



Australian Capital Territory

Public Sector Management Act 1994 No 37

Republication No 9

Effective: 19 December 2003 - 12 April 2004

Republication date: 19 December 2003

Last amendment made by A2003-62
(republication for amendments by A2003-56)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Public Sector Management Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 19 December 2003. It also includes any amendment, repeal or expiry affecting the republished law to 19 December 2003.

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

Kinds of republications

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

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

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

Editorial changes

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

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

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

Modifications

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

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Public Sector Management Act 1994

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

Part 1 Preliminary

1 Name of Act

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

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

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

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

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

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

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

autonomous instrumentality means—

- (a) the auditor-general's office; or

(b) the Office of the Director of Public Prosecutions.

chief executive means a person employed under section 28 or 30 to perform the duties of an office of chief executive.

chief executive officer, in relation to a Territory instrumentality, means the person who has responsibility for managing the affairs of the instrumentality.

chief executive officer, in relation to an autonomous instrumentality, means—

- (a) for the Office of the Director of Public Prosecutions—the director of public prosecutions; and
- (b) for the auditor-general’s office—the auditor-general.

classification means—

- (a) in relation to an executive office—a description that identifies the class of offices to which the office belongs, being a class of offices with the same range of salaries; and
- (b) in relation to an office that is not an executive office—a description that identifies the class of offices to which the office belongs, being a class of offices that are of a similar kind, that have responsibilities of a similar level, the performance of the duties of which requires work of similar value and the salary, or range of salaries, applicable to which are the same; and
- (c) in relation to an officer who holds an office—the classification of that office; and
- (d) in relation to an unattached officer—the classification that the officer has as an unattached officer determined in accordance with section 56 (4) or 69.

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

Commonwealth officer means an officer of the Australian Public Service constituted by the *Public Service Act 1922* (Cwlth), section 10.

criminal offence means—

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

director means the director of the merit protection agency.

employee means—

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

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

executive office means an office created under section 54A.

government agency means—

- (a) an administrative unit; or
- (b) a Territory instrumentality; or

- (c) a statutory office-holder and the staff required to assist the statutory office-holder.

industrial award means—

- (a) an award under the *Industrial Relations Act 1988* (Cwlth); or
- (b) an award or order under the *Conciliation and Arbitration Act 1904* (Cwlth); or
- (c) a determination, award or order made by a prescribed person, tribunal or body under a law of the Commonwealth or the Territory.

management standards means the management standards made under section 251.

medical practitioner means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- (b) who is to be deemed to be registered under that Act because of the *Mutual Recognition Act 1992* (Cwlth), section 25.

Merit Protection Act means the *Merit Protection (Australian Government Employees) Act 1984* (Cwlth).

merit protection agency means the Merit Protection and Review Agency established by the Merit Protection Act.

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

- (a) a classification equal to or higher than the classification of senior officer grade C; or
- (b) a classification equivalent to a classification referred to in paragraph (a), being a classification prescribed, or included in a class of classifications prescribed, by the management standards other than an office for appointment to which teaching qualifications are required.

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

officer means—

- (a) a person who is an officer because of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*; or
- (b) a person appointed to be an officer under division 5.3 or 5.8; or
- (c) a person who is to be taken to be an officer in accordance with section 115A.

overseas means outside Australia and the Territories.

part-time office means an office in relation to which a declaration under section 33 or 60 is in force.

prescribed means prescribed by the management standards.

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

promotion appeal committee means a promotion appeal committee established under the Merit Protection Act, part 2, division 2, subdivision B.

public employee means a person—

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

public sector means all government agencies and public employees.

relevant chief executive means—

- (a) in relation to an officer or employee employed in an administrative unit—the chief executive who has control of the administrative unit; or

- (b) in relation to an officer or employee employed in a Territory instrumentality—the person who has the powers of a chief executive in relation to that person; or
- (c) in relation to an officer or employee who is required to assist a statutory office-holder—the office-holder; or
- (d) in relation to an unattached officer—the chief executive who has control of the administrative unit in which the officer last held an office.

relevant staff organisation, in relation to an office or a position in a government agency, means an organisation—

- (a) that is an organisation within the meaning of the *Industrial Relations Act 1988* (Cwlth); and
- (b) for membership of which a person holding the office or performing the duties of the position, as the case may be, would be entitled; and
- (c) that is a party to an industrial award that applies in relation to the remuneration payable in respect of the office or position, as the case may be, being an industrial award to which the Minister who is responsible for the agency is also a party.

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

statutory office-holder means the holder of an office established by an Act, and includes all persons who at any time occupy for the time being, or perform for the time being the duties of, such an office.

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

- (a) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory; or
- (b) is subject to control or direction by a Minister; or

- (c) is declared under section 3A to be a Territory instrumentality; but does not include—
- (d) an administrative unit; or
- (e) a body declared under section 3A not to be a Territory instrumentality.

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

3A Declaration of Territory instrumentalities

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

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

4 Operation of Act

This Act operates both within and outside the ACT.

5 Application

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

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

- (g) ACTEW Corporation Limited;
- (h) ACTTAB Limited;
- (i) the University of Canberra.

Part 2 Administration of the public sector

Division 2.1 Values and general principles

6 Values and principles

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

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

7 General principles of public administration

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

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

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

8 General principles of management in employment matters

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

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

9 General obligations of public employees

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

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

as soon as possible after the relevant facts come to the employee's notice;

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

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

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

11 Legal effect

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

Division 2.2 Constitution of the service

12 ACT Public Service

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

Division 2.3 Administrative arrangements

13 Constitution of administrative units

- (1) The Chief Minister may, from time to time, in writing—
 - (a) establish administrative units; and

- (b) place chief executives in control of the administrative units.
- (2) An administrative unit consists of the offices within that administrative unit.
- (3) An instrument under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

14 Ministerial responsibility and functions of administrative units

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

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

15 Machinery of government changes—officers

- (1) If an administrative unit is abolished, the Chief Minister or the commissioner may, in writing, transfer an office in the administrative unit to another administrative unit.
- (2) If, because of administrative arrangements approved by the Chief Minister, a matter that immediately before those arrangements took effect was the responsibility of an administrative unit (the **losing area**) becomes the responsibility of another administrative unit (the **gaining area**), the commissioner may, in writing, transfer an office in the losing area to the gaining area where the holder of the office is required to perform duties that—
 - (a) relate wholly or mainly to that matter; or

- (b) are certified by the Chief Minister to be ancillary to, or attributable to, that matter.
- (3) The transfer of an office under subsection (1) or (2) does not affect the identity of that office or anything done in relation to the office before the transfer.
- (4) Without limiting the operation of subsection (3)—
- (a) if immediately before its transfer, an office was occupied by a person—the office continues to be occupied by the person; and
 - (b) if immediately before its transfer, an office was a part-time office—the office continues to be a part-time office.
- (5) A person occupying an office that has been transferred to an administrative unit under subsection (1) or (2) shall be taken to have been transferred to the administrative unit.
- (6) If immediately before the transfer of an office to an administrative unit (the *gaining area*)—
- (a) the office was vacant; and
 - (b) a person had been selected to fill the office following action taken for that purpose in accordance with this Act and the management standards and written notification of his or her selection had been forwarded to the person; and
 - (c) the remaining steps necessary to fill the office in accordance with this Act and the management standards had not been taken;
- those steps shall be taken in the gaining area.
- (7) If immediately before the transfer of an office from one administrative unit (the *losing area*) to another administrative unit (the *gaining area*)—
- (a) the office was vacant; and

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

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

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

16 Machinery of government changes—employees

- (1) If—
- (a) an administrative unit is abolished; or
 - (b) because of administrative arrangements approved by the Chief Minister, a matter that was the responsibility of an administrative unit (the *losing area*) immediately before those arrangements took effect becomes the responsibility of another administrative unit (the *gaining area*);
- subsection (2) has effect.
- (2) The commissioner may direct in writing that—
- (a) if subsection (1) (a) applies—an employee who was employed in the administrative unit immediately before the abolition is to be employed in another administrative unit; or
 - (b) if subsection (1) (b) applies—an employee who was employed in the losing area immediately before the arrangements took effect is to be employed in the gaining area;

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

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

Part 3 **Management of the service**

Division 3.1 **Preliminary**

17 **Meaning of *officer* in pt 3**

In this part:

officer includes an employee.

Division 3.2 **Role of commissioner**

18 **Appointment of commissioner**

(1) The Chief Minister may, by writing, appoint a person to be Commissioner for Public Administration.

(2) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

(3) However, subsection (2) does not apply to the appointment if the *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment.

Note Under the *Legislation Act 2001*, s 229 the appointment is a disallowable instrument.

19 **Acting appointment**

(1) The Chief Minister may appoint a person to act in the office of commissioner.

(2) Section 65 does not apply in relation to an appointment under this section.

20 **General functions**

(1) The commissioner shall—

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

21 Review of government agencies or functions

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

should be taken, or could be taken, to give effect to any proposals arising from that review.

- (6) If the relevant chief executive disagrees with the recommendations or does not within a reasonable time take action to implement them, the chief executive shall—
 - (a) notify the relevant Minister and the Chief Minister of his or her reasons for disagreeing with the recommendations or not taking action to implement them; and
 - (b) provide a copy of those reasons to the commissioner.
- (7) The commissioner shall, from time to time, report to the Chief Minister on the operation of this section.

22 Investigative powers

- (1) The commissioner may, for the purpose of carrying out his or her functions—
 - (a) conduct inspections of, or inquiries or investigations into the operations of, government agencies and for that purpose may—
 - (i) summon any person whose evidence appears to be material; and
 - (ii) take evidence on oath; and
 - (iii) require the production of documents; and
 - (b) enter premises occupied by a government agency at any time.
- (2) An officer shall not, without reasonable excuse, neglect or fail to attend in obedience to a summons, or to be sworn, or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation.

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

- (3) A person, other than an officer, shall not, after payment or tender of reasonable expenses, neglect or fail, without reasonable excuse, to attend in obedience to a summons, or to be sworn, or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation.

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

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

23 Records of members

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

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

24 **Powers of chief executive officers of certain Territory
instrumentalities**

- (1) If an Act provides that the staff of a Territory instrumentality shall be employed under this Act, the chief executive officer of the instrumentality has all the powers of a chief executive in relation to that staff as if—
 - (a) the instrumentality were an administrative unit under the control of the chief executive officer; and
 - (b) the staff were employed in an administrative unit.
- (2) For the purpose of the administration of the service in relation to a Territory instrumentality referred to in subsection (1), a reference in this Act to an administrative unit includes a reference to such an instrumentality.

25 **Powers of certain statutory office-holders**

- (1) If an Act provides that the staff assisting a statutory office-holder shall be employed under this Act, the Chief Minister may, by writing, declare that the office-holder has all the powers of a chief executive in relation to that staff as if that staff was employed in an administrative unit under the control of the office-holder.
- (2) A declaration under subsection (1) has effect subject to the Act under which the statutory office-holder holds his or her office.
- (3) For the purpose of the administration of the service in relation to a statutory office-holder referred to in subsection (1) and the staff assisting the office-holder, a reference in this Act to an administrative unit includes a reference to that office-holder and that staff.

26 Powers relating to certain staff providing services for Calvary Hospital

- (1) If an agreement is in force between the Territory and Calvary Hospital for staff at the hospital to be employed under this Act, the following provisions apply.
- (2) The chief executive officer, Calvary Hospital has all the powers of a chief executive in relation to the officers employed in the branch of the service that provides services required to enable Calvary Hospital to exercise its public hospital functions as if those officers were employed in an administrative unit under the control of the chief executive officer.
- (3) For the purpose of the administration of the service in relation to the branch referred to in subsection (2), a reference in this Act to an administrative unit includes a reference to that branch.
- (4) In this section:

Calvary Hospital means the body known as Calvary Hospital A.C.T. Incorporated.

chief executive officer, Calvary Hospital means the person for the time being—

- (a) performing the duties of an executive office; and
- (b) holding the position of chief executive officer under the rules of Calvary Hospital.

Division 3.4 Chief executives

27 Office of chief executive

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

28 Engagement

- (1) A person may be engaged by a contract under this section to perform the duties of an office of chief executive.
- (2) The parties to a contract under this section are the Territory and the person engaged.
- (3) A contract under this section shall—
 - (a) be in writing; and
 - (b) be signed by or on behalf of each party; and
 - (c) specify the day the person engaged is to commence to perform the duties of the office; and
 - (d) specify a day the period of employment is to end, being a day that is not more than 5 years after the day specified in accordance with paragraph (c).
- (4) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (5) Subject to subsections (6) and (7), a contract under this section may be varied at any time by a written agreement between the parties.
- (6) A variation of a contract under this section that would—
 - (a) extend the period of employment provided for by the contract to more than 5 years and 2 months; or
 - (b) increase the rate at which remuneration or an allowance is payable to the person employed;is void.
- (7) A contract under this section may only be varied to extend the period of employment provided for by the contract to more than 5 years if the contract as varied will require the person employed to

be absent from duty on leave for so much of the period of employment as exceeds 5 years.

28A Early termination of contract

- (1) A contract under section 28 may provide for termination of the employment of the person employed before the end of the period of employment specified in the contract.
- (2) A contract under section 28 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.
- (3) The grounds specified under subsection (2) shall not include—
 - (a) the ground that the person employed under the contract is incompatible with another person; or
 - (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in respect of the termination other than the benefit (if any) prescribed for this subsection.
- (5) If a chief executive—
 - (a) is employed under a contract under section 28; and
 - (b) is an eligible employee for the *Superannuation Act 1976* (Cwlth); and
 - (c) has not reached his or her maximum retiring age within the meaning of that Act;

the employment of the chief executive under that contract is not capable of being terminated on the ground of invalidity within the meaning of that Act, part 4A unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under that Act, section 54C.

- (6) If a chief executive—
- (a) is employed under a contract under section 28; and
 - (b) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* (Cwlth); and
 - (c) is under 60 years of age;

the employment of the chief executive under that contract is not capable of being terminated on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under that Act, section 13.

28B Effect of contracts on responsibilities of Ministers

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

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

28C Application of merit principle to re-engagements

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

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

29 Responsibilities

- (1) A chief executive, other than a chief executive assigned under subsection (2), shall, in relation to each administrative unit under his or her control—
 - (a) be responsible, under the relevant Minister, for its administration and its business; and
 - (b) advise that Minister on all matters relating to the unit; and
 - (c) have regard to the interests of the Government and the service as a whole.
- (2) The Chief Minister may assign a chief executive (including an unattached chief executive) to special duties on behalf of the Territory.

30 Temporary performance of duties

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

- (c) be signed by or on behalf of each party.
- (4) The period specified under subsection (3) (b) shall not exceed 6 months.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the Executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.
- (8) A contract under this section may be terminated at any time by one party giving written notice to the other party.
- (9) A person is not entitled to any compensation for the termination of a contract under subsection (8).
- (10) Subject to subsection (11), a contract under this section may be varied at any time by an agreement in writing between the parties.
- (11) A variation of a contract under this section that extends the period of employment of the person engaged to more than 9 months is void.
- (12) Section 65 (1), (3) and (4) does not apply in relation to the engagement of a person under this section.

31 Negotiation and execution of contracts

- (1) A contract, or a variation of a contract, under section 28 or 30 shall be executed on behalf of the Territory by the Chief Minister.
- (2) If an office to which a contract under section 28 or 30 relates, or will relate, is an office in an administrative unit for which the Chief Minister has allocated responsibility to another Minister, the Chief

Minister shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of that other Minister.

31A Presentation of contracts and variations of contracts

The Chief Minister shall present a copy of—

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

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

32 Effect of defects or irregularities

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

33 Employment to perform duties of multiple positions

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

34 Notification

The Chief Minister shall cause to be notified in the Gazette—

- (a) the making of a contract under section 28; or
- (b) the termination of a contract made under that section; or
- (c) the completion of a period of employment provided for by a contract under that section;

within 28 days after the making or termination of the contract, or the completion of the period of employment, as the case may be.

35 Remunerative employment outside the service

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

Division 3.5 Powers of delegation

36 Delegation by commissioner or chief executives

(1) In this section:

public sector officer means—

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

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

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

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

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

- (a) delegate to a public sector officer all or any of his or her powers under this Act or under any other law; or

- (b) subdelegate to a public sector officer all or any of the powers delegated to him or her under a law other than this Act.
- (5) A power shall not be delegated or subdelegated under subsection (2) or (4) to a person exercising a function on behalf of the Territory unless the commissioner or chief executive, as the case may be, considers that the tasks to be undertaken by the person require the exercise of that power.
- (6) If the commissioner has delegated or subdelegated a power under subsection (2) or a chief executive has delegated or subdelegated a power under subsection (4), the commissioner or the chief executive, as the case may be, may give directions to the delegate or subdelegate with respect to the exercise of the power.
- (7) If—
- (a) the commissioner gives a delegation or subdelegation under subsection (2) or a chief executive gives a delegation or subdelegation under subsection (4); and
- (b) the delegation or subdelegation is expressed to be given to persons each of whom occupies or performs the duties of an office of a kind described in the delegation or subdelegation;

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

37 Delegations in autonomous instrumentalities

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

Division 3.7 Whole-of-government management responsibilities

39 Definitions for div 3.7

In this division:

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

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

designated group means any of the following classes of persons:

- (a) Aboriginal persons, being persons who are descended from, identify as, and are accepted by an Aboriginal community as, Aboriginal persons;
- (b) Torres Strait Islanders, being persons who are descendants of an indigenous inhabitant of the Torres Strait Islands;
- (c) persons who have migrated to Australia and whose first language is a language other than English, and the children of such persons;
- (d) persons who have an impairment within the meaning of the *Discrimination Act 1991*.

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

employment matters means—

- (a) the selection of persons for appointment as officers, or for employment as employees, in the service; and
- (b) the promotion and transfer of officers to offices in the service; and

- (c) training and staff development for officers and employees in the service; and
- (d) terms or conditions of service of officers and employees in the service; and
- (e) any other matter related to the employment of officers and employees in the service.

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

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

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

40 Equal employment opportunity programs

- (1) As soon as practicable, and in any event, within 12 months after the commencement of this section, the commissioner shall—
 - (a) after giving relevant staff organisations and any other persons the commissioner considers appropriate an opportunity to put their views, cause to be developed an equal employment opportunity program for the service; and

- (b) cause to be prepared a written statement setting out the program so developed; and
 - (c) give a copy of the statement to the Chief Minister.
- (2) The management standards may provide for an equal opportunity program for the service to implement a statement provided to the Chief Minister under subsection (1).

41 Access and equity programs

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

42 Industrial democracy programs

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

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

43 Development of programs in autonomous instrumentalities

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

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

44 Joint council

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

Division 3.8 Clerk of Legislative Assembly

45 Meaning of *clerk* in div 3.8

In this division:

clerk means the clerk of the Legislative Assembly.

46 Office

- (1) There shall be an office of Clerk of the Legislative Assembly.
- (2) The clerk shall be appointed by the Executive on the advice of the appropriate standing committee of the Legislative Assembly and the appointment of the clerk shall be exercised in accordance with the merit principles laid down in section 65 so far as they relate to an appointment.
- (3) The clerk is not subject to direction by the Executive in relation to the performance of his or her duties.

47 Leave of absence

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

48 Disclosure of interests

The clerk shall give written notice to the Speaker of all direct or indirect pecuniary interests that he or she has or acquires—

- (a) in a business, whether in the ACT or elsewhere; or
- (b) in a body corporate carrying on such a business.

49 Resignation

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

50 Suspension and removal from office

- (1) The Executive shall remove the clerk from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Assembly.
- (2) The Executive, on the advice of the Speaker, may suspend the clerk from office on the ground of misbehaviour or physical or mental incapacity.
- (3) If the Executive suspends the clerk from office, the Speaker shall present a statement of the grounds of the suspension to the Assembly on the first sitting day after the suspension.
- (4) If a statement has been presented to the Assembly under subsection (3), the Assembly may, within 3 sitting days after the day when the statement has been presented to it, by resolution, declare that the clerk should be removed from office and, if the Assembly so passes such a resolution, the Executive shall remove the clerk from office.
- (5) If within 3 sitting days of the Assembly after the day when the statement is presented to it, the Assembly—
 - (a) by resolution declares that the clerk should not be removed from office; or
 - (b) rejects a motion for a resolution to declare that the clerk should be removed from office;the suspension terminates.
- (6) If, at the end of 3 sitting days of the Assembly after the day the statement has been presented to it, the Assembly has not passed a resolution declaring that the clerk should be removed from office, the suspension terminates.
- (7) If the clerk is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any period of 12

months, the Executive, on the advice of the Speaker, may remove the clerk from office.

- (8) The clerk shall not be removed or suspended from office except as provided by this section.
- (9) The suspension of the clerk from office does not affect any entitlement of the clerk to be paid remuneration and allowances.

