting day of the Legislative Assembly after receiving the SAC report, the responsible Minister must refer the SAC's recommendation to the appropriate Legislative Assembly committee for inquiry.
- 10 (3) The committee must—
- (a) complete the inquiry within 15 working days after the reference; and
- (b) present a report to the Legislative Assembly on the next sitting day of the Legislative Assembly after the completion of the inquiry.
- 15 (4) The committee must observe the principles of natural justice in the conduct of the inquiry.
- (5) An inquiry report must include a fair record of the chief executive's participation in the inquiry and response to the matters raised during the inquiry.
- 20

62P Chief executives—suspension pending outcome of Assembly inquiry

- 25 (1) This section applies if the SAC gives the responsible Minister a written report (under section 62O (1)) recommending the chief executive's removal from office.
- (2) Unless the SAC directs otherwise under subsection (3), the chief executive is suspended from office from the date of the report until the earlier of the following days (the *end of the suspension period*):
- (a) the day the chief executive is removed from office;

-
- 5 (b) if the chief executive is not removed from office—the earlier of the following days:
- (i) the day the committee presents a majority or unanimous report to the Legislative Assembly rejecting the recommendation;
- (ii) the latest day on which the chief executive could have been removed from office.
- 10 (3) The SAC may direct in the report that the chief executive—
- (a) remain in office until the end of the suspension period; or
- (b) undertake the duties of another office in the service until the end of the suspension period.
- (4) If the SAC makes a direction under subsection (3) (b), the chief executive is taken to be transferred to the office until the end of the suspension period.
- 15 (5) The SAC must—
- (a) give a copy of the SAC report to the chief executive, together with a statement of the effect of this division; and
- (b) if the chief executive is removed from office—give written notice of removal to the chief executive; and
- 20 (c) if the chief executive is not removed from office—give written notice of reinstatement to the chief executive.
- (6) The SAC must publish the following in the Gazette:
- (a) notice of the making of the SAC report;
- (b) a notice of removal from office;
- 25 (c) a notice of reinstatement.

Division 4A.9 Unattached chief executives

62Q Chief executives—unattached officers

- (1) This section applies to a chief executive if—
- 5 (a) at the end of the chief executive's term of office, the chief executive is not reappointed, and is not transferred into another chief executive office; or
- (b) before the end of the chief executive's term of office, the office is vacated or abolished for either of the following reasons:
- 10 (i) the continued exercise of the functions of the office is unnecessary (due to the reorganisation of the service, or for any other reason);
- (ii) a reduction of staff in the administrative unit or the service is necessary because the quantity of work has
- 15 diminished, or is to diminish.
- (2) The SAC may, by notice published in the Gazette, declare the chief executive to be an unattached chief executive.
- (3) The unattached chief executive stops being an unattached chief executive on—
- 20 (a) transfer to a vacant chief executive office or executive office; or
- (b) retirement from the service.

62R Redeployment of unattached chief executives

- 25 (1) Under this section, the SAC must do everything reasonable to assist an unattached chief executive to find a suitable position or engagement either within or outside the service.
- (2) Without limiting subsection (1), the SAC must take the following steps to redeploy an unattached chief executive:

- (a) seek to transfer the unattached chief executive to a vacant office of chief executive (under section 62L);
- (b) if a transfer to a vacant chief executive office is unlikely to be arranged within a reasonable time—assist the chief executive to find employment or an engagement (a *suitable alternative position*) entitling the chief executive to remuneration and entitlements, and other working conditions, comparable with those of the chief executive office last held by the unattached chief executive;
- (c) if, within a reasonable time after the unattached chief executive became unattached, neither a transfer to a vacant chief executive office nor a suitable alternative position can be arranged—seek to arrange the transfer of the unattached chief executive to an executive office (under division 4B.6).
- (3) Until an unattached chief executive is redeployed, or retires, the SAC must assign special functions to the unattached chief executive.
- (4) An unattached chief executive undertaking special functions is engaged on the conditions of employment (including those relating to remuneration and entitlements, but not including the term of office) on which he or she was engaged while last holding an office of chief executive.

62S Unattached chief executives—retirement and special benefits

- (1) An unattached chief executive is retired from the service on a particular day if, by written notice to the SAC, he or she elects to retire from the service on that day.
- (2) The SAC may give written notice (a *special benefits notice*) to an unattached chief executive to the effect that if the unattached chief executive retires from the service within a stated period, he or she will be entitled to a special benefit worked out under the management standards.