51 Retirement

- (1) The Executive may, on the advice of the Speaker, retire the clerk on the ground of physical or mental incapacity.
- (2) Notwithstanding anything contained in this section, if the clerk—
 - (a) is an eligible employee for the *Superannuation Act 1976* (Cwlth); and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;

the clerk is not capable of being retired from office on the ground of invalidity within the meaning of that Act, part 4A unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under that Act, section 54C.

- (3) Notwithstanding anything contained in this section, if the clerk—
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* (Cwlth); and
 - (b) is under 60 years of age;

the clerk is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under that Act, section 13.

52 Terms and conditions generally

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

53 Acting appointment

The Speaker may appoint the person for the time being holding the office of deputy clerk to act in the office of clerk.

54 Staff

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

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

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

54A **Creation and abolition of offices**

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

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

54B **Meaning of *office* in div 4.1A**

In this division:

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

55 **Creation and abolition of offices**

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

56 **Classification of offices and officers**

- (1) A classification is an approved classification for this Act only if—
 - (a) a management standard is in force that specifies the salary payable in respect of offices having that classification; or
 - (b) in a case to which paragraph (a) does not apply—the commissioner declares, in writing, that the classification is an approved classification for this subsection.
- (2) If the rate of salary, or the maximum rate of salary, as the case requires, payable in respect of 2 offices is the same, the classifications of the 2 offices shall be taken to be equal.

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

58 Reclassification of offices

- (1) Subject to the management standards, the chief executive of an administrative unit may, in writing, alter the classification of an office in the administrative unit to the classification specified in the instrument, being a classification that is an approved classification under section 56 (1).
- (2) Subject to section 59 (2), the commissioner may, by written notice to the chief executive of an administrative unit, direct the chief executive to alter the classification of an office, or a class of offices, in the administrative unit to a classification specified in the notice, being a classification that is an approved classification under section 56 (1).
- (3) Subject to subsection (4), if—
 - (a) the classification of an office is altered; and

- (b) the rate of salary, or the maximum rate of salary, payable in respect of the office immediately after the alteration is different from the rate of salary, or the maximum rate of salary, payable in respect of the office immediately before the alteration;

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

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

59 Reclassification of offices in autonomous instrumentalities

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

Division 4.2 Part-time offices

59A Meaning of *office* in div 4.2

In this division:

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

60 Part-time offices

- (1) The chief executive of an administrative unit may, with the consent of the officer holding an office in an administrative unit, in writing, declare the office to be a part-time office.
- (2) A declaration under subsection (1) in relation to an office shall not be varied, amended or revoked without the consent of the officer holding the office.
- (3) The management standards may prescribe conditions to be complied with before—

- (a) a declaration may be made in respect of an office under subsection (1); or
- (b) a declaration under subsection (1) may be varied, amended or revoked.

61 Hours of attendance of part-time officers

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

62 Hours of attendance of certain unattached officers

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

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

attendance applicable to the officer immediately before he or she became an unattached officer.

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

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

- (3) Subject to subsection (4), if—
- (a) a person is appointed under section 68, or reappointed under section 118, to the service as an unattached officer; and
 - (b) the relevant chief executive is satisfied that the person will, when he or she ceases to be an unattached officer, be appointed to a part-time office;

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

- (4) If the hours of attendance applicable to a person are ascertained in accordance with subsection (1), (2) or (3) or a previous application of this subsection, the relevant chief executive may, with the consent of the person, determine, in writing, that the hours of attendance applicable to the person are those specified in the

determination and, if such a determination is made, the hours of attendance that are applicable to the person shall, until he or she ceases to be an unattached officer, be those specified in the determination.

- (5) A declaration under subsection (3) or a determination under subsection (4) shall not specify hours of attendance that are inconsistent with the requirements of the management standards.

Part 5 **Employment in the service**

Division 5.1 **Preliminary**

63 **Interpretation for pt 5**

(1) In this division:

employment matters means—

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

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

64 Application to autonomous instrumentalities

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

Division 5.2 Personnel management

65 Application of merit principle

- (1) Powers under this Act in relation to employment matters shall be exercised in accordance with procedures designed to ensure that in each case where—
 - (a) an appointment; or
 - (b) an engagement under section 28 or 72; or
 - (c) a temporary transfer to an office of a higher classification for a period of not less than 3 months; or
 - (d) a promotion;is to be made—
 - (e) all persons who are eligible for the relevant appointment, engagement, transfer or promotion have, so far as is practicable, a reasonable opportunity to apply; and
 - (f) the selection of a person for the relevant appointment, engagement, transfer or promotion is made on the basis of an assessment of the relative efficiency of the several applicants, having regard to—
 - (i) the nature of the duties to be performed; and

- (ii) the abilities, qualifications, experience, personal qualities and potential for development of the several applicants that are relevant to the performance of the relevant duties, as the case may be.
- (2) Without limiting subsection (1), the powers under this Act shall be exercised—
 - (a) without patronage or favouritism; and
 - (b) without discrimination that is unlawful under the *Discrimination Act 1991*.
- (3) For subsection (2) (b), an appointment, engagement, promotion or transfer that is in accordance with a program to encourage the appointment to, or employment in the service, or the promotion or transfer within the service, of women or persons in a designated group, being a program that is declared by the management standards to be an approved program for this subsection, shall be taken to be not unlawful under the *Discrimination Act 1991*.
- (4) In this section:
designated group—see section 39.

65A Exception for returning officers

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

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

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

The commissioner shall cause notice of—

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

Division 5.3 Appointment of officers

66A Application

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

67 Employment in the service

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

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

Note See also pt 14 which makes provision for certain employees of Totalcare to be employed in the service.

68 Appointments generally

- (1) Subject to subsection (2), the appointment of a person to the service as an officer shall be made by the relevant chief executive.

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

69 Classification of unattached officers

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

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

70 Appointments to be on probation

- (1) Subject to subsection (2), the appointment of a person to the service as an officer shall in the first instance be an appointment on probation.
- (2) If the relevant chief executive, is satisfied that—
 - (a) a person selected for appointment has passed a medical examination to determine the person's standard of health and fitness; or
 - (b) it is unnecessary, in the circumstances, to require the person to undergo a medical examination;the appointment of the person may be made without probation if—
 - (c) the relevant chief executive is satisfied that the person merits appointment without probation and that such appointment would be in the public interest; or
 - (d) the person was engaged in prescribed employment and had been so engaged for a period of not less than 12 months immediately before the date of his or her appointment; or
 - (e) the appointment of the person without probation is otherwise permitted under this Act.
- (3) Subject to subsection (8), the appointment of an officer on probation may be confirmed by the relevant chief executive at any time after the end of the period of 6 months after the date of the appointment.
- (4) The appointment of an officer to the service on probation may be terminated by the relevant chief executive in accordance with subsection (9) at any time before the appointment has been confirmed.
- (5) If an officer was appointed on probation and at the end of the period of 12 months after the date of the appointment on probation the appointment has been neither confirmed nor terminated, the relevant chief executive shall, as soon as practicable after that period, either

confirm the appointment or terminate it in accordance with subsection (9).

- (6) The appointment of an officer on probation shall not be terminated under subsection (4) or (5) unless the officer has been given not less than 14 days written notice of the date of termination of the appointment.
- (7) If the appointment of an officer on probation has not been confirmed or terminated before the end of the period of 2 years after the date of the appointment, the appointment shall be taken to have been confirmed at the end of that period.
- (8) Subject to subsections (7) and (11), the appointment of an officer shall not be confirmed, or be taken to be confirmed, under this section, unless the relevant chief executive is satisfied that—
 - (a) the person selected for appointment has undergone a medical examination to determine the person's standard of health and fitness; and
 - (b) on the basis of the results of such examination, the standard of health and fitness of the officer is satisfactory.
- (9) The relevant chief executive shall not terminate the appointment of an officer under subsection (4) or (5) except on the following grounds:
 - (a) that he or she is not satisfied, after receiving a report from an authorised medical practitioner, as to the officer's health and fitness;
 - (b) that he or she considers, after receiving a report from the officer's supervisor or another appropriate officer, that performance of the officer's duties has not been satisfactory;
 - (c) that he or she considers that the officer is not a fit and proper person to remain an officer of the service;
 - (d) that he or she is satisfied that the officer is an excess officer.

- (10) Unless otherwise determined by the commissioner, an officer whose appointment has been terminated in accordance with this section is not eligible for reappointment to the service within the period of 12 months immediately following such termination.
- (11) Subsection (8) does not apply in relation to confirmation of the appointment of an officer who is absent on specified defence service.
- (12) In subsection (11):

specified defence service means—

- (a) continuous full-time service in a part of forces that are—
- (i) the Emergency Forces; or
 - (ii) the Reserve Forces; or
- within the meaning of the *Defence Act 1903* (Cwlth); or
- (b) service in a part of those forces for such periods as are fixed by or in accordance with the regulations made under the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth) or the *Air Force Act 1923* (Cwlth);

but does not include service rendered by a member of a part of those forces because of a voluntary undertaking by him or her to render continuous full-time service for a period for which he or she is not otherwise bound so to serve under any of those Acts.

71 Appointments on probation—training offices and teaching offices

- (1) Section 70 applies in relation to an officer—
- (a) who is appointed to the service on probation; and
 - (b) who holds a prescribed training office;
- as if—

- (c) the reference in section 70 (3) to the period of 6 months after the date of appointment were a reference to the period starting when the officer is appointed and ending when the officer completes the relevant course of training; and
 - (d) the reference in section 70 (5) to the period of 12 months after an officer is appointed on probation were a reference to the period starting when the officer is appointed and ending 6 months after the officer completes the relevant course of training; and
 - (e) the reference in section 70 (7) to the period of 2 years after an officer is appointed on probation were a reference to the period starting when the officer is appointed and ending 12 months after the officer completes the relevant course of training.
- (2) Section 70 applies in relation to an officer—
- (a) who is appointed to the service on probation; and
 - (b) who holds an office that the officer is not entitled to occupy unless he or she possesses prescribed teaching qualifications;
- as if—
- (c) the reference in section 70 (3) to the period of 6 months after the date of appointment were a reference—
 - (i) for a probation period of 12 months—to the period of 12 months after the date of appointment; and
 - (ii) for a probation period of 12 months that has been extended by a further 12 months—to the period of 24 months after the date of appointment; and
 - (d) the reference in section 70 (5) to the period of 12 months after an officer is appointed on probation were a reference—
 - (i) for a probation period of 12 months—to the period of 18 months after the date of appointment of the officer; and

- (ii) for a probation period of 12 months that has been extended by a further 12 months—to the period of 2 years and 6 months after the date of appointment; and
- (e) the reference in section 70 (7) to the period of 2 years after the date of appointment on probation were a reference—
 - (i) for a probation period of 12 months—to the period of 2 years and 6 months after the date of appointment; and
 - (ii) for a probation period of 12 months that has been extended for a further period of 12 months—to the period of 3 years and 6 months after the date of the appointment.

Division 5.4 Engagement of executives

72 Engagement

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

- (5) Subject to subsections (6) and (7), a contract under this section may be varied at any time by an agreement in writing between the parties.
- (6) A variation of a contract under this section that would—
- (a) extend the period of employment provided for by the contract to more than 5 years and 2 months; or
 - (b) increase the rate at which remuneration or an allowance is payable to the person employed;
- is void.
- (7) A contract under this section may only be varied to extend the period of employment provided for by the contract to more than 5 years if the contract as varied will require the person employed to be absent from duty on leave for so much of the period of employment as exceeds 5 years.

73 Early termination of contract

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

- (5) If an executive—
- (a) is employed under a contract under section 72; and
 - (b) is an eligible employee for the *Superannuation Act 1976* (Cwlth); and
 - (c) has not reached his or her maximum retiring age within the meaning of that Act;

the employment of the executive under that contract is not capable of being terminated on the ground of invalidity within the meaning of that Act, part 4A unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under that Act, section 54C.

- (6) If an executive—
- (a) is employed under a contract under section 72; and
 - (b) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* (Cwlth); and
 - (c) is under 60 years of age;

the employment of the executive under that contract is not capable of being terminated on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under that Act, section 13.

74 Effect of contracts on responsibilities of Ministers

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

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

75 Application of merit principle to re-engagements

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

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

76 Temporary performance of duties

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

- (4) The period specified under subsection (3) (b) shall not exceed 6 months.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.
- (8) A contract under this section may be terminated at any time by one party giving written notice to the other party.
- (9) A person is not entitled to any compensation for the termination of a contract under subsection (8).
- (10) Subject to subsection (11), a contract under this section may be varied at any time by a written agreement between the parties.
- (11) A variation of a contract under this section that extends the period of employment of the person engaged to more than 9 months is void.
- (12) Section 65 (1), (3) and (4) does not apply in relation to the engagement of a person under this section.

77 Chief executive officer, Calvary Hospital

- (1) A person shall not be engaged under section 72 or 76 to perform the duties of the office of chief executive officer, Calvary Hospital unless Calvary Hospital A.C.T. Incorporated has, by writing, consented to that engagement.
- (2) A contract under section 72 or 76 by which a person is employed to perform the duties of the office of chief executive officer, Calvary

Hospital shall not be varied unless Calvary Hospital A.C.T. Incorporated has, by writing, consented to the variation.

78 Negotiation and execution of contracts

- (1) Subject to subsection (2), a contract, or a variation of a contract, under section 72 or 76 shall be executed on behalf of the Territory by the chief executive who is, or will become, the relevant chief executive of the person engaged.
- (2) A contract under section 72 or 76 to engage a person to perform the duties of the office of chief executive officer, Calvary Hospital, or a variation of such a contract, shall be executed on behalf of the Territory by the administering chief executive.
- (3) If an office to which a contract under section 72 or 76 relates, or will relate, is an office in an administrative unit that is under the control of a chief executive other than the administering chief executive, the chief executive of the administrative unit shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of the administering chief executive.

79 Tabling of contracts and variations of contracts

The Chief Minister shall present a copy of—

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

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

80 Effect of defects or irregularities

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

81 Notification

The administering chief executive shall cause to be notified in the Gazette—

- (a) the making of a contract under section 72; or
- (b) the termination of a contract made under that section; or
- (c) the completion of a period of employment provided for by a contract under that section;

within 28 days after the making or termination of the contract, or the completion of the period of employment, as the case may be.

Division 5.5 Promotions and transfers of officers

82 Meaning of *office* in div 5.5

In this division:

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

83 Transfers and promotions

- (1) The chief executive of an administrative unit in which a vacant office exists may, subject to this Act and the management standards, transfer or promote an officer to fill the vacant office.
- (2) The chief executive of an administrative unit shall not, except in prescribed circumstances, fill, by promotion, a vacant office in the administrative unit unless the chief executive has caused the vacancy to be notified in the Gazette.
- (3) The chief executive of an administrative unit shall not transfer an officer to fill a vacant office in the administrative unit unless the chief executive has—

- (a) given the officer an opportunity to state his or her views in relation to the transfer; and
 - (b) considered those views (if any).
- (4) If 2 or more officers have applied for promotion or transfer to a vacant office, the chief executive of the administrative unit in which the office exists shall, for the purposes of exercising the power under subsection (1), select from those officers the officer who is, in the opinion of the chief executive, the more or most efficient.
- (5) An officer who is transferred or promoted under this section shall be given written notice of the transfer or promotion.

84 Appeals

- (1) An officer who considers that he or she is more entitled than another officer to promotion to a vacant office to which the other officer has been promoted under section 83 may, subject to subsections (2) and (3) and the management standards, appeal to a promotion appeal committee against the promotion of the other officer to that office.
- (2) Except as prescribed, an officer is not entitled to appeal against a promotion unless he or she applied for the promotion.
- (3) An officer is not entitled to appeal against a promotion that is a non-appellable promotion.
- (4) The only ground of appeal under subsection (1) shall be the greater efficiency of the officer appealing.
- (5) An appeal under subsection (1) shall be made in the way, and within the period, that are prescribed.
- (6) If the commissioner considers it appropriate to do so, he or she may, before the end of the period prescribed under subsection (5), extend that period.

85 Determination of appeals

- (1) If an appeal is, or appeals are, brought under section 84 in respect of a promotion, the promotion appeal committee shall form an opinion as to the more or most efficient of the officers concerned.
- (2) For the purpose of forming an opinion as to the more or most efficient of the officers concerned, the promotion appeal committee shall have regard to—
 - (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the committee considers that those matters are relevant to the performance of the duties of the office;
 - (b) the matters (if any) that are prescribed; and
 - (c) if, and only if, the chief executive who made the promotion has indicated that, for the purpose of forming an opinion under section 83, he or she had regard to the potential of officers for further career development in the service, or the ability of officers to perform the duties of other offices in the administrative unit of the same or equal classification—that matter.
- (3) If the promotion appeal committee has formed an opinion as to the more or most efficient of the officers concerned, the committee shall—
 - (a) unless paragraph (b) applies, allow or disallow the appeal or appeals so as to give effect to its opinion; or
 - (b) if the committee has also formed the opinion that none of the officers concerned is capable of efficiently performing the duties of the office—disallow the appeal or appeals and cancel the promotion.
- (4) If an appeal against a promotion is allowed—
 - (a) the promotion is, by force of this subsection, cancelled; and

- (b) the officer whose appeal is allowed is, by force of this subsection, promoted to the office.
- (5) If a promotion is cancelled under subsection (3) or by force of subsection (4), or an officer is promoted to an office by force of subsection (4), the relevant chief executive shall cause notification of the cancellation, or of the promotion, to be published in the Gazette.

86 Promotion appeal rights of certain officers

- (1) This section applies to an officer who has been advised in writing by the relevant chief executive that the relevant chief executive is satisfied that the officer is an excess officer within the meaning of section 139 (2).
- (2) An officer to whom this section applies has a right under this section to appeal against the promotion under section 83 of another person to a vacant office the classification of which is equal to or lower than the classification of the office occupied by the officer to whom this section applies.
- (3) Subsection (2) does not apply in relation to a promotion that is a non-appellable promotion.
- (4) If an officer to whom this section applies is an unattached officer, the reference in subsection (2) to a vacant office the classification of which is equal to or lower than the classification of the office occupied by the officer to whom this section applies is a reference to a vacant office the salary, or the maximum rate of salary, applicable to which is equal to or lower than the salary, or the maximum rate of salary, applicable to the officer to whom this section applies as an unattached officer.
- (5) Section 84 (4), (5) and (6) applies in relation to an appeal under this section as if the appeal were an appeal under section 84 (1).

- (6) If an officer to whom this section applies appeals under this section against the promotion of another officer, then, in relation to that appeal—
- (a) references in this Act to promotion are, in relation to the officer to whom this section applies, references to the transfer of the officer; and
 - (b) references in this Act to an appeal under section 84 are references to an appeal under this section.
- (7) An appeal under this section or section 84 by an officer to whom this section applies does not affect the operation of division 6.3.

87 Review of non-appellable promotion decisions by merit protection agency

- (1) An officer who applied unsuccessfully for a non-appellable promotion (other than a promotion to an office of chief executive or an executive office) may, within the prescribed period, apply to the merit protection agency for review of the promotion on the ground that it would be unreasonable for the promotion to stand because of—
- (a) a breach of section 65 in connection with the making of the promotion; or
 - (b) a serious defect in the selection process.
- (2) An application for review of a promotion shall be in writing and shall include particulars of the alleged breach of section 65 or the alleged defect in the selection process.
- (3) If an application is made to the merit protection agency for review of a promotion, the agency shall—
- (a) make the inquiries it considers necessary to determine whether a recommendation should be made under subsection (4) in relation to the promotion; and

- (b) make a decision in writing either—
 - (i) affirming the promotion; or
 - (ii) making a recommendation under subsection (4) in relation to the promotion.
- (4) If an application is made to the merit protection agency for review of a promotion, the agency shall, if it is satisfied that it would be unreasonable for the promotion to stand because of—
 - (a) a breach of section 65 in connection with the making of the promotion; or
 - (b) a serious defect in the selection process;recommend to the chief executive who made the promotion that the promotion be cancelled.
- (5) The merit protection agency shall cause a copy of its decision to be given to—
 - (a) the officer who made the application; and
 - (b) the officer promoted; and
 - (c) the chief executive who made the promotion.
- (6) If the merit protection agency recommends to the chief executive that a promotion be cancelled, the chief executive—
 - (a) shall, having regard to the recommendation, reconsider the promotion; and
 - (b) may cancel the promotion.
- (7) If a chief executive cancels a promotion under subsection (6)—
 - (a) the officer promoted shall, for all purposes, be treated as having held the office concerned during the period beginning when the promotion took effect and ending when the promotion is cancelled; and

- (b) on the cancellation of the promotion, the chief executive shall transfer the officer to an office in the chief executive's administrative unit having a classification that is the same as, or equal to, the classification that the officer had immediately before the promotion took effect, and, if necessary, the chief executive shall create such an office for the purpose.
- (8) The merit protection agency shall refuse to consider or further consider an application for review of a promotion if the agency is satisfied that the application is frivolous or vexatious or was not made in good faith.
- (9) If 2 or more applications are made to the merit protection agency for review of the same promotion, the agency may consider those applications concurrently.
- (10) The Merit Protection Act, part 2, division 7 applies in relation to a review under this section of a promotion in the same way as it applies to a review of a decision under part 2, division 3 of that Act.

88 Transfer or promotion on advice of joint selection committee

- (1) In this section:

teaching office means an office for appointment to which teaching qualifications are required.

- (2) Subject to subsection (5) and the management standards, the chief executive of an administrative unit in which an office is vacant may, instead of transferring or promoting an officer to fill the vacant office under section 83, transfer or promote an officer to fill the vacant office under this section.
- (3) A transfer or promotion of an officer under this section shall be a transfer or promotion made in accordance with the advice of a joint selection committee.

- (4) If a chief executive proposes that a vacant office be filled by a transfer or promotion under this section, the chief executive shall—
- (a) give written notice of the proposal to the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office; and
 - (b) if there is another relevant staff organisation or there are other relevant staff organisations—give written notice of the proposal to the other relevant staff organisation or organisations, including a statement to the effect that a relevant staff organisation may, by written notice to the chief executive before the end of the period prescribed by the management standards for this paragraph, object to the proposal.
- (5) If the principal relevant staff organisation consents to the proposal and—
- (a) there is no other relevant staff organisation; or
 - (b) if paragraph (a) does not apply—no other relevant staff organisation objects to the proposal before the end of the period referred to in subsection (4) (b);
- the chief executive shall—
- (c) cause notice of the vacancy, being a notification indicating that the chief executive proposes that the vacant office be filled by a transfer or promotion under this section, to be published in the Gazette; and
 - (d) arrange for the establishment of a joint selection committee for the purpose of giving advice to the chief executive with respect to the filling of the vacant office.
- (6) A joint selection committee established for the purpose of giving advice to a chief executive with respect to the filling of a vacant office (other than a teaching office) under this section shall be constituted by—

- (a) a convenor nominated by the merit protection agency; and
 - (b) a person nominated by the chief executive of the administrative unit in which the vacant office exists; and
 - (c) a person nominated by the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office.
- (7) A joint selection committee established for the purpose of giving advice to a chief executive with respect to the filling of a vacant teaching office under this section shall be constituted by—
- (a) a convenor nominated by the relevant chief executive; and
 - (b) not fewer than 2 or more than 3 other persons nominated by the relevant chief executive with the approval of the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office.
- (8) If a chief executive—
- (a) is unable to arrange for the establishment of a joint selection committee for the purpose of giving advice to the chief executive with respect to the filling of the vacant office; or
 - (b) having arranged for the establishment of a joint selection committee for such a purpose, is unwilling to transfer or promote an officer in accordance with the advice of the committee;
- the chief executive may transfer or promote an officer to fill the vacant office under section 83.
- (9) A promotion of an officer under this section in accordance with the advice of a joint selection committee—
- (a) shall be notified in the Gazette as a promotion made in accordance with the advice of a joint selection committee; and

- (b) is not subject to appeal under section 84 or review under section 87.
- (10) An officer who is transferred under subsection (2) shall be given written notice of the transfer.
- (11) If a joint selection committee has been constituted for the purpose of giving advice to a chief executive with respect to the filling of a vacant office under this section but, before the committee gives advice with respect to the filling of that vacant office, a member of the committee ceases to take part in the deliberations of the committee, the committee shall be reconstituted by the remaining members and another member appointed or nominated in accordance with subsection (6) or (7), as the case requires.
- (12) For the purpose of giving advice to a chief executive with respect to the filling of a vacant office (other than a teaching office) under this section, where the members of the committee do not concur in the advice—
- (a) if a majority of the members concur in the advice—the advice of the majority shall be deemed to be the advice of the committee; and
 - (b) in any other case—the advice of the convenor of the committee shall be deemed to be the advice of the committee.
- (13) For the purpose of giving advice to a chief executive with respect to the filling of a vacant teaching office under this section, if the members of the committee do not concur in the advice—
- (a) if a majority of the members concur in the advice—the advice of the majority shall be deemed to be the advice of the committee; and
 - (b) if the members are equally divided in their advice—the advice of the convenor of the committee shall be deemed to be the advice of the committee; and

- (c) if 2 members only concur in their advice and the remaining members are divided in their advice—the advice of the firstmentioned 2 members shall be deemed to be the advice of the committee.

89 Transfer or promotion on advice of management-initiated joint selection committee

- (1) Subject to subsections (2) and (3) and the management standards, the chief executive of an administrative unit in which an office is vacant may, instead of transferring or promoting an officer to fill the vacant office under section 83 or 88, transfer or promote an officer to fill the vacant office under this section.
- (2) A vacant office shall not be filled by a transfer or promotion under this section except in prescribed circumstances.
- (3) If a chief executive proposes that a vacant office be filled by a transfer or promotion under this section, the chief executive shall—
 - (a) cause notice of the vacancy, and of the chief executive's proposal that the office be filled by a transfer or promotion under this section, to be published in the Gazette; and
 - (b) notify the organisation that is, under the management standards, the principal relevant staff organisation of the chief executive's proposal that the office be filled by a transfer or promotion under this section; and
 - (c) arrange for the establishment of a joint selection committee for the purpose of giving advice to the chief executive with respect to the filling of the office.
- (4) A joint selection committee shall be constituted for this section by—
 - (a) a convenor nominated by the merit protection agency; and
 - (b) a person nominated by the chief executive of the administrative unit in which the vacant office exists; and

- (c) if, within the prescribed period after being notified under subsection (3) (b), the principal relevant staff organisation nominates a person—that person.
- (5) A promotion or transfer of an officer made in accordance with the unanimous advice of the members of a joint selection committee constituted for this section shall be deemed to have been made under section 88, and a promotion so made is not subject to appeal under section 84 or review under section 87.
- (6) If a joint selection committee constituted for this section gives advice to a chief executive with respect to the filling of a vacant office and—
- (a) the chief executive promotes or transfers an officer to fill the vacant office otherwise than in accordance with the advice; or
 - (b) the advice is not unanimous, but the chief executive transfers or promotes an officer to fill the vacant office;
- the promotion or transfer shall be deemed to have been made under section 83, and a promotion so made is subject to appeal under section 84 or review under section 87, as the case requires.
- (7) A promotion of an officer under this section shall be notified in the Gazette, and the notice in the Gazette shall state whether or not the promotion is subject to appeal under section 84 or review under section 87.
- (8) An officer who is transferred as mentioned in this section shall be given written notice of the transfer.
- (9) If a joint selection committee has been constituted for the purpose of giving advice under this section but, before the committee gives that advice, the convenor ceases to take part in the deliberations of the committee, the committee shall be reconstituted by the remaining member or members and another convenor nominated by the agency.

- (10) If a joint selection committee has been constituted for the purpose of giving advice under this section but, before the committee gives that advice, the member of the committee nominated under subsection (4) (b) ceases to take part in the deliberations of the committee—
- (a) if, within the prescribed period after the member so ceases to take part, the chief executive nominates another person—the committee shall be reconstituted by the remaining members or member and that other person; or
 - (b) in any other case, if there are 2 members of the committee remaining—the committee shall be reconstituted by the remaining members.
- (11) If a joint selection committee has been constituted for the purpose of giving advice under this section but, before the committee gives that advice, the member of the committee nominated under subsection (4) (c) (if any) ceases to take part in the deliberations of the committee, the chief executive shall notify the principal relevant staff organisation that the member has ceased to take part in those deliberations and—
- (a) if, within the prescribed period after being so notified by the chief executive, the principal relevant staff organisation nominates another person—the committee shall be reconstituted by the remaining members and that other person; or
 - (b) in any other case—the committee shall be reconstituted by the remaining members.

90 Procedure of joint selection committee

- (1) A joint selection committee established for the purpose of giving advice to a chief executive with respect to the filling of a vacant office under section 88 or 89 shall assess the claims of the

applicants for promotion or transfer to the office in the way the committee considers necessary to establish their relative efficiency.

- (2) A joint selection committee shall conduct its proceedings with as little formality and technicality, and as quickly, as a proper consideration of the applications permits.
- (3) If a joint selection committee is reconstituted under section 88 (11) or 89 (9), (10) or (11), the committee as reconstituted may have regard to the evidence given, the argument adduced and the reasons for any decision given during proceedings before the committee as previously constituted.
- (4) A transfer or promotion made under section 88 or 89 shall not be called in question because of a defect or irregularity in connection with the nomination of a member of the joint selection committee.
- (5) A member of a joint selection committee, while acting as such, is not subject to direction by any other person or by any body or authority other than a court.

91 Taking effect etc of promotions and transfers

- (1) A promotion or transfer of an officer to an office takes effect as provided by the management standards.
- (2) If a promotion under section 83 or 88 of an officer to an office takes effect, salary at the rate applicable to that office is payable to the officer on and from the prescribed day.
- (3) If, on the determination of an appeal against the promotion under section 83 of an officer to an office, another officer is promoted to that office by force of section 85 (4), salary at the rate applicable to that office is payable to that other officer on and from the prescribed day in respect of the firstmentioned promotion.

92 Death of officer before appeal determined

If, before an appeal under section 84 against the promotion of an officer has been determined, the officer dies, the appeal shall be deemed to lapse on the date of his or her death but the promotion shall not take effect unless the death occurred on or after the prescribed day in respect of the promotion.

93 Cancellation of promotion or transfer

- (1) Before the promotion or transfer of an officer to a vacant office in an administrative unit takes effect, the chief executive of the administrative unit may cancel the promotion or transfer.
- (2) If a promotion of an officer under section 83 or 88 that has not taken effect ceases, by reason of a change in rates of salary, to be a promotion of that officer, the promotion shall be deemed to be cancelled.
- (3) If a promotion is cancelled, or is to be deemed to be cancelled, under this section, any appeal under section 84 against the promotion lapses on the day of the cancellation.

94 Transfer of officers by chief executive from one administrative unit to another

- (1) If—
 - (a) an officer whom it is proposed to transfer to a vacant office under section 83 or 88 is an officer performing duties in an administrative unit other than the administrative unit in which the vacant office exists; and
 - (b) the officer or the chief executive of the firstmentioned administrative unit does not approve of the transfer;

the transfer shall not be made without the commissioner's approval.

- (2) The commissioner shall not approve the transfer of an officer performing duties in an administrative unit to a vacant office in another administrative unit unless—
- (a) a reasonable opportunity has been given to the chief executive of each administrative unit and to the officer to give submissions to the commissioner either in support of or against the making of the transfer; and
 - (b) the commissioner has considered any submissions so given.

95 Simultaneous transfers within an administrative unit

If 2 or more officers hold offices in the same administrative unit having the same classification and it is proposed to transfer each of those officers to the office held by the other officer or to an office held by another of those officers, the relevant chief executive may, in writing, declare the offices to be offices to which this section applies and, on the making of the declaration, each office to which the declaration relates shall, for the purposes of the application of sections 83 and 88 and any management standards made for those sections in giving effect to the proposed transfers, be deemed to be vacant.

96 Transfers of officers and employees between administrative units

- (1) If, in the opinion of the commissioner, it is necessary in the interests of the efficient administration of the service to transfer an officer temporarily from one administrative unit to another, the commissioner may direct that that officer be so transferred and as from the date (if any) the commissioner specifies.
- (2) The commissioner shall not give a direction under subsection (1) in relation to an officer unless the commissioner has—
- (a) given the officer an opportunity to state his or her views in relation to the transfer; and

- (b) considered those views (if any).
- (3) The commissioner shall notify in writing the chief executive of each of the administrative units concerned of any direction under subsection (1) and, on being so notified, the chief executive of the administrative unit from which the officer is to be transferred temporarily shall release the officer.
- (4) If, in the opinion of the commissioner, it is necessary in the interests of the efficient administration of the service to do so, the commissioner may, after consulting with the chief executive of each of the administrative units concerned—
- (a) transfer an officer who holds an office, or is included, in an administrative unit—
- (i) to a specified office in another administrative unit; or
- (ii) to another administrative unit as an unattached officer; or
- (b) direct that an employee who is employed in a particular capacity in an administrative unit be employed in an equivalent capacity in another administrative unit.
- (5) Notwithstanding section 91, a transfer under subsection (4) (a) takes effect as specified by the commissioner.

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

- (1) The management standards may specify, in relation to a specified class of offices, circumstances in which a vacancy in an office or offices included in that class of offices may be filled by a transfer or promotion under this section.
- (2) The commissioner may, in writing, declare that an examination applies to officers included in a stated class of officers.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) If—
- (a) in circumstances specified in relation to a class of offices under subsection (1) there is a vacancy in an office or offices included in that class; and
 - (b) an examination applies to that class of officers under a declaration under subsection (2);
- then, if the chief executive of the administrative unit in which the vacant office exists or the vacant offices exist—
- (c) if only 1 officer has passed the examination and is otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes that officer to that office or to 1 of those offices; or
 - (d) if 2 or more officers have passed the examination and are otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes those officers to that office or those offices in accordance with the order of merit in which they passed the examination;
- the transfer or promotion, or each of the transfers or promotions, shall be taken to have been made under this section and not under section 83.
- (5) The promotion of an officer to an office under this section takes effect on the day the promotion is made, and salary at the rate applicable to that office is payable to the officer on and from that day.
- (6) In this section:
- (a) a reference to an examination includes a reference to a test; and
 - (b) a reference to passing an examination includes a reference to completing satisfactorily any task required to be performed for the purposes of assessment.

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

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

may appeal against the transfer or promotion of that firstmentioned officer to the training office.

- (3) An appeal referred to in subsection (2) shall be made under section 84 and, for all purposes of that appeal—
- (a) if the appeal is an appeal against the transfer of an officer to a training office—
 - (i) references in this Act to the promotion of that officer are references to the transfer of that officer to the training office; and
 - (ii) references in this Act to the cancellation of the promotion of that officer are, if, immediately before that officer was

transferred to the training office, he or she occupied another office, references to the transfer of that officer back to that other office; and

- (iii) references in this Act to the cancellation of the promotion of that officer are, if, immediately before that officer was transferred to the training office, he or she was an unattached officer performing specified duties in an administrative unit, references to that officer's being taken again to have become an unattached officer and to his or her being required to perform those duties in that administrative unit; and
 - (b) if the appeal is an appeal by an officer in relation to whom it would constitute a transfer for him or her to occupy the training office—references in this Act to promotion of that officer are references to the transfer of that officer to the training office.
- (4) Subject to subsection (5), if there is a vacancy in an office that is, in relation to a training office, a relevant higher office, the chief executive of the administrative unit in which the relevant higher office exists shall—
- (a) if, at the time when that relevant higher office becomes vacant, an officer who has completed that course of training is, because of the operation of subsection (8), an unattached officer—transfer that officer to that office under this section; or
 - (b) if, at the time when that relevant higher office becomes vacant, 2 or more officers who have completed that course of training are, because of the operation of subsection (8), unattached officers—transfer to that office under this section whichever of those officers was the first so to become an unattached officer; or
 - (c) if, at the time when the relevant higher office becomes vacant, no officer who has completed that course of training is,

because of the operation of subsection (8), an unattached officer—subject to subsection (9), promote to that office under this section the first officer to complete that course of training.

- (5) Subsection (4) does not entitle—
- (a) an officer who holds a part-time office to be transferred or promoted to a full-time office; or
 - (b) an officer who holds a full-time office to be transferred or promoted to a part-time office.
- (6) The promotion of an officer to an office as referred to in subsection (4) (c) takes effect on the day when the promotion is made and salary at the rate applicable to that office is payable to the officer on and from that day.
- (7) If 2 or more officers complete a course of training at the same time or become, because of the operation of subsection (8), unattached officers at the same time, they shall be treated, for subsection (4), as having completed that course of training, or as having become unattached officers, as the case requires, in a sequence of time corresponding to the order of merit in which, on the assessment of the person or body conducting the course of training, those officers completed the course.
- (8) If an officer who is entitled, on completion of a particular course of training to the satisfaction of the commissioner, to occupy a relevant higher office so completes that course of training but there is, at the time when he or she completes that course, no vacant relevant higher office, or no vacant relevant higher office to which he or she is entitled under subsection (4) (c) to be promoted—
- (a) he or she becomes, by force of this subsection, an unattached officer who is required to perform duties corresponding to the duties of such an office; and
 - (b) he or she shall have the classification appropriate to the occupant of such an office and shall be entitled to be paid the

salary that would, from time to time, be payable to him or her if he or she were the occupant of such an office.

- (9) Nothing in subsection (4) shall be taken to prevent a chief executive from promoting or transferring an officer under section 83 to an office to which that subsection relates at any time when there is no officer immediately entitled to occupy that office in accordance with the management standards.
- (10) A transfer of an officer under section 83 to a vacant training office shall be notified in the Gazette.
- (11) If an officer is transferred under section 83 from an office held by him or her to a training office, no person shall be appointed or transferred to that firstmentioned office, and no promotion to that firstmentioned office shall take effect, until—
- (a) if paragraph (b) does not apply—the period for appealing against the transfer of that officer to the training office ends without any appeal having been made; or
 - (b) if any such appeal is, or 2 or more such appeals are, made within that period—that appeal or each of those appeals has been determined or has become inoperative.

Division 5.6 Temporary performance of duties—offices other than offices of chief executive and executive offices

99 Definitions for div 5.6

In this division:

appellable promotion means a promotion under section 83 other than a non-appellable promotion.

direction means a direction under section 100 (1).

notified, in relation to a direction, means notified in accordance with section 101.

office means an office other than—

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

specified, in relation to a direction, means specified in the direction.

100 Directions to act

- (1) The chief executive of an administrative unit may, in writing, direct an officer to perform temporarily the whole, or a specified part, of the duties of an office in that administrative unit.
- (2) The selection of an officer to be given a direction under subsection (1) shall be made as prescribed.
- (3) A direction, other than a direction that is required by section 101 (2) to be notified, takes effect on the day it is given or, if a later day is specified for the purpose, on that later day.
- (4) A direction shall be expressed to continue in force until—
 - (a) the end of a specified day; or
 - (b) the occurrence of a specified event;and, subject to subsection (8), shall cease to have effect accordingly.
- (5) A direction shall not—
 - (a) be expressed to operate until a notice is given terminating its effect; or
 - (b) be expressed to have a similar operation.
- (6) Notwithstanding subsection (1), the chief executive of an administrative unit shall not give a direction to an officer of another administrative unit without the approval of the chief executive of that other administrative unit.

- (7) The chief executive of an administrative unit may, under subsection (6), withhold his or her approval of a proposed direction if he or she considers that the performance of the duties to which the direction would relate by the officer to whom it is proposed that it be given would cause substantial difficulties or inefficiencies in the management or functioning of that administrative unit.
- (8) If an officer is given a direction to perform duties of an office in an administrative unit, the chief executive of the administrative unit may, in writing—
 - (a) revoke the direction at any time; or
 - (b) vary the direction at any time by requiring the officer not to perform, or to cease performing, part of those duties.

101 Directions to act in certain offices for more than 3 months or until the occurrence of an event

- (1) This section applies to an office to which a promotion under section 83 would be an appellable promotion.
- (2) If a chief executive gives a direction to an officer to perform the duties of a higher office to which this section applies and the direction is expressed to be given in respect of—
 - (a) a period exceeding 3 months; or
 - (b) a period that, when aggregated with the periods of any previous directions given to the officer to perform the duties of the office, would result in the officer performing the duties of that office for a continuous period exceeding 3 months; or
 - (c) a period ending on the occurrence of a specified event;the chief executive shall, as soon as practicable after giving the direction, cause the direction to be notified in accordance with subsection (3).
- (3) A notice under subsection (2) shall—

- (a) set out the terms of the direction or specify—
 - (i) the office to which the direction relates; and
 - (ii) the duties of that office to which the direction relates; and
 - (iii) the day when the person directed to perform the duties of the office is to commence performing those duties; and
 - (iv) the day until which, or the event until the occurrence of which, the person is to continue to perform the duties of that office; and
 - (v) the name and classification of the officer to whom the direction has been given; and
 - (b) be circulated or displayed in a way likely to bring it to the attention of the officers who may appeal against the giving of the direction.
- (4) A direction required to be notified under this section takes effect on the day it is first so notified or, if a later day is specified, on that later day.