- (3) An unattached chief executive who is given a special benefits notice is entitled to a special benefit as stated in the notice if he or she retires from the service within the period stated in the notice.

Division 4A.10 Defective appointments and actions

62T Defects and irregularities of appointment

An appointment of a chief executive, or any other action of the SAC, a Minister or the Chief Minister under this part, is not invalid, and may not be called into question, because of a defect or irregularity in connection with the appointment or action.

Division 4A.11 Chief executives currently engaged under contract

62U Definitions for div 4A.11

In this division:

amending Act means the Act that inserted this division.

commencement means the commencement of this division.

contract chief executive—see section 62V.

62V Application of pt 4A to contract chief executives

This division applies to a chief executive (a *contract chief executive*) who, immediately before the commencement, exercised the functions of a chief executive office under contract under section 28.

62W Chief executive contracts

- (1) This Act (including part 3, division 4 (Chief executives)) as in force immediately before the commencement continues to apply in relation to a contract chief executive despite anything in the amendments to this Act inserted by the amending Act.

- (2) The contract under which a contract chief executive was engaged (as varied, if at all, under this Act) continues in force despite anything in the amendments to this Act inserted by the amending Act.

5 **62X Contract chief executives—end of term of office**

At the end of the term of office of a contract chief executive, this part applies in relation to the contract chief executive in the same way as it applies in relation to a chief executive first appointed under this part.

- 10 *Note* This will allow the contract chief executive to be reappointed. However, if the SAC does not recommend the reappointment of the contract chief executive, or the Minister or the Legislative Assembly rejects an SAC recommendation for reappointment, the contract chief executive will be able to be transferred or declared to be unattached. Under division 4A.9, an unattached chief executive—
- 15 • must be offered assistance to find another position within or outside the service; and
- may be redeployed by transfer to another chief executive office or to an executive office; and
- 20 • may be offered a special benefit to retire.

62Y Expiry (div 4A.11)

This division expires 5 years and 6 months after it commences.

- 25 *Note* *Interpretation Act 1967*, s 42 (Repeal does not end transitional or validating effect etc) will ensure that despite the expiry of this division after 5½ years, its effect will continue beyond that time.

Part 4B Employment of executives

Division 4B.1 Senior executive service

62Z Senior executive service—objects

- 30 The SAC, in consultation with the chief executives, must ensure that the service is staffed with executives (together constituting a *senior executive service*) who—

- 5
- (a) have the ability to manage administrative units at the most senior level; and
 - (b) constitute a unifying force at the most senior levels of the service, by their training and approach to the management of the service.

63 Senior executive service—development

- 10
- (1) The SAC, in consultation with the chief executives, is responsible for developing the senior executive service so that the executives—
 - (a) have ability and integrity; and
 - (b) are imbued with a spirit of service to the public.
 - (2) The SAC, in consultation with the chief executives, is responsible for ensuring that executives are appropriately trained to achieve the highest standards of efficiency and management in the service.

63A Senior executive service—training

- 15
- (1) The SAC is responsible for the provision of appropriate training for—
 - (a) executives in the senior executive service; and
 - (b) officers and employees who, in the SAC's opinion, have the potential for appointment to the senior executive service.
 - 20 (2) The chief executive for an administrative unit must comply with a reasonable request by the SAC for officers and employees in the administrative unit to be made available for training under this section.
 - 25 (3) However, the chief executive need not comply with a request for an officer or employee if compliance would result in the officer or employee being made available for training for more than 15 days in any period of 12 months.

Division 4B.2 Selection principles

63B Executive appointments—selection principles

- 5 (1) The relevant chief executive and the SAC must have regard to the considerations mentioned in this section in any decision relating to the filling of a vacancy in an executive office in an administrative unit.

Note The different ways in which a vacancy may be filled are as follows:

- 10
 - reappointment (see s 63D (2))
 - appointment of a new executive (see s 63C)
 - transfer (see div 4B.6)
 - concurrent appointment of another executive (see s 63J).

- (2) An executive in an administrative unit must be able to do all of the following:
- 15 (a) manage the exercise of the functions of the administrative unit assigned to the executive office;
- (b) imbue officers and employees in the administrative unit with a spirit of service to the public;
- (c) promote efficiency in the administrative unit;
- (d) assist in managing the administrative unit responsibly;
- 20 (e) maintain appropriate standards of integrity and conduct among the officers and employees in the administrative unit;
- (f) assist in administering the administrative unit in accordance with the principles mentioned in section 8 (General principles of management in employment matters).
- 25 (3) Section 65 (Application of merit principle) applies to the filling the vacancy, but section 65 (1) does not apply to a reappointment, transfer or concurrent appointment.

Note Section 65 provides as follows for all employment in the service (except short-term temporary transfers and transfers at or below level):

- 30
 - s 65 (1)—all eligible people are to have a reasonable opportunity to apply for vacant positions, and selection is on merit;

- s 65 (2)—selection is to be without patronage, favouritism or discrimination;
 - s 65 (3) and (4)—affirmative action programs are not unlawful under the *Discrimination Act 1991*.
- 5 (4) A vacancy must not be filled by a former executive if the former executive was removed from office under section 63K.
- (5) A vacancy must otherwise be filled in accordance with the management standards.

Division 4B.3 Appointment

10 **63C Executives—appointment by chief executive**

- (1) The relevant chief executive for an administrative unit may, by notice published in the Gazette, appoint an executive to a vacancy in the senior executive service in the unit.
- (2) The chief executive must—
- 15 (a) consult with the SAC before making the appointment; and
- (b) fully consider anyone nominated by the SAC as suitable and available for appointment.
- (3) The chief executive may appoint 1 executive to fill 2 or more vacant executive offices.
- 20 (4) The relevant chief executive for the administrative unit responsible for Calvary Hospital must not appoint an executive as Chief Executive Officer for the hospital unless Calvary Hospital ACT Incorporated has given written consent.
- 25 (5) The *Statutory Appointments Act 1994* does not apply to an appointment under this section.

Division 4B.4 Conditions of employment

63D Executives—term of office

- (1) An executive holds office for a term of not longer than 5 years stated in the notice of appointment.

- (2) An executive is eligible for reappointment for a further term of not longer than 5 years (stated in the notice of appointment for the further term) at the end of the term of office, and at the end of any further term.

5 **63E Executives—other conditions of employment**

- (1) The conditions of employment of an executive are as agreed between the relevant chief executive and the executive, except as provided in an applicable determination of the remuneration tribunal, or as expressly provided by this Act (including the management standards).

Examples of conditions that may be agreed

- hours of work
- annual leave allocation
- discipline procedures
- 15 • grievance procedures

Note Executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (k)).

- (2) However, the chief executive must consult with the SAC before finalising the agreed conditions of employment.
- (3) The chief executive for the administrative unit responsible for Calvary Hospital may agree to conditions of employment (including any change in those conditions) for the chief executive officer for the hospital only with the prior written consent of Calvary Hospital ACT Incorporated.

Division 4B.5 End of term of office

63F Executives—end of term of office

At the end of a term of office for which an executive is appointed, the chief executive must—

- 30 (a) reappoint the executive for a further term (under section 63C);
or

- (b) transfer the executive to another executive office (under section 63G); or
- (c) arrange the transfer of the executive to an executive office in another administrative unit (under section 63H); or
- 5 (d) declare the executive to be unattached (under section 63L).

Division 4B.6 Transfer

63G Executives—transfer within administrative unit

- (1) The chief executive responsible for an administrative unit may, by notice published in the Gazette—
 - 10 (a) transfer an executive from an executive office in the administrative unit to another executive office in the unit; or
 - (b) transfer an unattached executive, or an unattached chief executive, formerly holding office in the administrative unit into an executive office in the unit.
- 15 (2) The chief executive must consult with the SAC before finalising the transfer.

Note Section 63M (Redeployment of unattached executives) requires the SAC to seek to arrange the transfer of an unattached executive into a vacant executive office as the first priority option for redeploying the unattached chief executive.

63H Executives—transfer between administrative units

- (1) The chief executives responsible for 2 administrative units may, by notice published in the Gazette—
 - 25 (a) transfer an executive from an executive office in either of the administrative units to an executive office in the other; or
 - (b) transfer an unattached executive, or an unattached chief executive, formerly holding office in either of the administrative units into an executive office in the other.