102 Appeals against directions

- (1) An officer who considers that he or she is more entitled than another officer to be given a direction under section 100 (1) that the other officer has been given may, subject to subsections (2) and (3) and the management standards, appeal to a promotion appeal committee against the giving of the direction to the other officer.
- (2) An appeal under subsection (1) against the giving of a direction to an officer to perform duties of an office may only be made—
 - (a) by an officer in relation to whom the office is a higher office; and
 - (b) on the ground that the appellant would perform the duties with superior efficiency.

- (3) An appeal under subsection (1) shall be made in the way, and within the period, that are prescribed.

103 Lapsing of appeals

- (1) An appeal under section 102 (1) against the giving of a direction shall lapse if—
- (a) the appellant advises the agency in writing that he or she does not intend to proceed with the appeal; or
 - (b) the period for which the direction was given has ended; or
 - (c) the appellant ceases to be an officer; or
 - (d) the direction is revoked in respect of all of the duties to which it relates; or
 - (e) the officer directed to perform those duties ceases to be an officer; or
 - (f) the appellant has been promoted to an office having a classification equal to or higher than the classification of the office to which the direction relates and that promotion takes effect; or
 - (g) the chief executive of an administrative unit affected by the appeal advises the agency that performance of those duties by the appellant would cause substantial difficulties or inefficiencies in the management or functioning of the administrative unit; or
 - (h) for a direction that is expressed to continue in force until the end of a specified day—
 - (i) subject to subsection (4), the chief executive of an administrative unit affected by the appeal advises the agency that performance of those duties by the appellant during a period specified in that advice (the *period of unavailability*) would cause substantial difficulties or

inefficiencies in the management or functioning of the administrative unit; and

- (ii) the effect of removing the period of unavailability from the period for which the direction was given would not leave a continuous period exceeding 3 months in the lastmentioned period.
- (2) For subsection (1), an administrative unit is to be taken to be affected by an appeal if the appeal is made by an officer of that administrative unit or relates to an office in that administrative unit.
 - (3) Advice referred to in subsection (1) (g) that is given in relation to an appeal by an officer does not affect any other appeal by that officer.
 - (4) Advice given by a chief executive for subsection (1) (h) (i) shall specify the day when the period of unavailability commences and the day it ends.

104 Determination of appeal

- (1) If an appeal is, or appeals are, brought under section 102 against the giving of a direction to perform duties of an office, the promotion appeal committee shall form an opinion as to the more or most efficient of the officers concerned.
- (2) For the purpose of forming an opinion as to the more or most efficient of the officers concerned, the promotion appeal committee shall have regard to—
 - (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the committee considers that those matters are relevant to the performance of duties of the office; and
 - (b) if, and only if, the chief executive who made the selection has indicated that, for the purpose of making that selection, he or she had regard to the potential of officers for further career development in the service, or the ability of officers to perform

the duties of other offices in the administrative unit of the same or equal classification—that matter.

- (3) When the promotion appeal committee has formed an opinion as to the more or most efficient of the officers concerned, it shall allow or disallow the appeal so as to give effect to its opinion.

105 Procedure if appeal is successful

- (1) If an appeal under section 102 (1) against the giving of a direction to an officer to perform duties of an office in an administrative unit is allowed by a promotion appeal committee and the period for which those duties are to be performed has not ended, the chief executive of the administrative unit shall, as soon as practicable after being advised by the committee of its decision—

- (a) revoke the direction; and
- (b) give a direction to the successful appellant to perform those duties;

and the direction referred to in paragraph (b) shall be taken to have replaced the direction referred to in paragraph (a).

- (2) A direction referred to in subsection (1) (b)—
- (a) shall be expressed to continue in force until the time at which the direction it replaces was to cease to have effect; and
 - (b) takes effect as soon as it is given; and
 - (c) is not subject to appeal; and
 - (d) shall be taken, for this Act (other than sections 100 (1) to (7), 101, 102, 103 and 104), to have been given under section 100 (1).

Division 5.7 Temporary employment

106 Power to engage employees

- (1) Subject to subsection (2), a chief executive of an administrative unit may engage a person for temporary employment in that unit in accordance with this division if he or she is satisfied—
 - (a) that there is no officer available in the service with the expertise, skills or qualifications required for the duties required to be performed; or
 - (b) that assistance of a temporary nature is required for the performance of urgent or specialised work in that unit and it is not practical in the circumstances to use the services of an existing officer to perform the relevant duties.
- (2) A chief executive shall not engage a person under this division to perform the duties of an executive office.
- (3) A person shall not be engaged for temporary employment under this division except in accordance with, and subject to, the management standards.

107 Overseas employment

- (1) A person may be engaged overseas under this division for temporary employment overseas.
- (2) This section shall not be taken to prevent the engagement in Australia, under another provision of this Act, of a person to perform duties overseas.

108 Temporary employment—generally

- (1) Subject to subsection (2), a person may be engaged for a fixed term to perform the duties of a position having an existing classification for a period not exceeding 5 years.

- (2) A person shall not be engaged under subsection (1) to perform the duties of a position for a period of 12 months or longer unless the principal relevant staff organisation in relation to that position has been consulted in connection with the temporary employment of persons for a fixed term in that position.
- (3) A person engaged under subsection (1) to perform the duties of a position shall be paid at the same rate of remuneration as would be applicable to an officer performing the duties of that position.
- (4) Subject to subsection (5), the relevant chief executive may extend the period of employment of a person engaged to perform the duties of a position under subsection (1) for a period of less than 12 months, if—
 - (a) the total period of employment (including the period as so extended) does not exceed 12 months; and
 - (b) the principal relevant staff organisation in relation to the position has agreed to the proposed extension of the term of temporary employment of the person in that position.
- (5) The period of temporary employment of a person in a position shall not be extended under subsection (4) if the principal relevant staff organisation in relation to that position has notified the commissioner that it is opposed to the extension of temporary employment in respect of a class of positions that includes that position.
- (6) The engagement of a person under this section may be subject to conditions—
 - (a) concluded in accordance with the management standards; or
 - (b) approved by the commissioner.

109 Entry to the workforce programs

- (1) A person may be engaged for temporary employment in the performance of duties under a prescribed scheme, being a scheme

for enabling persons to gain ability for the purposes of participating in the Australian workforce.

- (2) A chief executive may engage a person for temporary employment under subsection (1) without having to be satisfied about matters referred to in section 106 (1).

110 Casual employment

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

111 Employment of unsuccessful election candidates

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

the commissioner shall, on application by the person within 2 months after the declaration of the result of the election, employ the person in the same or a similar capacity with the same rate of pay as that payable to the person immediately before resigning.

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

112 Termination of employment

- (1) Subject to section 177, the temporary employment of a person engaged in an administrative unit may be terminated by the chief executive of that unit—
- (a) for casual employment—at any time before the end of that employment; and
 - (b) in any other case—by giving reasonable written notice to the person at any time before the end of that employment.
- (2) Unless terminated in accordance with subsection (1), the temporary employment of a person shall cease at the end of the period for which that person was engaged (including any extension of that period).

113 Work performed after termination of temporary employment

If—

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

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

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

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

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

if the person has—

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

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

Division 5.8 Miscellaneous

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

- (1) If, under section 83, 88 or 89 notification of a vacancy in an office in an administrative unit is published in the Gazette, a Commonwealth officer may apply for appointment to the office.

- (2) If—
- (a) a Commonwealth officer applies under subsection (1) for appointment to an office in an administrative unit; and
 - (b) the chief executive of the administrative unit is satisfied that the Commonwealth officer should be appointed to the office;
- the chief executive may appoint the Commonwealth officer to the office in accordance with section 68.
- (3) Subject to subsection (4), an appointment made under subsection (2) shall be made in accordance with part 5.
- (4) Notwithstanding section 70, the appointment of a Commonwealth officer to an office in the service shall not be an appointment on probation if the Commonwealth officer's appointment to the Australian Public Service—
- (a) was an appointment without probation; or
 - (b) was an appointment on probation and has been confirmed.
- (5) If, immediately before the appointment of a Commonwealth officer to the service takes effect—
- (a) the appointee is a Commonwealth officer because of an appointment on probation; and
 - (b) that appointment has not been confirmed; and
 - (c) the appointment of the Commonwealth officer to the service is an appointment on probation;
- section 70 has effect as if the period of probation for the purposes of the appointment to the service had commenced when the period of probation as a Commonwealth officer commenced.
- (6) If the appointment of a Commonwealth officer to an office in an administrative unit would be a transfer of the officer to that office if the Commonwealth officer had, immediately before being so appointed, been a member of the service having the same

classification as he or she had as a Commonwealth officer, the following provisions have effect:

- (a) the provisions of division 5.5 apply to the appointment as if—
 - (i) the appointment were a transfer (a *deemed transfer*) of the Commonwealth officer to the office by the chief executive of the administrative unit, being a transfer—
 - (A) if the appointment is in accordance with the advice of a joint selection committee constituted for section 88—made under section 88; or
 - (B) if the appointment is in accordance with the unanimous advice of a joint selection committee constituted for section 89—made under section 88; or
 - (C) in any other case—made under section 83; and
 - (ii) the Commonwealth officer were an officer within the meaning of this Act;
- (b) the deemed transfer takes effect as provided under section 91;
- (c) subject to paragraph (d), the appointment takes effect on the day when the appointee resigns from the Australian Public Service, being a day not earlier than the day the deemed transfer takes effect;
- (d) the appointment does not take effect if, when the deemed transfer takes effect, the appointee has already ceased to be a member of the Australian Public Service;
- (e) if the appointee does not commence to perform the duties of the office within a reasonable time after the appointment takes effect—the chief executive may cancel the appointment;
- (f) if the appointee had, immediately before his or her appointment to the service, accrued a period of long service leave or leave of absence on account of illness—he or she

becomes eligible, on his or her appointment, for the grant of an equal period of long service leave or leave of absence on account of illness, as the case may be;

- (g) subject to paragraph (f), the period of continuous service of the Commonwealth officer in the Australian Public Service immediately before his or her appointment to the Australian Capital Territory Public Service shall be recognised as prescribed for the purposes of determining the leave and other benefits to which the Commonwealth officer is entitled under this Act and the management standards.
- (7) If the appointment of a Commonwealth officer to an office in an administrative unit is not an appointment to which subsection (6) applies, the following provisions have effect:
- (a) the provisions of division 5.5 and the provisions of the Merit Protection Act apply to the appointment as if—
 - (i) the appointment were a promotion (a *deemed promotion*) of the Commonwealth officer to the office by the chief executive of the administrative unit, being a promotion—
 - (A) if the appointment is in accordance with the advice of a joint selection committee constituted for section 88—made under section 88; or
 - (B) if the appointment is in accordance with the unanimous advice of a joint selection committee constituted for section 89—made under section 88; or
 - (C) in any other case—made under section 83; and
 - (ii) the Commonwealth officer were an officer within the meaning of this Act;
 - (b) the deemed promotion takes effect according to the following rules:

- (i) if—
- (A) the deemed promotion is a non-appellable promotion; and
 - (B) an application for review of the deemed promotion by the merit protection agency is made under section 87 (1); and
 - (C) the agency makes a decision under section 87 (3) (b) affirming the promotion;
- the deemed promotion takes effect on the day after the day the merit protection agency makes its decision;
- (ii) if—
- (A) the deemed promotion is a non-appellable promotion; and
 - (B) an application for review of the deemed promotion by the merit protection agency is made under section 87 (1); and
 - (C) the agency makes a recommendation under section 87 (4) that the promotion be cancelled; and
 - (D) the chief executive makes a decision under section 87 (6) not to cancel the deemed promotion;
- the deemed promotion takes effect on the day after the day the chief executive makes his or her decision;
- (iii) in any other case—the deemed promotion takes effect as provided under section 91;
- (c) subject to paragraph (d), the appointment takes effect on the day when the appointee resigns from the Australian Public Service, being a day not earlier than the day the deemed promotion takes effect;

- (d) the appointment does not take effect if, when the deemed promotion takes effect, the appointee has already ceased to be a member of the Australian Public Service;
- (e) if the appointee does not commence to perform the duties of the office within a reasonable time after the appointment takes effect, the chief executive may cancel the appointment;
- (f) if the appointee had, immediately before his or her appointment to the service, accrued a period of long service leave or leave of absence on account of illness, he or she becomes eligible, on his or her appointment, for the grant of an equal period of long service leave or leave of absence on account of illness, as the case may be;
- (g) subject to paragraph (f), the period of continuous service of the Commonwealth officer in the Australian Public Service immediately before his or her appointment to the Australian Capital Territory Public Service shall be recognised as prescribed for the purposes of determining the leave and other benefits to which the Commonwealth officer is entitled under this Act and the management standards.

115A Mobility rights of certain employees of ACTEW Corporation Limited

- (1) Notwithstanding the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*, section 7 (2), the following provisions have effect in relation to employees of the company.
- (2) A transferred employee of the company shall, within a period of 3 years commencing on the relevant day, be taken to be an officer within the meaning of this Act for the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* (Cwlth).
- (3) For the purposes of transfer or promotion to an office in the service in accordance with this part, an employee of the company shall be taken to be an officer within the meaning of this Act.

- (4) An expression used in this section has the same meaning as in the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*, section 7.

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

- (1) If a person who is a Commonwealth officer is engaged under section 28 to perform the duties of an office of chief executive, section 115 (7) (f) and (g) apply in respect of the person unless the Chief Minister, with the person's consent, directs that the paragraphs are not to so apply.
- (2) If a person who is a Commonwealth officer is engaged under section 72 to perform the duties of an executive office, section 115 (7) (f) and (g) apply in respect of the person unless the administering chief executive, with the person's consent, directs that the paragraphs are not to so apply.

117 Reappointment of retired officers

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

- (c) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;
- and received a payment from the Territory or a Territory instrumentality for being so retired.
- (3) A chief executive shall not reappoint a person to the service under this section—
- (a) if the person ceased, or last ceased, to be an officer by reason of his or her having been dismissed from the service for misconduct or inefficiency; or
- (b) if the person has, since ceasing, or last ceasing, to be an officer, been engaged in prescribed employment and been dismissed from that employment for misconduct or inefficiency.
- (4) Subsection (3) does not apply in relation to a person in relation to whom it would, but for this subsection, apply if—
- (a) the person was dismissed by reason of his or her having been found by a court to have committed a criminal offence; and
- (b) the finding of the court has been nullified.
- (5) For subsection (3)—
- (a) a person shall be taken to have been dismissed from the service for misconduct if he or she was dismissed from the service under part 9; and
- (b) a person shall be taken to have been dismissed from employment prescribed for subsection (3) (b) for misconduct if he or she was dismissed from that employment on grounds similar to the grounds on which an officer may be dismissed from the service under part 9.
- (6) For subsection (4), a finding of a court in relation to an offence shall be taken to have been nullified—

- (a) if a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or
- (b) in any other case—if the finding has been set aside.

118 Reappointment of unsuccessful election candidates

(1) If—

- (a) an executive performing the duties of an office in an administrative unit under a contract under section 72—
 - (i) terminated his or her contract to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory; and
 - (ii) was a candidate at the election; and
 - (iii) failed to be elected; and
- (b) the contract was terminated not earlier than 6 months before the day nominations for the election closed;

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

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

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

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

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

119 Unattached officers

- (1) The chief executive of an administrative unit may, with the written consent of an officer who holds an office in the administrative unit, declare, in writing, that the officer shall, on a day specified in the declaration, become an unattached officer and, if the chief executive does so, the office so held by the officer becomes vacant on the day so specified.

- (2) Except as otherwise directed by the commissioner under this or another provision of this Act, a person who is, or is deemed to be, an unattached officer of the service is included in the administrative unit in which the person last held an office.

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

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

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

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

Part 6 Retirement and redeployment of offices other than chief executives and executives

139 Interpretation for pt 6

(1) In this part:

appeal committee means a redeployment and retirement appeal committee constituted under the Merit Protection Act, part 2, division 2, subdivision D.

excess officer includes a person who is an excess officer within the meaning of subsection (2).

officer does not include an officer whose appointment to the service on probation has not been confirmed.

- (2) An officer in an administrative unit is an *excess officer* for this part if—
- (a) the officer is included in a class of officers employed in the administrative unit, which class comprises a greater number of officers than is necessary for the efficient and economical working of the administrative unit; or
 - (b) the services of the officer cannot be effectively used because of technological or other changes in the work methods of the administrative unit or changes in the nature, extent or organisation of the functions of the administrative unit; or
 - (c) if the duties usually performed by the officer are to be performed at a different locality and the commissioner has determined that the provision applies in relation to the relocation of the performance of those duties—the officer is not willing to perform duties at that locality.

- (3) For this part, an officer is inefficient only if the officer fails, in the performance of the duties that he or she is required to perform, to attain or sustain a standard of efficiency that a person may reasonably be expected to attain or sustain in the performance of those duties.
- (4) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether an officer has failed, in the performance of the duties that he or she is required to perform, to attain or sustain the standard of efficiency referred to in subsection (3)—
- (a) regard shall be had to—
 - (i) any written selection criteria or job specifications applicable to those duties; and
 - (ii) any duty statement describing those duties; and
 - (iii) any written work standards or instructions relating to the manner of performance of those duties; and
 - (b) regard may be had to—
 - (i) any written selection criteria or job specifications applicable to similar duties; and
 - (ii) any duty statements describing similar duties; and
 - (iii) any written work standards or instructions relating to the manner of performance of similar duties.
- (5) A reference in subsection (4) to similar duties, in relation to an officer holding an office or included in an administrative unit, is a reference to similar duties that other officers of that administrative unit are required to perform.
- (6) For this part, an officer is not qualified to perform his or her duties only if, in relation to those duties—

- (a) the officer ceases to hold, or becomes unable or ineligible to hold or to use and enjoy, an essential qualification; or
 - (b) a court, person, authority or body that is competent to do so suspends, cancels, revokes, rescinds or otherwise withdraws an essential qualification held by the officer.
- (7) A reference in subsection (6) to an essential qualification, in relation to an officer, is a reference to any statutory, professional, academic, commercial, technical, trade, health or other qualification the holding of which is a prerequisite to the practice of a profession, trade or occupation, the exercise of a right or the performance of a function or duty, being a profession, trade, occupation, right, function or duty that it is necessary for that officer to practise, exercise or perform in the course of his or her employment.

140 Power to reduce officer's classification

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

141 Retirement—minimum retiring age

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

143 Action by chief executive to reduce officer's classification or retire officer from the service

- (1) If the relevant chief executive is satisfied that an officer—
 - (a) is unable to perform his or her duties, or other duties appropriate to the officer's classification, because of physical or mental incapacity (which ground is referred to as the *ground of invalidity*); or
 - (b) is inefficient; or
 - (c) is not qualified to perform his or her duties; or
 - (d) is an excess officer;the relevant chief executive may, having considered whether it would be in the interests of the efficient administration of the administrative unit of the chief executive to transfer the officer under section 83, subject to subsection (2), by written notice given to the officer, reduce the officer's classification or retire the officer from the service.
- (2) If—
 - (a) a chief executive—

- (i) has been unable to find alternative suitable employment for an excess officer in the administrative unit of the chief executive; and
 - (ii) proposes to exercise a power under subsection (1) in relation to the officer; and
 - (b) the officer has not consented to the exercise of that power;
the commissioner shall take reasonable action to find alternative suitable employment for the officer in the service, and the chief executive shall not exercise a power under subsection (1) in relation to the officer unless the commissioner is satisfied that it would not be in the interests of the efficient administration of the service to transfer the officer under section 96 to another administrative unit.
- (3) For subsection (1)—
- (a) if an officer has consented to his or her proposed reduction in classification or retirement on the ground of invalidity—the notice under that subsection takes effect on a day agreed between the officer and the chief executive and specified in the notice, whether before or after the day the notice is given to the officer; and
 - (b) if an officer has consented to his or her proposed reduction in classification or retirement on any other ground—the notice under that subsection takes effect on a day agreed between the officer and the chief executive and specified in the notice, being a day no earlier than the day the notice is given to the officer.
- (4) For subsection (1), if an officer has not consented to his or her proposed reduction in classification or retirement on the ground of invalidity, the notice under that subsection takes effect—
- (a) in accordance with subsection (7); or
 - (b) if under an industrial award that is applicable to the officer the notice would not take effect until the day immediately

following the day the officer exhausts any full-pay sick leave credits to which the officer may be entitled before retirement in accordance with that award and the day that so follows occurs after the time so determined—on that day.

- (5) For subsection (1), if an officer has not consented to his or her proposed reduction in classification or retirement on the ground that the officer is an excess officer, the notice under that subsection takes effect—
- (a) in accordance with subsection (7); or
 - (b) if under an industrial award that is applicable to the officer the notice would not take effect until the end of a retention period that ends in relation to that officer after the time so determined—at the end of that period.
- (6) For subsection (1), if an officer has not consented to his or her proposed reduction in classification or retirement on a ground other than invalidity or that the officer is an excess officer, the notice under that subsection takes effect in accordance with subsection (7).
- (7) For subsections (4), (5) and (6), a notice under subsection (1), takes effect—
- (a) on the day (if any) specified in the notice as the day the notice takes effect; or
 - (b) 1 month after the day the notice is given to the officer; or
 - (c) if the officer appeals under section 147 against the giving of the notice and withdraws that appeal after the end of the period fixed by section 147 (1) but before the appeal committee determines the appeal—on the day that appeal is withdrawn; or
 - (d) if the officer appeals under section 147 against the giving of the notice and the appeal committee confirms the notice—on the day that notice is confirmed;

whichever occurs last.

- (8) The powers given to a chief executive or the commissioner by this section are subject to any applicable industrial award.

144 Action by commissioner to reduce officer's classification

- (1) If the commissioner is—
- (a) satisfied that an officer—
 - (i) is unable to perform his or her duties, or other duties appropriate to the officer's classification, because of physical or mental incapacity (which ground is referred to as the *ground of invalidity*); or
 - (ii) is inefficient; or
 - (iii) is not qualified to perform his or her duties; or
 - (iv) is an excess officer; and
 - (b) satisfied that it would be in the interests of the efficient administration of the service to reduce the officer's classification;

the commissioner may, having considered whether it would be in the interests of the efficient administration of the service to transfer the officer under section 96, by written notice given to the officer, reduce the officer's classification accordingly.

- (2) For subsection (1)—
- (a) if an officer has consented to his or her proposed reduction in classification on the ground of invalidity—the notice under that subsection takes effect on a day agreed between the officer and the commissioner and specified in the notice, whether before or after the day the notice is given to the officer; and
 - (b) if an officer has consented to his or her proposed reduction in classification on any other ground—the notice under that subsection takes effect on a day agreed between the officer and

the commissioner and specified in the notice, being a day no earlier than the day the notice is given to the officer.

- (3) For subsection (1), if an officer has not consented to his or her proposed reduction in classification on the ground of invalidity, the notice under that subsection takes effect—
 - (a) in accordance with subsection (6); or
 - (b) if under an industrial award that is applicable to the officer the notice would not take effect until the day immediately following the day the officer exhausts any full-pay sick leave credits to which the officer may be entitled before retirement in accordance with that award and the day that so follows occurs after the time so determined—on that day.
- (4) For subsection (1), if an officer has not consented to his or her proposed reduction in classification on the ground that the officer is an excess officer, the notice under that subsection takes effect—
 - (a) in accordance with subsection (6); or
 - (b) if under an industrial award that is applicable to the officer the notice would not take effect until the end of a retention period that ends in relation to that officer after the time so determined—at the end of that period.
- (5) For subsection (1), if an officer has not consented to his or her proposed reduction in classification on a ground other than invalidity or that the officer is an excess officer, the notice under that subsection takes effect in accordance with subsection (6).
- (6) For subsections (3), (4) and (5), a notice under subsection (1) takes effect—
 - (a) on the day (if any) specified in the notice as the day the notice takes effect; or
 - (b) 1 month after the day the notice is given to the officer; or

- (c) if the officer appeals under section 147 against the giving of the notice and withdraws that appeal after the end of the period fixed by section 147 (1) but before the appeal committee determines the appeal—on the day that appeal is withdrawn; or
- (d) if the officer appeals under section 147 against the giving of the notice and the appeal committee confirms the notice—on the day that notice is confirmed;

whichever occurs last.

- (7) The powers given to the commissioner by this section are subject to any applicable industrial award.
- (8) This section does not apply in relation to an autonomous instrumentality.

145 Limitation on retirement on ground of invalidity

- (1) Notwithstanding anything contained in section 143 or 144, an officer who—
 - (a) is an eligible employee for the *Superannuation Act 1976* (Cwlth); and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;is not capable of being retired from office on the ground of invalidity within the meaning of that Act, part 4A unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under that Act, section 54C.
- (2) Notwithstanding anything contained in section 143 or 144, an officer who—
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* (Cwlth); and
 - (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under that Act, section 13.

146 Unattachment of officers

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

147 Appeals

- (1) An officer to whom a notice under section 143 or 144 has been given (other than an officer who, before receiving the notice, consented in writing to the giving of the notice) may, within the period of 14 days commencing on the day the notice is given to the officer, appeal to an appeal committee against the giving of the notice, on the ground that the reduction in the officer's classification, or the retirement of the officer, as the case requires, would be unreasonable.
- (2) If an officer appeals to an appeal committee against the giving of a notice, an appeal committee shall hear and determine the appeal and may—
 - (a) confirm the notice; or
 - (b) revoke the notice.

Part 7 Long service leave

148 Interpretation for pt 7

(1) In this part:

approving authority means—

- (a) in relation to a person who is, or was at the time of his or her ceasing to be an officer (whether because of death or otherwise), the holder of an office or appointment, being an office or appointment to which this paragraph applies or applied under subsection (6)—the commissioner or any other person who is authorised to grant leave to the holder of the office or appointment by the law establishing the office or providing for the making of the appointment; or
- (b) in relation to any other person—the commissioner or the relevant chief executive.

category A officer means—

- (a) an officer the whole of whose employment that counts as eligible employment for this part has been employment in a full-time capacity; or
- (b) an officer the whole of whose employment that counts as eligible employment for this part has been employment in a part-time capacity.

category B officer means an officer other than a category A officer.

Commonwealth Long Service Leave Act means the *Long Service Leave (Commonwealth Employees) Act 1976* (Cwlth).

leave means leave of absence.

long service leave includes long leave, furlough, extended leave and any other leave in the nature of long service leave (however described).

officer includes—

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

redundancy, in relation to an officer other than a chief executive or an executive, means the compulsory termination of the employment of the officer for the reason that—

- (a) his or her employment or position is not necessary; or
 - (b) the work for which he or she was engaged is finished; or
 - (c) a reduction in the number of officers is necessary because the quantity of work has diminished.
- (2) A reference in this part to eligible employment is a reference to employment by the Territory or employment referred to in section 154 (2).
- (3) For the purposes of references in this part to a number of months (other than a reference to a number of completed months), the number of months shall be taken to be, where appropriate, a whole number and a fraction.
- (4) For the purposes of references in this part to a number of years (other than a reference to a number of completed years), the number of years shall be taken to be, where appropriate, a whole number and a fraction.
- (5) A reference in this part to a person who is on loan to the Territory includes a reference to a person who is on loan to a Territory instrumentality or a statutory office-holder.

- (6) If—
- (a) a Minister may grant leave of absence to a statutory officeholder or the holder of an appointment established by, or made under, an Act; and
 - (b) the holder of the office or appointment is, for this part, to be taken to be employed by the Territory because of holding the office or appointment;
- the office is an office, or the appointment is an appointment, as the case may be, to which subsection (1), definition of *approving authority*, paragraph (a) applies.
- (7) For this part, the minimum retiring age of an officer is—
- (a) for an officer to whom part 6 applies—the age that is, in accordance with part 6, his or her minimum retiring age;
 - (b) for an officer whose minimum retiring age is fixed by the terms and conditions of his or her employment otherwise than under part 6—the age so fixed; or
 - (c) in any other case—the age of 60 years.
- (8) For this part, the engagement of a person as a chief executive or executive shall be taken to have been terminated for redundancy if—
- (a) the person was engaged under section 28 or 72; and
 - (b) his or her engagement was terminated because—
 - (i) his or her employment was unnecessary; or
 - (ii) the work for which he or she was engaged was finished; or
 - (iii) a reduction of officers was necessary because the quantity of work had diminished; and

- (c) the person was eligible to be re-engaged under section 28 or 72; and
- (d) he or she desired to be so re-engaged; and
- (e) he or she was not offered a further re-engagement under either of those sections on terms and conditions that provided for remuneration at a rate equal to or greater than the rate at which remuneration was payable to him or her immediately before the termination of his or her engagement.

149 Meaning of public authority

Subject to the management standards, a reference in this part to a public authority is a reference to—

- (a) an authority, whether incorporated or not, that was or is constituted by or under the law of the Territory, the Commonwealth, a State or another Territory for a public purpose; or
- (b) a local governing body that was or is established by or under a law of the Commonwealth, a State or another Territory.

150 Management standards with respect to previous employment with prescribed authorities etc

- (1) The management standards may provide that a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the management standards shall, for this part, be taken to be, or to have been, a public authority.
- (2) The management standards may provide that previous employment of an officer by a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the management standards shall be taken into account for section 154 as if it had been employment by the Territory.

- (3) Management standards made in accordance with this section may modify sections 154, 155, 156 and 157 in relation to officers who have been employed in the Independent State of Papua New Guinea.
- (4) Management standards made in accordance with this section—
- (a) may refer to a specified person, authority, institution or body or to persons, authorities, institutions or bodies included in a specified class of persons, authorities, institutions or bodies; and
 - (b) may be expressed to have effect in respect only of employment in specified cases or circumstances; and
 - (c) may be expressed to have effect in respect only of employment on or after a particular date, before a particular date or during a particular period.

151 Meaning of salary

- (1) The management standards may provide that allowances of specified kinds are to be included in salary for this part or of a provision of this part.
- (2) The management standards may prescribe the conditions subject to which, or specify the extent to which, payments in accordance with this part, or in accordance with a provision of this part, are to include amounts by way of, or in respect of, an allowance of a kind specified in the management standards referred to in subsection (1), including conditions having effect after the time at which leave commences.
- (3) For an officer who receives, or of officers included in a class of officers who receive, salary otherwise than by way of uniform amounts in respect of uniform periods, the management standards may provide that an amount ascertained in the way provided by the management standards is to be the annual salary for this part of the officer or of the officers included in the class of officers.

152 Certain payments not included in salary

The management standards may—

- (a) provide that payments of a specified kind are not included in salary; or
- (b) specify the extent to which payments of a specified kind are not included in salary; or
- (c) prescribe the circumstances in which payments of a specified kind are not included in salary;

for this part or of a provision of this part.

153 Persons taken to be employed by the Territory

- (1) A statutory office-holder shall, for this part, be taken to be employed by the Territory, and his or her employment shall, for those purposes, be taken to be constituted by the performance of the duties of his or her office.
- (2) A person—
 - (a) who is temporarily transferred to employment with the Territory from, or whose services are temporarily loaned to the Territory by—
 - (i) the Commonwealth, a State or another Territory; or
 - (ii) a public authority of the Commonwealth, a State or another Territory; or
 - (b) who is appointed or engaged for employment overseas only;shall not be taken, only because the person is such a person, to be employed by the Territory for this part.
- (3) This section applies in relation to employment before the commencement of this part in the same way as it applies in relation to employment after the commencement of this part.

154 Period of employment

- (1) Subject to this part, the period of employment of an officer for this part is the period during which he or she has been employed continuously by the Territory.
- (2) If, before his or her current period of employment by the Territory, an officer—
 - (a) was employed continuously in a type of employment recognised by the management standards for section; and
 - (b) the period for which he or she was so employed was continuous with his or her current period of employment;his or her period of employment for this part includes, subject to this part, the period for which he or she was so employed.
- (3) The period of employment of an officer does not include any period during which his or her eligible employment—
 - (a) was employment in an honorary capacity and was not or is not also eligible employment in some other capacity, other than employment in respect of which he or she was or is remunerated by fees, allowances or commission only; or
 - (b) was or is remunerated, by fees, allowances or commission only and was not or is not remunerated in respect of other eligible employment in some other way.

155 Continuity of employment

- (1) For this part, a person shall be taken not to break, or to have broken, the continuity of his or her eligible employment by reason of his or her being or having been—
 - (a) on leave of absence; or
 - (b) absent for a continuous period not exceeding 12 months without the approval of his or her employer.

- (2) If a continuous period of eligible employment of a person has commenced after, but not more than 12 months after, the end of a continuous period of previous eligible employment of the person, those periods of employment shall, for this part, be taken to be continuous with one another.
- (3) For subsection (2), if a person, having ceased to be employed in eligible employment, has undertaken a prescribed course of full-time training before resuming eligible employment, the resumption of his or her eligible employment shall be taken to have occurred not more than 12 months after he or she ceased to be so employed if the period between his or her ceasing to be so employed and the resumption of that employment, less the period of his or her course of full-time training under that scheme, does not exceed 12 months.
- (4) If a continuous period of employment of a person by the Territory or in—
- (a) the Australian Public Service; or
 - (b) the public service of another Territory, or the teaching service or police force of the Northern Territory; or
 - (c) any authority established or constituted by or under a law of an external Territory; or
 - (d) the public service of the former Territory of Nauru;
- has commenced after, but not immediately after, the end of a continuous period of previous employment of the person by the Territory or in employment of the type mentioned in paragraph (a), (b), (c) or (d) those periods of employment shall, for this part, be taken to be continuous with one another if the approving authority is satisfied that—
- (e) the termination of the person's employment at the end of that period of previous employment was due to ill health; and
 - (f) the commencement of that firstmentioned period of employment occurred not more than 12 months after his or her

health became so restored as to enable him or her to perform duties of a kind that were suitable to be performed by him or her having regard to the duties performed by him or her immediately before the end of that period of previous employment.

(5) If—

- (a) a continuous period of employment of a person by a State or an authority of a State has commenced after, but not immediately after, the end of a continuous period of previous employment of the person by the Territory or in employment of the kind referred to in subsection (4) (a), (b), (c) or (d); or
- (b) a continuous period of eligible employment of a person has commenced after, but not immediately after, the end of a continuous period of previous employment of the person by a State or an authority of a State;

the periods of employment referred to in paragraph (a) or (b), whichever is applicable, shall, for this part, be taken to be continuous with one another if the approving authority is satisfied that—

- (c) the termination of his or her employment at the end of that period of previous employment was due to ill health; and
 - (d) the person was, due to ill health, unemployed for a period immediately following the end of that period of previous employment; and
 - (e) the commencement of the period of employment firstmentioned in paragraph (a) or (b), whichever is applicable, occurred not more than 12 months after the end of the period of unemployment referred to in paragraph (d).
- (6) A person shall not be taken, for this part, to have been in eligible employment during a period that would, apart from subsection (2), (3), (4) or (5), have broken the continuity of his or her employment.

156 Status of periods of absence

(1) In this section:

defence employment means—

- (a) continuous full-time employment in a part of the Reserve Forces or of the Citizen Forces; or
- (b) employment in a part of those forces for such a period as was fixed by or in accordance with regulations in force under the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth), or the *Air Force Act 1923* (Cwlth), as in force at the relevant time; or
- (c) national service.

executive office-holder means an officer—

- (a) who is an officer or employee, within the meaning of the *Industrial Relations Act 1988* (Cwlth), of an organisation within the meaning of that Act; and
 - (b) who occupies an office that is a prescribed office for this paragraph; and
 - (c) who is required to devote the whole of his or her time to the duties of the office.
- (2) A person absent from eligible employment without the approval of his or her employer shall be taken, for this part, not to be, or to have been, in that employment during the period of the absence.
- (3) Subject to subsections (4) and (5) and the management standards, a person absent from eligible employment on leave of absence shall be taken, for this part, to have been in that employment during the period of the absence.
- (4) Subject to subsection (5), if—
- (a) an officer is or has been absent from his or her employment on leave of absence without pay (other than leave of absence on

account of illness or in respect of a period of defence employment); and

- (b) the leave of absence is the subject of a determination by the approving authority at the time of the grant of that leave or at a subsequent time that the period during which the officer is or was so absent be included in his or her period of employment for this part;

the officer shall be taken, for this part, to have been in that employment during the period of the absence.

- (5) If a person is or has been absent from his or her employment in Territory employment on leave granted for the purpose of enabling him or her to be an executive office-holder—
 - (a) the period of the absence shall be reckoned as part of his or her period of employment for the purpose of determining whether a provision of this part that applies only in relation to officers whose periods of employment are at least 1 year or 10 years, as the case may be, applies in relation to him or her; and
 - (b) the person shall be taken not to have been employed in that employment during the period of absence for any other purpose.

157 Concurrent employment

- (1) If the period of service of an officer includes a period of eligible employment that is wholly or partly concurrent with a period of other eligible employment, subsections (3), (4) and (5) apply for the purpose of determining the extent (if any) to which each of those periods is to count in ascertaining the period of leave that may at any time be granted to the officer under this part or the payment that may at any time be made under this part to or in respect of the officer.
- (2) In applying subsections (3), (4) and (5) in relation to an officer—

- (a) subsection (3) shall, if applicable, be applied before subsection (4) or (5); and
 - (b) subsection (4) shall, if applicable, be applied before subsection (5).
- (3) If, on the day—
- (a) leave is granted to an officer under this part; or
 - (b) an officer ceases to be an officer;
- the officer is also in eligible employment other than employment by the Territory, so much of his or her current period of eligible employment as is or was concurrent with any of his or her employment by the Territory does not count as eligible employment.
- (4) If a person is or was in eligible employment in a full-time capacity, any eligible employment in a part-time capacity that is or was concurrent with the full-time employment does not count as eligible employment.
- (5) If a person who is or was in eligible employment in a part-time capacity renders or rendered on a day service—
- (a) for a period in accordance with the terms of his or her employment; and
 - (b) for a further period on that day in accordance with the terms of other eligible employment in a part-time capacity;
- his or her period of employment on that day shall be taken to be a period equal to the sum of those periods.

158 Long service leave and payments instead of long service leave

- (1) Subject to section 159, an officer is not eligible to be granted long service leave unless his or her period of service is at least 10 years.

- (2) If the period of service of a category A officer is at least 10 years, the approving authority may, at any time, grant to the officer long service leave on full salary for a period not exceeding his or her long service leave credit at that time.
- (3) If the period of service of a category B officer is at least 10 years, the approving authority may, at any time, grant to the officer long service leave on full salary in relation to the officer's full-time employment for a period not exceeding the officer's long service leave credit related to the officer's full-time employment at that time and, in relation to the officer's part-time employment, for a period not exceeding the officer's long service leave credit related to the officer's part-time employment at that time or both.
- (4) If a period of long service leave (the *relevant period*) may be granted to an officer under subsection (2) or (3), the approving authority may, at the request of the officer, grant to him or her long service leave on half salary for a period not exceeding twice the relevant period.
- (5) Subject to subsections (7) and (8), if a category A officer whose period of employment is at least 10 years ceases to be an officer otherwise than by death, the approving authority shall authorise payment to the officer of an amount equal to the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit immediately before the officer ceases to be an officer if salary were payable to him or her in respect of that period at the rate applicable to the officer under section 163 in relation to his or her long service leave immediately before he or she ceases to be an officer.
- (6) Subject to subsections (7) and (8), if a category B officer whose period of employment is at least 10 years ceases to be an officer otherwise than by death, the approving authority shall authorise payment to the officer of an amount equal to the sum of—
- (a) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long

service leave credit related to the officer's full-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's full-time employment immediately before he or she ceases to be an officer; and

- (b) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit related to the officer's part-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's part-time employment immediately before he or she ceases to be an officer.
- (7) Subsection (5) or (6) does not apply to an officer who requests the approving authority in writing, before the officer ceases to be an officer, not to authorise a payment to him or her under that subsection.
- (8) If an officer requests the approving authority in writing before the officer ceases to be an officer to authorise a payment to the officer, on his or her ceasing to be an officer, of a specified amount, being an amount less than the amount that would otherwise be payable to the officer under subsection (5) or (6), that subsection does not empower the approving authority to authorise a payment to the officer of an amount greater than the amount so specified.
- (9) Subject to subsection (10), if, apart from this subsection—
- (a) an amount would become due to a person under this section; and
 - (b) the amount would become due solely because of the resignation of the person from the service for the purpose of

his or her being appointed to the Australian Public Service under a provision corresponding to section 115;

the amount does not become due on the person's resignation from the service.

- (10) If, apart from subsection (9)—
- (a) an amount would become due under this section to a person to whom section 166 applies; and
 - (b) the amount would become due solely because of the resignation of the person from the service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115 (being the first occasion when he or she had resigned for that purpose);
- the amount that the person shall receive shall be the difference between—
- (c) the amount that the person would have received because of the operation of section 166 apart from subsection (9) of this section; and
 - (d) the amount that the person would have received apart from that subsection if section 166 did not apply to him or her.
- (11) If an officer whose period of employment is at least 10 years dies, the approving authority shall authorise payment to a dependant of the officer of an amount equal to, or payments to any 2 or more dependants of the officer of amounts aggregating, the amount that would have been payable to the officer under subsection (5) or (6) if the officer had ceased to be an officer otherwise than by death on the day the officer died.

159 Extended leave or pay instead of leave for officers not entitled to long service leave

- (1) If an officer whose period of employment is less than 10 years but not less than 1 year is to cease to be an officer—

- (a) on or after his or her attaining the minimum retiring age; or
- (b) on his or her redundancy;

the approving authority shall, on written application by the officer, grant to the officer long service leave under this subsection in accordance with the requirements of subsection (2) or (3), as the case may be.