- (2) The chief executives must consult with the SAC before finalising the transfer.

Note Section 63M (Redeployment of unattached executives) requires the SAC to seek to arrange the transfer of an unattached executive into a vacant executive office as the first priority option for redeploying the unattached chief executive.

63I Executives—conditions of employment on transfer

- (1) A transferred executive holds office for a term of not longer than 5 years stated in the notice of transfer.
- (2) The conditions of employment of an executive on transfer within (or into) an administrative unit (other than the term of office, and subject to any applicable remuneration tribunal determination) are not affected by the transfer, unless the relevant chief executive and the executive agree otherwise under section 63E (Executives—other conditions of employment).
- (3) The relevant chief executive must consult with the SAC before finalising any change to the conditions of employment.

Note Executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (k)).

Division 4B.7 Concurrent employment

63J Executives—concurrent executive appointments

- (1) A chief executive in an administrative unit may, by notice published in the Gazette, make a concurrent appointment of an executive who holds 1 executive office in the administrative unit (the *first executive office*) to another executive office in the administrative unit (the *new appointment*).
- (2) The executive continues to hold the first executive office despite the new appointment.
- (3) The new appointment is for a term of not longer than 5 years stated in the notice of concurrent appointment.

- 5 (4) The executive is only entitled to be paid remuneration and entitlements for 1 of the executive offices.
- (5) If the remuneration and entitlements for 1 of the executive offices are more favourable, the executive is entitled to the more favourable remuneration and entitlements.
- Note* Executive remuneration and allowances and related conditions of employment are fixed by determination of the remuneration tribunal (see *Remuneration Tribunal Act 1995*, s 10 (1) (k)).
- 10 (6) The conditions of employment of the executive for the new appointment (other than the term of office, and subject to any applicable remuneration tribunal determination) are the same as for the first executive office, unless the chief executive and the executive agree otherwise under section 63E (Executives—other conditions of employment).
- 15 (7) The chief executive must consult with the SAC before finalising the appointment or any change to the conditions of employment.
- (8) In this section—
- (a) a reference to holding an executive office includes a reference to acting in executive office; and
- 20 (b) a reference to being appointed to an executive office includes a reference to being appointed to act in an executive office.
- Note* A person may be appointed to act in an executive office under the *Interpretation Act 1967*, s 28 and s 28A.

Division 4B.8 Removal from office

- 25 **63K Executives—removal from office**
- (1) The chief executive of an administrative unit may, by notice published in the Gazette, remove an executive in the administrative unit from office for just cause, subject to any procedures under the executive's conditions of employment.

Examples of just cause for removal

1 An executive is physically or mentally incapable of exercising the functions of office.

5 2 An executive is convicted (in Australia or elsewhere) of an offence punishable by imprisonment for 1 year or longer.

Note The examples are fully effective as part of the Act, but they are not exhaustive. See *Interpretation Act 1967*, s 11D.

(2) However, the chief executive must consult the SAC before removing an executive from office.

10 **Division 4B.9 Unattached executives**

63L Executives—unattached officers

(1) This section applies if—

15 (a) at the end of an executive's term of office, the executive is not reappointed, and is not transferred into another executive office; or

(b) before the end of the executive's term of office, the office is vacated or abolished for either of the following reasons:

20 (i) the continued exercise of the functions of the office is unnecessary (due to the reorganisation of the service, or for any other reason);

(ii) a reduction of staff in the administrative unit or the service is necessary because the quantity of work has diminished, or is to diminish.

25 (2) The relevant chief executive may, by notice published in the Gazette, declare the executive to be an unattached executive.

(3) The unattached executive stops being an unattached executive on—

(a) transfer to a vacant executive office or other office; or

(b) retirement from the service.