- (2) For subsection (1), long service leave shall be granted to a category A officer on full salary, to be taken so as to end immediately before the officer is to cease to be an officer, for a period not exceeding the officer's long service leave credit immediately before the officer commences that leave.
- (3) For subsection (1), long service leave shall be granted to a category B officer on full salary, to be taken so as to expire immediately before the officer is to cease to be an officer, in relation to the officer's full-time employment for a period not exceeding the officer's long service leave credit related to the officer's full-time employment, and long service leave in relation to the officer's part-time employment for a period not exceeding the officer's long service leave credit related to the officer's part-time employment, immediately before the officer commences whichever of those periods of leave he or she commences first.
- (4) Subject to subsections (5) and (6), if an officer whose period of employment is less than 10 years but not less than 1 year—
 - (a) ceases to be an officer, otherwise than because of the officer's death, on, or after, his or her attaining the minimum retiring age; or
 - (b) ceases to be an officer because of his or her redundancy; or
 - (c) ceases to be an officer and satisfies the approving authority that his or her so ceasing is due to ill health of such a nature as to justify his or her so ceasing;

the approving authority shall authorise payment to the officer under this subsection in accordance with the requirements of subsection (5) or (6), as the case requires.

- (5) For subsection (4), the amount payable for a category A officer is an amount equal to the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave immediately before he or she ceases to be an officer.
- (6) subsection (4), the amount payable for a category B officer is an amount equal to the sum of—
- (a) the amount of salary that would be payable to the officer in respect of a period of employment equal to the period of the officer's long service leave credit related to the officer's full-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's full-time employment immediately before he or she ceases to be an officer; and
 - (b) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit related to the officer's part-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's part-time employment immediately before he or she ceases to be an officer.
- (7) Subsection (4) does not apply to an officer who requests the approving authority in writing, before the officer ceases to be an

officer, not to authorise a payment to him or her under that subsection.

- (8) If an officer requests the approving authority in writing before the officer ceases to be an officer to authorise a payment to the officer, on his or her ceasing to be an officer, of a specified amount, being an amount less than the amount that would otherwise be payable to the officer under subsection (4), that subsection does not empower the approving authority to authorise a payment to the officer of an amount greater than the amount so specified.

- (9) Subject to subsection (10), if, apart from this subsection—

- (a) an amount would become due to a person under this section; and
- (b) the amount would become due solely because of the resignation of the person from the service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115;

the amount does not become due on the person's resignation from the service.

- (10) If, apart from subsection (9)—

- (a) an amount would become due under this section to a person to whom section 166 applies; and
- (b) the amount would become due solely because of the resignation of the person from the service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115 (being the first occasion when he or she had resigned for that purpose);

the amount that the person shall receive shall be the difference between—

- (c) the amount that the person would have received because of the operation of section 166 apart from subsection (9) of this section; and
 - (d) the amount that the person would have received apart from that subsection if section 166 did not apply to him or her.
- (11) If an officer whose period of employment is less than 10 years but not less than 1 year dies, the approving authority may authorise payment to a dependant of the officer of an amount equal to, or to 2 or more dependants of the officer of amounts aggregating, the amount that would have been payable to the officer under subsection (4) if the officer had, on the day the officer died, ceased to be an officer otherwise than because of death on, or after, his or her attaining the minimum retiring age.

160 Calculation of long service leave credit

- (1) In this section:

prescribed day means—

- (a) in relation to a long service leave credit of an officer on the day the officer ceases to be an officer—the day immediately following the last day of the last completed month in the officer's period of employment ending on the day he or she ceases to be an officer; or
 - (b) in relation to a long service leave credit of an officer on any other day—the day immediately following the last day of the last completed year of employment included in the officer's period of employment ending on that other day.
- (2) For sections 158 and 159—
- (a) the long service leave credit of a category A officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3a}{10} - b$$

where:

a means the number of years comprised in the part of the officer's period of employment that accrued before the prescribed day.

b means the number of months comprised in the period or the sum of the periods of long service leave (if any) previously granted to the officer; and

- (b) the long service leave credit related to the full-time employment of a category B officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3c}{10} - d$$

where:

c means the number of years comprised in a period equal to the period, or the sum of the periods, of the officer's employment in a full-time capacity included in the part of the officer's period of employment that accrued before the prescribed day.

d means the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to the officer in relation to his or her full-time employment; and

- (c) the long service leave credit related to the part-time employment of a category B officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3e}{10} - f$$

where:

e means the number of years comprised in a period equal to the period, or the sum of the periods, of the officer's employment in a part-time capacity included in the part of the officer's period of employment that accrued before the prescribed day.

f means the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to the officer in relation to his or her part-time employment.

161 Application of s 160

- (1) Subject to subsection (2), in the application of section 160 in relation to an officer—
 - (a) a reference to a period of long service leave granted to the officer is a reference to a period of long service leave granted to the officer, whether before or after the commencement of this part, under this part or otherwise in respect of a period of the officer's employment that is included in his or her period of employment; and
 - (b) a reference to a period of long service leave granted to the officer in relation to the officer's full-time employment is a reference to a period of long service leave granted to the officer, whether before or after the commencement of this part, under this part or otherwise in respect of a period of employment in a full-time capacity that is included in his or her period of employment; and
 - (c) a reference to a period of long service leave granted to the officer in relation to the officer's part-time employment is a reference to a period of long service leave granted to the officer, whether before or after the commencement of this part, under this part or otherwise in respect of a period of

employment in a part-time capacity that is included in his or her period of employment.

- (2) In the application of section 160 in relation to an officer—
- (a) if the officer has been granted long service leave on half salary under this part or otherwise in respect of a period of the officer's employment included in the officer's period of employment for this part—the period of that leave shall be taken to have been a period equal to $\frac{1}{2}$ that period;
 - (b) if the approving authority is satisfied that long service leave that was granted to the officer otherwise than under this part, under any of the Acts repealed by the Commonwealth Long Service Leave Act or under the *Public Service Act 1922* (Cwlth) in respect of a period of employment included in the officer's period of employment for this part was not granted to the officer on full salary or half salary having regard to the terms and conditions of the employment—the period of that long service leave shall be taken to have been such a period as is determined by the approving authority to be the period of long service leave that the officer would have been granted in respect of that employment if he or she had been granted long service leave on full salary;
 - (c) if the officer has been paid an amount under this part, under the Commonwealth Long Service Leave Act, under any of the Acts repealed by the Commonwealth Long Service Leave Act or under a repealed section of the *Public Service Act 1922* (Cwlth) in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in the officer's period of employment for this part—the officer shall be taken to have been granted, on the day that payment was made to the officer, a period of long service leave in relation to the officer's full-time employment or to the officer's part-time employment, as the case may be, equal to the period of long service leave on full

salary in relation to which that payment was made to him or her; and

- (d) if the officer has, in circumstances that are similar to the circumstances in which an amount is payable to an officer under section 158 or 159, been paid an amount otherwise than under this part or a section of the *Public Service Act 1922* (Cwlth) referred to in paragraph (c) in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in the officer's period of employment for this part—the officer shall be taken to have been granted, on the day that payment was made to the officer, such a period of long service leave in relation to the officer's full-time employment or in relation to the officer's part-time employment, as the case may be, as is determined by the approving authority to be equal to the period of his or her employment in respect of which that payment represented full salary.

162 Rate of salary while absent on long service leave

- (1) In this section:

current rate of salary, in relation to a part of a period of long service leave that is granted to an officer, means the rate at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to be employed in the capacity in which he or she was employed on the relevant day.

prescribed average number of hours means—

- (a) in relation to a category A officer who is granted a period of long service leave—
- (i) the officer's average number of hours of employment per week during the relevant period; or

- (ii) if the officer satisfies the approving authority that the officer's average number of hours of employment per week during the relevant period is less than the officer's average number of hours of employment per week during his or her period of employment—that lastmentioned average number of hours; and
- (b) in relation to a category B officer who is granted a period of long service leave—
 - (i) the officer's average number of hours of employment per week during the relevant period; or
 - (ii) if the officer satisfies the approving authority that the officer's average number of hours of employment per week during the relevant period is less than the officer's average number of hours of employment per week throughout the officer's period or periods of employment in a part-time capacity included in his or her period of employment—that lastmentioned average number of hours.

relevant day, in relation to an officer who has been granted long service leave, means the day immediately before the day that leave commences.

relevant period means—

- (a) in relation to a category A officer who has been granted a period of long service leave—the 12 months of his or her period of employment ending on the day before the day the leave commences; and
- (b) in relation to a category B officer who has been granted a period of long service leave—
 - (i) the period of, or the periods aggregating, 12 months during which the officer was last employed in a part-time capacity before the day the leave commences; or

- (ii) if the officer has not been employed in a part-time capacity for 12 months—the period or periods during which the officer has been employed in a part-time capacity.

relevant rate per hour, in relation to a part of a period of long service leave that has been granted to an officer who was employed in a part-time capacity on the relevant day, means the rate per hour at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to be engaged in part-time employment in the capacity in which he or she was employed on the relevant day.

- (2) If a period of long service leave is granted under section 158 or 159 to a category A officer on full salary, salary is payable to the officer in respect of any part of the leave—
 - (a) if the officer has been employed in a full-time capacity throughout the officer's period of employment—at the rate that is his or her current rate of salary in respect of that part of the leave; or
 - (b) if the officer has been employed in a part-time capacity throughout the officer's period of employment and there has been no change during that period in the number of hours per week for which the officer has, by the terms of the officer's employment, been required to render service—at the rate per week at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to render service for that number of hours per week in the capacity in which he or she was employed on the relevant day; or
 - (c) if the officer has been employed in a part-time capacity throughout the officer's period of employment but there has been a change during that period in the number of hours per week for which the officer was required by the terms of the officer's employment to render service—at the rate per week

ascertained by multiplying the relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her employment.

- (3) If a period of long service leave on full salary is granted under section 158 or 159 to a category B officer who is employed in a full-time capacity on the relevant day—
- (a) salary is payable to the officer in respect of any part of that leave that is granted to the officer in relation to the officer's full-time employment—at the rate that is his or her current rate of salary in respect of that part of the leave; and
 - (b) salary is payable to the officer in respect of any part of that leave that is granted to the officer in relation to his or her part-time employment—at a weekly rate, being the lesser of—
 - (i) the rate that is the officer's current rate of salary per week in respect of that part of the leave; and
 - (ii) the rate per week ascertained in accordance with the formula—

$$\frac{ab}{c}$$

where:

a means the rate that is the officer's current rate of salary per week in respect of that part of the leave.

b means the prescribed average number of hours of the officer's employment.

c means the number of hours of employment that the officer was, on the relevant day, required by the terms of his or her employment to render during a week.

- (4) If a period of long service leave on full salary is granted under section 158 or 159 to a category B officer who is employed in a part-time capacity on the relevant day—

- (a) salary is payable to the officer in respect of any part of the leave that is granted to the officer in relation to the officer's full-time employment at the rate at which salary would be payable to the officer in respect of that part of the leave if the officer were not on long service leave but were rendering full-time service in the capacity in which he or she was employed on the relevant day; and
- (b) salary is payable to the officer in respect of any part of the leave that is granted in relation to the officer's part-time employment at the rate per week ascertained by multiplying the officer's relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her employment.

163 Rate of salary in relation to pay instead of leave

- (1) For sections 158 and 159, where an officer ceases to be an officer—
 - (a) the rate applicable to the officer in relation to his or her long service leave; or
 - (b) the rate applicable to the officer in relation to the officer's long service leave related to his or her full-time employment; or
 - (c) the rate applicable to the officer in relation to the officer's long service leave related to his or her part-time employment;

immediately before the officer ceases to be an officer is the rate at which full salary would be payable to the officer in respect of the officer's employment on the day he or she ceases to be an officer (the *terminating day*) if—

- (d) the officer were absent from duty on the terminating day in accordance with a period of long service leave, long service leave related to the officer's full-time employment or long service leave related to the officer's part-time employment, as the case requires, that had been granted to him or her on full salary to commence on the terminating day; and

- (e) on the day immediately before the terminating day the officer had completed the period of employment that he or she completes on the terminating day.
- (2) If an officer is not employed in the same capacity on the terminating day and on the day immediately before the terminating day, subsection (1) applies in relation to the officer as if the officer had been employed on the day immediately before the terminating day in the capacity in which the officer is employed on the terminating day.

164 Long service leave benefits not to be granted under other laws

- (1) If a person who holds an office or appointment under a relevant law, or is employed under a relevant law, is, for this part, employed in Territory employment because of holding that office or appointment or of being so employed, then, unless otherwise expressly provided by a relevant law, nothing in a relevant law shall be taken to authorise the provision of long service leave benefits for or in relation to the person under a relevant law or under terms and conditions of employment determined under a relevant law.
- (2) In subsection (1):

long service leave benefits means any benefits of the kind provided under sections 158 and 159.

relevant law means a Territory law that is in force on the day on which this part comes into operation or that comes into force on or after that day.

165 Additional provisions relating to death of officer

- (1) If the approving authority, after consideration of all the circumstances, directs that, for this part, the death of an officer whose period of employment is at least 1 year is to be presumed to have occurred on a specified date, this part applies in relation to the officer as if he or she had died on that date.

- (2) If there are 2 or more dependants of a deceased officer, the approving authority shall, in exercising the powers given to it by section 158 (11) or 159 (11), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the officer.
- (3) If an officer dies—
- (a) the approving authority may, if it has not authorised a payment or payments under section 158 (11) or 159 (11), whichever is applicable, authorise payment of an amount equal to the amount referred to in whichever of those subsections is applicable to the legal personal representative of the officer; and
 - (b) the approving authority shall, if it has not authorised a payment to a dependant, or payments to dependants, of the officer or a payment to the legal personal representative of the officer, of an amount equal to the amount referred to in section 158 (11) or 159 (11), whichever is applicable, within 12 months after the death of the officer or, if the approving authority gave a direction in relation to the officer under subsection (1), the date it gave that direction, authorise payment of that amount to the legal personal representative of the officer.
- (4) If an amount is payable under this part to a person, being an officer or a dependant of an officer, who is under a legal disability, the approving authority may, instead of authorising payment of the amount to the person, authorise payment of the amount to such trustee or trustees as the approving authority appoints to be held by that trustee or those trustees on the trusts for the benefit of the person that the approving authority directs and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for this part, other than this section, be taken to have been paid to the person.
- (5) If, on the death of an officer, the amount payable under this part in relation to the officer's death would be *bona vacantia*, this part does

not authorise that amount to be paid in relation to the officer and, if the amount is payable by a Territory instrumentality or a statutory office-holder, the amount is payable to the Territory.

166 Provisions relating to members of the teaching service

(1) In this section:

long service leave includes long leave, furlough, extended leave and any other leave in the nature of long service leave (however described).

long service leave entitlement means—

- (a) a period of long service leave; or
- (b) an amount of pay in lieu of long service leave.

member of the service—see the *Teaching Service Act 1972* as in force on 1 November 1988.

prescribed teacher means—

- (a) a member of the service who became such a member after 13 September 1973 and before 1 January 1974 and was, immediately before becoming such a member—
 - (i) employed in the teaching service of New South Wales and engaged in teaching duties in a Territory school in the ACT; or
 - (ii) employed in the teaching service of South Australia and engaged in teaching duties in a Territory school in the Northern Territory; or
- (b) a member of the service who became such a member after 31 December 1976 and before 1 April 1977 and was, immediately before becoming such a member, employed in the teaching service of New South Wales and engaged in full-time teaching duties in the ACT in connection with the provision of

technical and further education, that is to say, education provided by way of a course of instruction or training—

- (i) that is, or that is preparatory to, a course of a kind relevant to a trade, technical or other skilled occupation; or
- (ii) that otherwise meets the educational needs of persons who are not enrolled in a full-time course of education at a primary school, a secondary school or a secondary college.

relevant date means—

- (a) in relation to a prescribed teacher referred to in the definition of **prescribed teacher**, paragraph (a)—1 January 1974; and
- (b) in relation to a prescribed teacher referred to in that definition, paragraph (b)—1 April 1977.

relevant State means, in relation to a prescribed teacher, the State in the teaching service of which he or she was employed immediately before becoming a member of the service.

service means the Australian Capital Territory Teaching Service established by the *Teaching Service Act 1972*.

- (2) If, at any time, in the application of this part in relation to a prescribed teacher, the long service leave entitlement to which the teacher would, apart from this section, be entitled is less than the long service leave entitlement to which the teacher would be entitled if the scale of accrual of long service leave (the **former scale of accrual**) that would have been applicable in relation to the teacher under the law of the relevant State as in force on the relevant date if the teacher had continued to be employed in the teaching service of the relevant State were substituted for the scale of accrual of long service leave applicable to the teacher at that time under this part, the long service leave entitlement to which he or she is entitled shall be determined in accordance with the former scale of accrual.

Part 8 Maternity leave

167 Interpretation for pt 8

(1) In this part:

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

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

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

officer includes—

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

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

168 Persons in relation to whom pt 8 applies

(1) Subject to this section, this part applies to—

- (a) a woman who is an officer; and

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

169 Absence on maternity leave

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

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

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

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

170 Entitlement to paid maternity leave

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

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

171 Unauthorised absences

- (1) If, an unauthorised absence of an officer occurs immediately before the commencement of the period when, apart from the operation of paragraph (a), the officer would be required to take maternity leave under section 169 (1) (b), unless the relevant chief executive determines that the unauthorised absence occurs in extenuating circumstances—

- (a) the other provisions of this part do not apply to her in connection with her confinement, or her expected confinement; and
 - (b) she shall absent herself from duty during that firstmentioned period, but, subject to subsection (2), is not entitled to pay in respect of the period while she is so absent; and
 - (c) if, on the end of that firstmentioned period, the unauthorised absence of the officer continues—her unauthorised absence before the commencement of that period shall be deemed to be continuous with her unauthorised absence after the end of that period.
- (2) Subsection (1) does not affect an officer's entitlement to pay for any period of long service leave or leave of absence for recreation or on account of illness that is granted to her.

172 Absence on leave without pay

- (1) If an officer who is granted leave of absence without pay is pregnant before or during that leave, her absence from duty on maternity leave during part of the period of 52 weeks commencing 6 weeks before the expected birth of her child or if she is confined earlier than 6 weeks before the expected birth of her child, commencing on the date of her confinement, shall be taken, for sections 169 (1) (c) and 170 (1), to be absence from duty on maternity leave under section 169 (1) (a).
- (2) Notwithstanding subsection (1), if an officer who is granted leave of absence without pay for a period (the *relevant period*) being a period exceeding 6 weeks, has become pregnant before, or becomes pregnant after, the commencement of that leave, then unless the relevant chief executive otherwise determines—
- (a) section 169 (1) does not authorise a leave officer to grant her maternity leave under this part at any time while she is absent during the relevant period; and

- (b) she is not entitled to pay under section 170 (1) in respect of any part of the relevant period.
- (3) Subsection (2) applies in relation to an officer who has been granted leave of absence without pay for a period whether or not she ceases to be absent from duty on leave without pay before the end of that period, but does not apply to such an officer unless she is absent on leave without pay in accordance with the grant for a continuous period exceeding 6 weeks.

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

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

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

- (2) If permission is given under subsection (1) for an officer to continue to perform duty until and including a date specified in the permission—
 - (a) if she is confined more than 6 weeks before the expected date of birth of her child—the grant of permission so to perform duty is of no effect; or
 - (b) if she is confined before the date so specified but not more than 6 weeks before the expected date of birth of her child—section 169 (1) (b) (i) has effect as if the period referred to in

that subparagraph commenced on the date of her confinement;
or

- (c) in any other case—section 169 (1) (b) (i) has effect as if the period referred to in that subparagraph commenced on the day next following the date so specified.
- (3) If, before the end of the period when an officer who has been confined would, apart from this subsection, be required to take maternity leave under section 169 (1) (b), the officer gives the leave officer a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will be fit to resume duty on a specified date occurring before the end of that period of maternity leave, the leave officer may give her permission, in writing, to resume duty on that date and the period when she shall, on permission being so given, be required to take maternity leave terminates immediately before that date.

174 Other applications to resume duty

- (1) An officer who takes maternity leave under section 169 (1) (a) or (c) may, at any time after the end of the period of maternity leave required to be taken by her under section 169 (1) (b), apply, in writing, to the leave officer for permission to resume duty on a day specified in the application.
- (2) Within 7 days after receipt of an application made under subsection (1), the leave officer shall—
- (a) subject to subsections (3) and (6), grant or refuse to grant the application; and
 - (b) inform the applicant, in writing, whether he or she has granted or refused to grant the application.
- (3) A leave officer shall not grant an application made under subsection (1) to resume duty on a day that is less than 7 days after the application is received by the leave officer unless he or she is

satisfied that there are special circumstances justifying the granting of the application.

- (4) If a leave officer refuses to grant an application for permission to resume duty and the application was received by the leave officer not less than 21 days before the day the applicant wished to resume duty—
 - (a) the leave officer shall give to the applicant, when informing the applicant that he or she has refused to grant the application, particulars of the grounds in which it would not, in his or her opinion, be in the interests of the service for her to resume duty on that date; and
 - (b) the applicant may, within 7 days after she has received the particulars referred to in paragraph (a) request the commissioner, in writing, to review the decision of the leave officer and give, with her request, particulars of any matters she wishes the commissioner to consider in making the review.
- (5) If the commissioner receives a request under subsection (4), the commissioner shall, within 7 days after receiving the request—
 - (a) subject to subsection (6)—
 - (i) affirm the decision of the leave officer; or
 - (ii) set aside the decision of the leave officer and grant the applicant the permission sought in her application; and
 - (b) inform the applicant, in writing, of the decision.
- (6) An application under subsection (1) shall be granted by the leave officer to whom the application is made, or by the commissioner in reviewing a refusal by the leave officer to grant the application, unless the leave officer or the commissioner is satisfied that it would not be in the interests of the service to grant the application.
- (7) If an applicant is granted, under this section, permission to resume duty before the end of a period in respect of which she had been

granted permission to absent herself from duty, that period shall be treated as having ended immediately before the day she resumes duty.

175 Grant of maternity leave not to affect continuity of service

- (1) If an officer is absent on maternity leave for a period—
 - (a) if she has been paid, whether under section 170 (1) or otherwise, in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has been so paid forms part of her period of service or employment for all purposes of this Act or any other Territory law; and
 - (b) subject to subsection (2) if she has not been so paid in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has not been so paid does not form part of her period of service or employment for this Act or of any other Territory law, but shall not be taken to have broken her continuity of service or employment.
- (2) If an officer, who is absent on maternity leave for a period, had not, immediately before the commencement of that period, been an officer for a continuous period of 12 months, the period of the absence or the period comprising the first 12 weeks of the period of absence, whichever is the less, forms part of her period of service or employment for all purposes of this Act or of any other Territory law.

176 Officers on maternity leave

- (1) Notwithstanding anything in this Act, if—
 - (a) an officer is absent on maternity leave; and
 - (b) that absence is after her confinement and is without pay;

the relevant chief executive may, with the officer's written consent, declare that the office held by the officer is vacant and, in that event, the officer becomes an unattached officer for this Act.

- (2) If an officer who has become an unattached officer under subsection (1) returns to duty on completion of her maternity leave, she shall be appointed—
 - (a) if the office occupied by her immediately before she so became an unattached officer is vacant—to that office; or
 - (b) in any other case—to another office that, in status and salary, is as near as possible to the office referred to in paragraph (a).
- (3) Notwithstanding subsection (2), if an officer who has become an unattached officer under subsection (1) returns to duty before the end of the period of 52 weeks commencing on the date of commencement of the period when she is required to take maternity leave under section 169 (1) (b), the chief executive is not required to comply with the provisions of subsection (2) until the firstmentioned period has ended.

177 Temporary employees on maternity leave

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

Part 8 Maternity leave

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

Part 9 **Discipline**

Division 9.1 **Preliminary**

178 Interpretation for pt 9

(1) In this part:

disciplinary appeal committee means a disciplinary appeal committee established in accordance with the Merit Protection Act, part 2, division 2, subdivision C.

eligible public employment means—

- (a) employment as the holder of a public office; or
- (b) employment by a Territory instrumentality.

employment means—

- (a) employment in a full-time capacity; or
- (b) employment in a part-time capacity if—
 - (i) the person employed does not also perform duties in the service; and
 - (ii) the number of ordinary hours of duty per week applicable to the person in respect of the employment is greater than the prescribed number of hours; and
 - (iii) the employment is not employment of a kind that the commissioner has declared, in writing, to be non-qualifying part-time employment for this subparagraph.

misconduct, in relation to an officer, means a failure of the officer to fulfil his or her duty as an officer.

original office means—

- (a) for a person who has been dismissed from the service under section 187 or 188—
 - (i) if the person held an office immediately before his or her dismissal—that office; or
 - (ii) if the person was an unattached officer performing duty in an administrative unit immediately before his or her dismissal—an office in that administrative unit the duties of which correspond to the duties the person was performing, and the classification of which is the same as the classification applicable to the person, immediately before his or her dismissal; and
- (b) for a person who has been dismissed from the service under section 197—
 - (i) if he or she or she was the holder of an office when he or she last performed duty in the service before his or her dismissal—that office; or
 - (ii) if he or she was an unattached officer performing duty in an administrative unit when he or she last performed duty in the service before his or her dismissal—an office in that administrative unit the duties of which correspond to the duties he or she was performing, and the classification of which is the same as the classification applicable to him or her, when he or she last performed duty in the service before his or her dismissal; and
- (c) for a person who is deemed, under section 221, to have retired from the service—
 - (i) if the person held an office immediately before he or she was deemed so to have retired—that office; or
 - (ii) if the person was an unattached officer performing duty in an administrative unit immediately before he or she

was deemed so to have retired—an office in that administrative unit the duties of which correspond to the duties he or she was performing, and the classification of which is the same as the classification applicable to him or her, immediately before he or she was deemed to have retired; and

- (d) for an officer who has been transferred to another office under section 187, 188 or 191—the office held by the officer immediately before his or her transfer.

public office means—

- (a) an office established by an Act; or
- (b) an office or appointment the holder of which is appointed—
- (i) by the Governor-General or a Commonwealth Minister; or
 - (ii) by the Governor or a Minister of a State; or
 - (iii) by the Administrator or a Minister of the Northern Territory;

being an office or appointment prescribed, or included in a class of offices or appointments prescribed, by the management standards for this paragraph; or

- (c) any other office or appointment prescribed, or included in a class of other offices or appointments prescribed, by the management standards for this paragraph;

but does not include an office or appointment in the public service of the Commonwealth, a State or the Northern Territory.

salary includes any allowances that are prescribed.

- (2) A power given by a provision of this part to reappoint a person to an office includes a power to reappoint the person to the service as an unattached officer to whom there is applicable a salary, or range of

salary, equivalent to the salary or range of salary applicable to that office.

- (3) A reference in this division or division 9.3 or 9.7 to an officer does not include a reference to a person who is a detached officer for division 9.4.

179 Meaning of failure to fulfil duty as officer

For this division and divisions 9.3 and 9.7, an officer shall be taken to have failed to fulfil his or her duty as an officer only if he or she fails to comply with section 9.

Division 9.3 Officers

186 Disciplinary action

- (1) If an officer or employee authorised by the relevant chief executive for this subsection is of the opinion that an officer may have failed to fulfil his or her duty as an officer, the authorised officer or employee shall, as soon as practicable, decide whether he or she should be charged and—
- (a) if the authorised officer or employee decides that the officer should not be charged—may counsel the officer or cause a supervisor of the officer to counsel the officer; or
 - (b) if the authorised officer or employee decides that the officer should be charged—shall, by signed writing given to the officer, charge the officer with the failure.
- (2) An officer charged under subsection (1) may request the relevant chief executive to give copies of the charge to either or both of the following:
- (a) an organisation specified by the officer, being an organisation within the meaning of the *Industrial Relations Act 1988*, (Cwlth);

(b) a person specified by the officer, being a person whom the officer wishes to assist him or her in relation to the charge;

and, if the officer makes such a request, the relevant chief executive shall comply with it.

187 Inquiries into misconduct

- (1) Subject to subsection (2), if an officer is charged with misconduct under section 186, an inquiry shall, without undue delay, be held into the charge by the relevant chief executive or an officer or employee appointed for the purpose by the relevant chief executive.
- (2) An inquiry into a charge shall not be held—
 - (a) by an officer or employee who has given a report in respect of any of the matters alleged to constitute the misconduct to which the charge relates; or
 - (b) by the officer or employee who laid the charge.
- (3) In an inquiry for subsection (1), a formal hearing is not required, but the officer shall be notified that an inquiry is to be held into the alleged misconduct and given an opportunity to state, in writing, within 7 days or any longer period that the officer or employee holding the inquiry may allow after the notice is given to him or her, whether he or she admits or denies the truth of the matters alleged to constitute the misconduct and to give a statement in relation to those matters, including a statement submitting that the matters alleged to constitute the misconduct are, even if true, incapable in law of constituting misconduct for this Act.
- (4) If an officer has furnished a statement in relation to the matters alleged to constitute misconduct, the officer shall, if he or she so requests, be given the opportunity of making a further oral statement to the officer or employee holding the inquiry and, if he or she does so, a written record of his or her further statement shall be made by that officer or employee.

- (5) An officer who has been charged with misconduct under section 186 shall not, only because of having failed to deny the truth of a matter included among matters alleged to constitute the misconduct, be taken to have admitted the truth of that matter.
- (6) If the officer or employee holding an inquiry into a charge is satisfied that the officer charged has failed to fulfil his or her duty as an officer, he or she may counsel the officer, or cause the officer to be counselled by another officer, or, if he or she is of the opinion that other action is necessary—
- (a) may direct that there be taken, in respect of the officer, action by way of—
- (i) admonishing the officer; or
 - (ii) causing a sum not exceeding \$500 to be deducted from the salary of the officer; or
 - (iii) if the officer occupies an office to which a range of salary is applicable and the salary payable to him or her is not the minimum salary in that range—reducing the salary of the officer to a specified salary in that range and then, at the end of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his or her salary had not been so reduced, or to a lesser salary specified in the direction; or
 - (iv) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and that has the same classification as the classification of the office held by him or her; or
 - (v) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and that has the same classification as the classification held by him or her and causing a

sum, not exceeding \$500, to be deducted from his or her salary; or

- (vi) if the officer occupies an office to which a range of salary is applicable and the salary payable to him or her is not the minimum salary of that range—transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and that has the same classification as the classification of the office held by him or her, reducing the salary of the officer to a specified salary and then, at the end of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his or her salary had not been so reduced, or to a lesser salary specified in the direction; or
 - (vii) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and that has a lower classification than the classification of the office held by him or her, and, if there is a salary range applicable to the office so specified, determining that he or she be paid a specified salary within that range; or
- (b) may direct that the officer be dismissed from the service.
- (7) If the officer or employee holding an inquiry into a charge gives a direction of a kind referred to in subsection (6) (a) or (b) in respect of the officer charged, he or she shall give the officer particulars of his or her reasons for giving that direction.
- (8) A direction under this section in respect of an officer takes effect—
- (a) if the officer has no right of appeal against the direction—on the day the officer is given particulars of the reasons for the giving of the direction; or

- (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a disciplinary appeal committee confirming the direction, whichever happens first; or
- (c) in any other case—at the end of the period within which the officer may appeal against the direction to a disciplinary appeal committee.

188 Convictions by courts

(1) If—

- (a) a court has convicted an officer of a criminal offence or found, without recording a conviction, that an officer has committed a criminal offence; and
- (b) the relevant chief executive, after giving the officer an opportunity to give to him or her, in writing, any statement that the officer desires to give in relation to the offence, is of the opinion that, having regard to the nature and seriousness of the offence, the circumstances in which it was committed and the nature of the duties of the officer, he or she is justified in so doing in the interests of the service;

the relevant chief executive may counsel the officer or may—

- (c) direct that there be taken, in respect of the officer, action by way of—
 - (i) transferring the officer to a specified office (whether or not at the same or a different locality), being an office for which he or she is qualified and that has the same classification as the classification of the office held by him or her; or
 - (ii) transferring the officer to a specified office (whether or not at the same or a different locality), being an office for which he or she is qualified and that has a lower

classification than the classification of the office held by him or her and, if there is a salary range applicable to the office so specified, determining that he or she be paid a specified salary within that range; or

- (d) direct that the officer be dismissed from the service.
- (2) If the relevant chief executive gives a direction of a kind referred to in subsection (1) (c) or (d) in respect of an officer, he or she shall give to the officer particulars of his or her reasons for giving that direction.
- (3) A direction under this section in respect of an officer takes effect—
 - (a) if the officer has no right of appeal against the direction—on the day the officer is given particulars of the reasons for the giving of the direction; or
 - (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a disciplinary appeal committee confirming the direction, whichever happens first; or
 - (c) in any other case—at the end of the period within which the officer may appeal against the direction to a disciplinary appeal committee.
- (4) The fact that an officer is, or is not, counselled, or that other action is, or is not, taken against an officer, under this section, in respect of a criminal offence shall not be taken to preclude the commissioner, a chief executive or another person from having regard to the conviction or finding, to the nature and seriousness of the offence and to the circumstances in which the offence was committed in the course of exercising a function given to him or her by this Act or by the management standards if those matters are relevant to the way in which the function should be exercised.

- (5) Nothing in subsection (4) shall be taken to authorise the charging of an officer under section 186, and the taking of action in respect of the officer under this section, in relation to the same matter.

189 Suspension

- (1) If—
- (a) an officer or employee has been charged with having committed a criminal offence; or
 - (b) an officer authorised for section 186 (1) has informed the relevant chief executive that he or she is of the opinion that an officer may have failed to fulfil his or her duty as an officer;

and the relevant chief executive is of the opinion that it would be prejudicial to the effective operation of the service, to the interests of the public or to the interests of the officer or his or her fellow officers if the officer were to continue to perform the duties of his or her existing office pending the hearing and determination of the criminal charge, the taking of a decision not to charge the officer with misconduct or the hearing and determination of any charge of misconduct laid against the officer, as the case may be, the relevant chief executive may, by written notice delivered to the officer—

- (c) direct the officer to perform temporarily other duties that he or she is qualified to perform (whether at the same or a different locality); or
 - (d) suspend the officer from duty.
- (2) The relevant chief executive shall not suspend an officer under subsection (1) (d) without first giving the officer an opportunity to be heard unless, in the opinion of the relevant chief executive, it would not be appropriate in the particular circumstances to give the officer such an opportunity.
- (3) Except as provided by subsection (4), (5) or (6) or by section 190, an officer who is suspended from duty under this section is not

entitled to be paid salary in respect of the period when he or she is so suspended.

- (4) If an officer is, because of circumstances referred to in subsection (1) (b), suspended from duty under this section before a decision is made whether or not he or she is to be charged with misconduct, he or she shall be suspended with salary—
 - (a) for an officer or employee authorised for section 186 (1) decides that he or she should not be so charged—until that decision is made; or
 - (b) in any other case—until he or she is charged.
- (5) If an officer is suspended from duty under this section at a time when he or she is absent on leave of absence, the suspension does not prevent the officer receiving any salary to which he or she is entitled in respect of that period of leave of absence.
- (6) The suspension of an officer from duty under this section does not prevent the granting to the officer of leave of absence with salary.
- (7) An officer who is suspended from duty under this section is entitled to engage in employment outside the service during any period of suspension from duty other than a period when the officer is receiving salary.

190 Removal and variation of suspension

- (1) If an officer has been suspended from duty under section 189, the suspension may be removed in accordance with this section, but, subject to section 218 (1) (e), shall not otherwise be removed, revoked or rescinded.
- (2) If an officer is suspended from duty under section 189—
 - (a) the relevant chief executive may—
 - (i) at any time, on application by the officer or otherwise, remove the suspension; or

- (ii) if the relevant chief executive is satisfied that the officer is suffering or has suffered hardship—subject to the management standards, direct that the officer be paid the whole or part of the officer’s salary in respect of the whole or part of the period of the officer’s suspension; and
 - (b) the relevant chief executive shall, if the suspension continues for more than 30 days, after the suspension has continued for more than 30 days, consider whether the suspension should be removed, or a direction should be given, under paragraph (a).
- (3) If, after an officer has been directed to perform temporarily other duties, or has been suspended from duty, in circumstances referred to in section 189 (1) (b)—
 - (a) the officer is charged with a failure, or with 2 or more failures, to fulfil his or her duties as an officer and the charge or each charge is found not to have been proved by the officer or employee holding the inquiry or by a disciplinary appeal committee or is withdrawn; or
 - (b) an officer or employee authorised for section 186 (1) decides that the officer should not be charged with any such failure;the relevant chief executive shall, if the direction has not previously been revoked or the suspension has not previously been removed, revoke the direction or remove the suspension.
- (4) If—
 - (a) an officer has, because of his or her having been charged with a criminal offence or with 2 or more criminal offences, been directed to perform temporarily other duties, or been suspended from duty, under section 189; and
 - (b) a condition specified in subsection (5) is fulfilled in respect of the charge, or of each of the charges, as the case may be;

the relevant chief executive shall, if the direction has not previously been revoked or the suspension has not previously been removed, revoke the direction or remove the suspension.

- (5) For subsection (4) (b), the conditions in respect of a charge are—
- (a) the condition that, on the hearing of the charge, the officer neither pleads guilty to the charge nor is found guilty of the criminal offence with which he or she is charged or of any other criminal offences established by the evidence given on the hearing of the charge; and
 - (b) the condition that the charge is not proceeded with.
- (6) If—
- (a) an officer has been suspended from duty under section 189; and
 - (b) an amount of salary that would otherwise have been paid to the officer in respect of the whole, or a part, of the period of the suspension was not payable to him or her; and
 - (c) the suspension is required to be removed under subsection (3) or (4) or would have been required to be so removed had it not previously been removed;
- the relevant chief executive shall, subject to subsection (7), authorise payment to the officer of an amount equal to the amount of salary referred to in paragraph (b).
- (7) If an officer to whom subsection (6) applies has engaged in employment outside the service during the whole, or a part, of the period of his or her suspension, the amount payable to him or her under that subsection shall be reduced by an amount equal to the total of the amounts of the earnings that were received or are receivable by him or her in respect of that employment or work.
- (8) A relevant chief executive may request an officer to whom subsection (6) applies to give to him or her, in writing—

- (a) particulars of any employment outside the service in which the officer has engaged during the whole, or a part, of the period of his or her suspension; and
- (b) particulars of the total amounts of the earnings that were received or are receivable by the officer in respect of that employment;

and may defer authorising payment to the officer under subsection (6) until these particulars have been given to him or her.

- (9) If the suspension of an officer who had, after being suspended under section 189, sought, and been granted, leave of absence for a part of the period of suspension, is required to be removed under subsection (3) or (4) or would have been required to be so removed had it not previously been removed, the officer is entitled to a credit of a period of leave of absence equal to that part of the period of suspension.
- (10) If an officer who has been suspended from duty under section 189 is dismissed from the service, the period when the officer is suspended from duty does not count as service for any purpose.
- (11) If an officer retires from the service or dies while he or she is, under section 189, suspended from duty, the commissioner shall determine whether the whole, or any part, of the officer's period of suspension is to form part of the officer's period of service for any purpose under this Act or any other Act, and, if so, the purposes for which it is to form part of his or her period of service.
- (12) If an officer retires from the service or dies while he or she is, under section 189, suspended from duty without salary, the commissioner may, in his or her discretion, authorise payment to the officer, or to the estate of the deceased officer, of an amount equal to the amount of salary that would otherwise have been paid to the officer in respect of the period of his or her suspension without salary less the total of the amounts (if any) of the earnings that the commissioner is satisfied the officer received or was entitled to receive in respect of

any employment or work engaged in by him or her while so suspended.

- (13) If an officer is performing temporarily other duties in accordance with a direction under section 189, or is under suspension from duty under that section, in connection with any misconduct or offence, immediately before—
- (a) a direction in respect of the officer in relation to that misconduct or offence takes effect under section 187 or 188; or
 - (b) a disciplinary appeal committee sets aside a direction given under section 187 (6) in relation to the misconduct or under section 188 (1) in relation to the offence;

the direction that the officer perform temporarily those other duties shall be taken to have been revoked or the suspension of the officer from duty shall be taken to have been removed, as the case requires, on the direction referred to in paragraph (a) taking effect or the setting aside of the direction referred to in paragraph (b).

- (14) The revocation of a direction under section 189 (1) that an officer perform other duties, or the removal of the suspension under that section of an officer from duty, in circumstances other than circumstances where the direction is required to be revoked or the suspension is required to be removed, does not prevent the officer from being directed to perform other duties, or suspended from duty, in accordance with that section, as if the previous direction or suspension had not taken place.