63M Redeployment of unattached executives

- 5 (1) Under this section, the SAC and the chief executive in the administrative unit in which the unattached executive last held office (the *primary chief executive*) must do everything reasonable to assist an unattached executive to find a suitable position or engagement within or outside the service.
- (2) Without limiting subsection (1), the SAC must take the following steps to redeploy an unattached executive:
- 10 (a) seek to arrange the transfer of the unattached executive to a vacant senior executive service office (under division 4B.6);
- (b) if a transfer to a vacant senior executive service office is unlikely to be arranged within a reasonable time—assist the executive to find employment or an engagement (a *suitable alternative position*) entitling the executive to remuneration and entitlements, and other working conditions, comparable with those of the executive office last held by the unattached executive;
- 15 (c) if, within a reasonable time after the unattached executive became unattached, neither a transfer to a vacant senior executive service office nor a suitable alternative position can be arranged—seek to arrange the transfer of the unattached executive to another office in the service.
- 20 (3) Until an unattached executive is redeployed, or retires, the primary chief executive must—
- 25 (a) assign special functions to the unattached executive in the administrative unit; or
- (b) arrange with another chief executive for special functions to be assigned to the unattached executive in another administrative unit.
- 30 (4) The primary chief executive and the other chief executive (if any) involved must consult with the SAC before special functions are assigned to the unattached executive.

- 5 (5) An unattached executive exercising special functions is engaged on the conditions of employment (including those relating to remuneration and entitlements, but not including the term of office) on which the unattached executive was engaged while last holding an executive office.

63N Unattached executives—retirement and special benefits

- (1) An unattached executive is retired from the service on a particular day if, by written notice to the primary chief executive, he or she elects to retire from the service on that day.
- 10 (2) The primary chief executive may give written notice (a *special benefits notice*) to an unattached executive to the effect that if the unattached executive retires from the service within a stated period, he or she will be entitled to a special benefit worked out under the management standards.
- 15 (3) The primary chief executive must consult with the SAC before giving a special benefits notice to an unattached executive.
- (4) An unattached executive who is given a special benefits notice is entitled to a special benefit as stated in the notice if he or she retires from the service within the period stated in the notice.

20 Division 4B.10 Defective appointments and actions

63O Defects and irregularities

- 25 An appointment of an executive, or any other action of a chief executive or the SAC under this part, is not invalid, and may not be called into question, because of a defect or irregularity in connection with the appointment or action.

Division 4B.11 Executives currently engaged under contract

63P Definitions for div 4B.11

In this division:

- 5 *amending Act* means the Act that inserted this division.
commencement means the commencement of this division.
contract executive—see section 63Q.

63Q Application of pt 4B to contract executives

- 10 This division applies to an executive (a *contract executive*) who, immediately before the commencement, exercised the functions of an executive office under contract under section 72.

63R Executive contracts

- 15 (1) This Act (including part 5, division 4 (Engagement of executives)), as in force immediately before the commencement, continues to apply in relation to a contract executive despite anything in the amendments to this Act inserted by the amending Act.
- (2) The contract under which a contract executive was engaged (as varied, if at all, under this Act) continues in force despite anything in the amendments to this Act inserted by the amending Act.

20 63S Contract executives—end of term of office

At the end of the term of office of a contract executive, this part applies in relation to the contract executive in the same way as it applies in relation to an executive first appointed under this part.

- 25 *Note* This will allow the contract executive to be reappointed. If the contract executive is not reappointed, however, this part will provide for the contract executive to be declared to be unattached. Under division 4B.9, any unattached executive—

- must be offered assistance to find another position within or outside the service; and

- may be redeployed by transfer to another office in the senior executive service, or, failing that, to another office in the service; and
- may be offered a special benefit to retire.

5 **63T Expiry (div 4B.11)**

This division expires 5 years and 6 months after it commences.

Note *Interpretation Act 1967*, s 42 (Repeal does not end transitional or validating effect etc) will ensure that despite the expiry of this division after 5½ years, its effect will continue beyond that time.

10 **17 Part 5, division 4**

omit

18 Renumbering

15 In the next republication of the *Public Sector Management Act 1994* under the *Legislation (Republication) Act 1996*, the *Public Sector Management Act 1994* must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

19 Remuneration Tribunal Act 1995, section 10 (1)

insert

20 (i) the senior appointments commissioner under the *Public Sector Management Act 1994*;

Schedule 1 Additional amendments— Public Sector Management Act

5 (see s 3, note)

[1.1] Section 12 (2)

substitute

(2) The service is constituted by—

- (a) the chief executives; and
- 10 (b) the senior executive service; and
- (c) other officers; and
- (d) employees.

[1.2] Part 4, division 1, heading

substitute

15 Division 4.1 Chief executive and executive offices

[1.3] Section 54A, heading

substitute

54A Executive offices

20 [1.4] Part 4, divisions 1A and 2, headings

substitute

Division 4.2 Other offices

Division 4.3 Part-time offices

[1.5] Part 5, division 1, heading*substitute***Division 5.1 Preliminary****[1.6] Section 63**

5 *renumber as section 63U*

[1.7] Section 64*omit*

Unless the contrary intention appears, the provisions of this Part
(other than sections 73 or 74) apply

10 *substitute*

This part applies

[1.8] Part 5, division 2, heading*substitute***Division 5.2 Personnel management**

15 **[1.9] Section 65 (1) (ab)**

*omit***[1.10] Section 66***before*

The Commissioner

20 *insert*

(1)

[1.11] New section 66 (2)*insert*

25 (2) Subsection (1) does not apply to action in relation to a chief
executive or an executive appointment.

Amendment [1.12]

Note Chief executive and executive appointments, transfers, retirements or removal from office are required to be notified in the Gazette under pt 4A and pt 4B.

[1.12] Part 5, new division 2A

5 *insert*

Division 5.2A Employment status

66A Employment status in the service

A person may be employed in the service under this Act—

- 10 (a) by appointment as an officer or unattached officer (including an appointment as a chief executive or an executive); or
- (b) by engagement for temporary employment under division 5.7.

[1.13] Part 5, division 3, heading and sections 66A and 67

substitute

15 **Division 5.3 Appointment of non-executive officers**

67 Application (pt 5, div 3)

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

[1.14] Part 5, division 5, heading

20 *substitute*

Division 5.5 Promotion and transfers of non-executive officers

[1.15] Section 82, new definition

insert

25 *officer* does not include a chief executive, an executive or an unattached chief executive or executive.

[1.16] Part 5, division 6, heading*substitute***Division 5.6 Temporary performance of duties
(non-executive offices)**5 **[1.17] Section 99, new definition***insert*

officer does not include a chief executive, an executive or an unattached chief executive or executive.

10 **[1.18] Part 5, divisions 7 and 8, headings***substitute***Division 5.7 Temporary employment****Division 5.8 Miscellaneous****[1.19] Part 6, heading***substitute*15 **Part 6 Retirement and redeployment
of non-executive officers****[1.20] Part 6, division 3, heading***omit*20 **[1.21] Section 139 (1), definition of officer***substitute*

officer does not include—

- (a) a chief executive, an executive or an unattached chief executive or executive; or

- (b) an officer whose appointment to the service on probation has not been confirmed.

[1.22] Section 148 (8)—

substitute

- 5 (8) For this part, the employment of a person as a chief executive or executive is taken to have been terminated for redundancy if—
- (a) the person is an unattached chief executive or executive, under sections 62Q (1) (b) or 63L (1) (b); and
- 10 (b) the person would, if he or she had not been declared unattached, have been eligible for reappointment, and desired to be reappointed; and
- (c) the person is retired from the service.

[1.23] Part 9, division 1, heading

substitute

15 **Division 9.1 Preliminary**

[1.24] New section 177A

before section 178, insert

177A Application (pt 9)

- 20 This part does not apply to disciplinary action, or proposed disciplinary action, against a chief executive, an executive or an unattached chief executive or executive.

[1.25] Part 9, division 3, heading

substitute

Division 9.3 Officers

25 **[1.26] Section 189 (1) (a)**

omit

or employee

[1.27] Section 189 (1) (b)

after first mention of

an officer

5

insert

or an employee

[1.28] Part 9, divisions 4 to 7, headings

substitute

10

**Division 9.4 Officers employed otherwise than
in the service**

Division 9.5 Employees

Division 9.6 Disciplinary appeal committees

Division 9.7 Miscellaneous

[1.29] New section 220A

15

before section 221, insert

220A Definition for pt 10

In this Part:

officer does not include a chief executive, an executive, an
unattached chief executive or an unattached executive.

20

[1.30] New section 244 (3)

insert

- (3) In the application of this section to chief executives, the reference to
approval of the relevant chief executive in subsection (1) is taken to
be a reference to the approval of the SAC.

Endnote

Act amended

- 1 Republished as in force on 30 June 1997. See also Act 1997 No 74, 1998 No 54, 1999 Nos 55 and 82.

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