191 Appeals

- (1) A reference in this section to a decision in respect of an officer is a reference to a direction given in respect of the officer under section 187 (6) or 188 (1), other than—
- (a) a direction under section 187 (6) that there be taken, in respect of the officer, action by way of—

- (i) admonishing the officer; or
 - (ii) causing a sum not exceeding \$50 to be deducted from the officer's salary; or
 - (iii) transferring the officer to an office at the same locality, being an office for which the officer is qualified and that has the same classification as the officer; or
 - (b) a direction under section 188 (1) that there be taken, in respect of the officer, action by way of transferring the officer to an office at the same locality, being an office for which the officer is qualified and that has the same classification as the officer.
- (2) An officer may appeal to a disciplinary appeal committee against a decision made in respect of him or her—
- (a) if the decision relates to a charge of misconduct—on either or both of the following grounds:
 - (i) that the charge should have been dismissed;
 - (ii) that the action directed to be taken in relation to the charge is unduly severe; or
 - (b) in any other case—on the ground that the action directed to be taken in respect of him or her is unduly severe.
- (3) A disciplinary appeal committee shall hear each appeal submitted to it under subsection (2) and may confirm, vary or set aside the decision against which the appeal is made.
- (4) If a decision in respect of an officer is varied by a disciplinary appeal committee in such a way as to direct the taking of action of a kind referred to in section 187 (6) (a) or 188 (1) (c), the direction takes effect in respect of the officer immediately it has been given.
- (5) If an officer appeals to a disciplinary appeal committee under subsection (2) against a decision on the ground that the action directed to be taken in respect of him or her is unduly severe, the

committee shall take into consideration any evidence given on the hearing of the appeal—

- (a) of matters relating to the previous employment history and general character of the appellant; and
 - (b) if the officer was, under section 189, suspended without salary in respect of the misconduct or offence to which the decision relates—of any loss of earnings arising from that suspension; and
 - (c) if the officer is to be transferred to another office—of the expenses that will be incurred by the officer in connection with that transfer.
- (6) A disciplinary appeal committee shall give written reasons for its decision on an appeal under this section.

192 Nullification of conviction

- (1) For this section, a finding of a court in relation to an offence shall be regarded as having been nullified—
- (a) if a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or
 - (b) in any other case—if the finding has been set aside.
- (2) If, after a person has been dismissed from the service under section 188 or 197 because of his or her having been found by a court to have committed a criminal offence, the finding of the court is nullified, the person may apply to the commissioner, in writing, for reappointment to the service.
- (3) If, after an officer has been transferred to another office under section 188 (1) or 191 (4) because of his or her having been found by a court to have committed a criminal offence, the finding of the

court is nullified, the officer may apply to the commissioner, in writing, for transfer to an appropriate office.

- (4) A person who—
- (a) has been dismissed from the service or the Australian Public Service because of his or her having been found by a court to have committed a criminal offence; and
 - (b) has subsequently been reappointed to the service or the Australian Public Service; and
 - (c) presently holds an office in the service;

may, if the finding of the court is nullified, apply to the commissioner, in writing, for transfer or promotion to an appropriate office at any time after the finding is nullified and before he or she ceases to be an officer.

- (5) The commissioner shall refer an application made to him or her under subsection (2), (3) or (4) to the chief executive who is, in the opinion of the commissioner, appropriate to consider it.
- (6) If an application is referred to a chief executive under subsection (5), the chief executive shall consider the application and—
- (a) if he or she is satisfied that it is, in all the circumstances reasonable that the applicant be reappointed to the service, or transferred or promoted to an appropriate office, as the case may be—shall recommend to the commissioner that the applicant be so reappointed, transferred or promoted; or
 - (b) if he or she is not so satisfied—shall recommend to the commissioner that the application be refused.
- (7) If the chief executive recommends to the commissioner that an application under subsection (2), (3) or (4) be refused—
- (a) he or she shall notify the applicant, in writing, accordingly and give to him or her and to the commissioner the reasons for his or her recommendation; and

- (b) the applicant may appeal to a disciplinary appeal committee against the recommendation.
- (8) A disciplinary appeal committee shall hear each appeal made to it under subsection (7) and may—
- (a) confirm the recommendation appealed against; or
 - (b) recommend to the commissioner that the appellant be reappointed to the service, or be transferred or promoted to an appropriate office, as the case may be;
- and shall give to the appellant and to the commissioner the reasons for its decision on the appeal.
- (9) On receipt of a recommendation of the chief executive under subsection (6), or of a decision on appeal of a disciplinary appeal committee under subsection (8), the commissioner may, subject to subsection (10)—
- (a) if the recommendation or decision relates to an application under subsection (2)—
 - (i) if the applicant was dismissed under section 188—appoint the applicant to the service to fill an appropriate office or, with the written consent of the applicant, another office; or
 - (ii) if the applicant was dismissed under section 197 but is engaged in eligible public employment—appoint the applicant to the service as an unattached officer on leave without pay, having the rights with respect to appointment, promotion or transfer to an office in the service that he or she had at the time of his or her dismissal; or
 - (iii) if the applicant was dismissed under section 197 but is not engaged in eligible public employment—appoint the applicant to the service to fill an appropriate office or,

with the written consent of the applicant, another office;
or

- (b) if the recommendation or decision relates to an application under subsection (3)—transfer the applicant to an appropriate office; or
 - (c) if the recommendation or decision relates to an application under subsection (4)—transfer or promote the applicant to an appropriate office.
- (10) If a chief executive under subsection (6), or a disciplinary appeal committee under subsection (8), recommends that a person be reappointed to the service or that an officer be transferred to an appropriate office, the commissioner shall reappoint the person to the service or transfer the officer, as provided in subsection (9).
- (11) If a person who had, under this part, been dismissed from the service, is reappointed to the service under this section, the person shall be deemed, during the period commencing on the day immediately following the day he or she was so dismissed and ending on the day immediately before the day he or she was so reappointed, to have continued in the service and to have been absent from duty on leave of absence without pay, and the commissioner shall determine whether that period, or any part of that period, is to form part of the officer's period of service for any purposes under this Act or any other Act and, if so, the purposes for which it is to form part of the period of his or her service.
- (12) In this section:

appropriate office, in relation to a person or to an officer, means the original office occupied by that person or officer, an equivalent office, or, if such an office is not available, an office determined by the commissioner to be as nearly as possible equivalent to the original office occupied by that person or officer.

193 Review of findings

- (1) If, on the holding of an inquiry into a charge laid against a person under section 186 (1), 195 or 196, or on the hearing by a disciplinary appeal committee of an appeal in connection with such a charge, the charge is found to have been established and—
- (a) if the charge was laid under section 186 (1)—
 - (i) a sum was deducted from the salary of the person; or
 - (ii) the salary of the person was reduced; or
 - (iii) the person was transferred to another office; or
 - (iv) the person was dismissed from the service; or
 - (b) if the charge was laid under section 195 or 196—the person was dismissed from the service;

the person may, at any time, request the merit protection agency, in writing, to review the finding, or the action taken in respect of the charge, on the ground that evidence that was not given, and could not reasonably be expected to be given, on behalf of the person in the course of the investigation of the charge is now available and that the evidence might, if it had been given, have resulted in the charge being found not to have been established, or in less severe action being taken in respect of the charge, as the case may be.

- (2) A request under subsection (1) shall set out particulars of the evidence that has become available.
- (3) If the merit protection agency is satisfied that the ground of the request is established, it shall refer the request to a disciplinary appeal committee.
- (4) If the request of a person for the review of a finding is referred to a disciplinary appeal committee, the disciplinary appeal committee—
- (a) shall review the finding; and
 - (b) shall—

- (i) if it is satisfied, in the light of the evidence given when the charge was being investigated and of the evidence given before it in connection with the review, that the person failed to fulfil his or her duty as an officer, or failed to fulfil his or her duty as a detached officer within the meaning of division 9.4, as the case requires—affirm the finding; or
 - (ii) in any other case—quash the finding and recommend to the commissioner that he or she take the action, by way of recompensing the person, that is, in the opinion of the commissioner, reasonable and practicable in all the circumstances; and
 - (c) shall give to the person and to the commissioner its reasons for making its decision.
- (5) If the request of a person for the review of action taken in respect of a charge is referred to a disciplinary appeal committee, the disciplinary appeal committee—
- (a) shall review the action so taken; and
 - (b) shall—
 - (i) if it is satisfied, in the light of the evidence given when the charge was being investigated and of the evidence given before it in connection with the review, that the action so taken was not too severe—affirm the action; or
 - (ii) in any other case—recommend to the commissioner that he or she take the action to mitigate the severity of the action that is, in the opinion of the commissioner, reasonable and practicable in all the circumstances; and
 - (c) shall give to the person and to the commissioner its reasons for making its decision or recommendation.
- (6) The commissioner shall consider the recommendation given to him or her by a disciplinary appeal committee on a review under this

section and the reasons for the recommendation and may, in his or her discretion—

- (a) if the recommendation relates to a review of a finding under subsection (4)—take the action by way of recompensing the person to whom the finding relates that is, in the opinion of the commissioner, reasonable and practicable in all the circumstances; or
 - (b) if the recommendation relates to a review of action taken in respect of a charge under subsection (5)—take the action to mitigate the severity of the action that is, in the opinion of the commissioner, reasonable and practicable in all the circumstances.
- (7) Without limiting the power of the commissioner to take action under subsection (6), the commissioner may, if he or she considers it appropriate to do so—
- (a) in relation to a person who had been dismissed from the service—reappoint the person to the service to fill his or her original office or an equivalent office, or, if such an office is not available, an available office as nearly as possible equivalent to his or her original office; or
 - (b) in relation to a person who had been transferred—direct that he or she be transferred to his or her original office or an equivalent office, or, if such an office is not available, an available office as nearly as possible equivalent to his or her original office.
- (8) If a person who had, under this part, been dismissed from the service, is reappointed to the service under this section, the person shall be taken, during the period commencing on the day immediately following the day he or she was so dismissed and ending on the day immediately before the day he or she was so reappointed, to have continued in the service and to have been absent from duty on leave of absence without pay, and the

(ii) employed by another person or body (including the Commonwealth, a State or another Territory), whether as the holder of an office or appointment or otherwise; or

(iii) engaged in employment on his or her own account or in partnership with another person or other persons;

but does not include an officer who is performing duty in an administrative unit or an autonomous instrumentality; or

(b) an officer who is on leave of absence from the service, other than leave of absence for recreation or on account of illness, and does not hold an office in an administrative unit or an autonomous instrumentality.

misconduct, in relation to a detached officer, means a failure by the officer to fulfil his or her duty as a detached officer.

(2) For this division, a detached officer shall be taken to have failed to fulfil his or her duty as a detached officer only if, while he or she is a detached officer, he or she engages in improper conduct, being conduct that brings the service into disrepute.

(3) Subsection (2) applies to conduct engaged in by a detached officer whether he or she engages in the conduct in, or in connection with, the employment (if any) in which he or she is engaged or otherwise.

195 Misconduct committed before becoming detached officer

(1) A detached officer may, as provided in the management standards, be charged with misconduct committed by him or her before he or she became a detached officer.

(2) The management standards may make provision for and in relation to the holding of an inquiry into a charge against a detached officer under subsection (1).

(3) If the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct before he or she became a detached officer, he or she may counsel the officer

or, if he or she is of the opinion that the misconduct is of such seriousness that, if the officer were performing duty in an administrative unit, he or she would direct that the officer be dismissed from the service, he or she may direct that the officer be dismissed from the service.

- (4) If the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct, he or she shall give to the officer particulars of his or her reasons for being so satisfied, and, if he or she gives a direction under subsection (3) in respect of the misconduct, he or she shall also give to the officer particulars of his or her reasons for giving the direction.
- (5) If a finding is made under this section that a detached officer committed misconduct before he or she became a detached officer, the fact that the officer is, or is not, counselled, or is not dismissed, in respect of the misconduct shall not be taken to preclude the commissioner, a chief executive or another person from having regard to the finding in the course of exercising a function given to him or her by this Act or by the management standards if the finding is relevant to the way in which the power should be exercised or function should be performed.
- (6) A reference in subsection (5) to a finding does not include a reference to a finding that has been set aside by a disciplinary appeal committee.
- (7) In this section, a reference to *misconduct* is a reference to misconduct as defined by section 178.

196 Misconduct while detached officer

- (1) A detached officer may, as provided in the management standards, be charged with misconduct committed by him or her while he or she is a detached officer.

- (2) The management standards may make provision for and in relation to the holding of an inquiry into a charge against a detached officer under subsection (1).
- (3) If the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct while a detached officer, he or she may counsel the officer or, if he or she is of the opinion that, having regard to the nature and seriousness of the misconduct and to the circumstances in which it was committed he or she is justified in doing so in the interests of the service, he or she may direct that the officer be dismissed from the service.
- (4) If the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct, he or she shall give to the officer particulars of his or her reasons for being so satisfied, and, if he or she gives a direction under subsection (3) in respect of the misconduct, he or she shall also give to the officer particulars of his or her reasons for giving the direction.
- (5) If a finding is made under this section that a detached officer has committed misconduct as a detached officer, the fact that the officer is, or is not, counselled, or is not dismissed, in respect of the misconduct shall not be taken to preclude the commissioner, a chief executive or another person from having regard to the finding in the course of exercising a function given to him or her by this Act or by the management standards if the finding is relevant to the way in which the function should be exercised.
- (6) A reference in subsection (5) to a finding does not include a reference to a finding that has been set aside by a disciplinary appeal committee.
- (7) A detached officer may be charged under this section in relation to a matter whether or not action has been or is being taken in respect of the matter otherwise than under this Act.

197 Criminal offences

- (1) If—
- (a) a court has convicted a detached officer of a criminal offence, or found, without recording a conviction, that a detached officer has committed a criminal offence; and
 - (b) a person selected by the commissioner from among the persons specified in a prescribed class of persons is of the opinion that, having regard to the nature and seriousness of the offence and to the circumstances in which it was committed he or she is justified in doing so in the interests of the service;

the person referred to in paragraph (b) may direct that the officer be dismissed from the service.

- (2) If a person gives a direction under subsection (1) in relation to an officer, he or she shall give to the officer particulars of his or her reasons for giving the direction.
- (3) The fact that a detached officer is, or is not, counselled, or is not dismissed under this section, in respect of a criminal offence shall not be taken to preclude the commissioner, a chief executive or another person from having regard to the conviction or finding, to the nature and seriousness of the offence and to the circumstances in which the offence was committed in the course of exercising a function given to him or her by this Act or by the management standards if those matters are relevant to the way in which the power should be exercised or function should be performed.
- (4) Nothing in subsection (3) shall be taken to authorise the charging of a detached officer under section 196, and the taking of action in respect of the detached officer under this section, in relation to the same matter.

198 When directions for dismissal take effect

A direction under section 195 (3), 196 (3) or 197 (1) that an officer be dismissed from the service takes effect—

- (a) if the officer appeals against the direction—on the lapsing of the appeal or on a disciplinary appeal committee confirming the direction; or
- (b) in any other case—on the end of the period within which the officer may appeal to a disciplinary appeal committee against the direction.

199 Appeals

- (1) A detached officer may appeal to a disciplinary appeal committee—
 - (a) against a finding under section 195 or 196 in respect of a charge that he or she has committed misconduct—on the grounds that the charge should have been dismissed; or
 - (b) against a direction under section 195 (3), 196 (3) or 197 (1) that the officer be dismissed from the service—on the ground that the giving of the direction is, in relation to the finding or conviction in relation to which the direction was given, unduly severe.
- (2) If a detached officer has appealed against a finding of a kind referred to in subsection (1) (a) and a direction of a kind referred to in subsection (1) (b) was given in relation to the finding, the officer shall be taken to have appealed also against that direction on the ground specified in subsection (1) (b).
- (3) Subject to subsection (4), a disciplinary appeal committee may confirm or set aside a finding or a direction appealed against.
- (4) If a disciplinary appeal committee sets aside the finding in respect of a charge under section 195 or 196, being a finding in relation to which a direction of a kind referred to in subsection (1) (b) was given, the direction shall be deemed to have been set aside.

200 Reasons to be given for making finding or giving direction etc

If a person makes a finding under section 195 or 196, or gives a direction under section 195 (3), 196 (3) or 197 (1), or a disciplinary appeal committee confirms a finding so made or a direction so given, the person or the committee shall give reasons, in writing, for making the finding or giving the direction or for confirming the finding or direction.

Division 9.5 Employees other than chief executives and executives

201 Definitions for div 9.5

In this division:

authorised officer means a person authorised by a chief executive for section 186 (1).

employee means an employee engaged under division 5.7 for a fixed term of not less than 12 months.

202 Application of pt 9 to employees

- (1) Subject to subsection (2), the provisions of this part apply to an employee—
 - (a) subject to the modifications and adaptations specified in schedule 1; and
 - (b) unless the contrary intention appears, as if—
 - (i) a reference in those provisions to *employment* included a reference to engagement under this Act; and
 - (ii) a reference in those provisions to the *service* included a reference to the administrative unit in which the employee is employed; and

- (iii) a reference in those provisions to an *officer* included a reference to an employee; and
 - (iv) a reference in those provisions to an *office* included a reference to employment or engagement under this Act.
- (2) The provisions of this part do not apply to—
- (a) employees engaged outside Australia to perform duty outside Australia; or
 - (b) prescribed employees.

Division 9.6 Disciplinary appeal committees

203 Definitions for div 9.6

In this division:

chief executive, in relation to a person who—

- (a) has been dismissed from the service under section 187 or 188; or
- (b) is to be taken, under section 221, to have retired from the service; or
- (c) is a detached officer within the meaning of division 9.4;

means—

- (d) the chief executive of the administrative unit in which the person last held office or, if that person did not hold office, the administrative unit in which the person last performed duties; or
- (e) if that administrative unit has been abolished—a chief executive selected by the commissioner having regard to the duties last performed in the service by that person.

proceeding means a hearing of an appeal under section 191, 192, 199 or 222 or the conduct of a review under section 193 or any part of such a hearing or review.

review means a review under section 193 of—

- (a) a finding in respect of a charge or an appeal; or
- (b) action taken in respect of a charge.

204 How appeal is made to disciplinary appeal committee

- (1) An appeal to a disciplinary appeal committee under section 191, 192 or 199 shall be made in writing and addressed to and lodged with the director.
- (2) An appeal to a disciplinary appeal committee under section 191 (2) or 199 (1) shall specify the ground referred to in that section on which the appeal is made.

205 Time for appealing to disciplinary appeal committee

- (1) Subject to subsection (2), an appeal referred to in section 204 (1) shall be lodged with the director by delivering it to, or posting it as a letter so as to be received by, the director within the period of 14 days after the day the appellant was given the particulars of reasons, or reasons, referred to in section 187 (7), 188 (2), 192 (7) (a), 195 (4), 196 (4) or 197 (2) or within any further period the person who is required to give the particulars of reasons, or reasons, to the appellant allows.
- (2) The director may extend the time for lodging an appeal referred to in section 204 (1) before or after the end of the period provided by subsection (1).
- (3) For this section, the director may, by notice published in the Gazette, nominate a place or places to which appeals and applications for extensions of time may be delivered or posted.

206 Giving of documents to appellants and persons requesting review

(1) Subject to subsections (2) and (3), if a disciplinary appeal committee is to hear and determine an appeal, review a finding or review action taken in respect of a charge, the chief executive of the person appealing or requesting the review shall—

- (a) give the person a copy of all documents intended to be used in the hearing of the appeal or in the review; and
- (b) if practicable, do so at least 7 days before the hearing or review is to commence.

(2) If—

- (a) a document referred to in subsection (1) contains medical or psychiatric information about the person to whom a copy of the document would otherwise be required to be given under that subsection; and
- (b) it appears to the relevant chief executive that the disclosure of that information to the person might be prejudicial to the physical or mental health or wellbeing of the person;

the chief executive may refuse to give the person a copy of the document.

(3) If—

- (a) a document referred to in subsection (1) contains information about a person other than the appellant or person seeking a review; and
- (b) the giving of a copy of that document in accordance with that subsection could be prejudicial to that other person;

the chief executive may refuse to give a copy of the document to the appellant or person requesting a review.

- (4) If a chief executive refuses under subsection (2) or (3) to give a person a copy of a document, the chief executive shall notify that person and the disciplinary appeal committee of that refusal and the provision under which the copy of the document was withheld.
- (5) If, in relation to a proceeding before a disciplinary appeal committee, the appellant or person requesting a review has not been given a copy of a document that is intended to be used in the proceeding, or has been given a copy of such a document less than 7 days before the hearing or review commenced, a person shall not use that document in that proceeding unless he or she has—
- (a) notified the committee accordingly; and
 - (b) given the committee a copy of the document and a written statement of his or her reasons for not giving, or for giving less than 7 days before the proceeding commenced, the appellant or person requesting a review a copy of the document.
- (6) If a disciplinary appeal committee hearing a proceeding is notified under subsection (5) that the appellant or person requesting a review has not been given a copy of a document, or has been given a copy of a document less than 7 days before the proceeding commenced, the committee may, after consideration of the contents of the document and the reasons given to it under subsection (5) (b), subject to the *Merit Protection (Australian Government Employees) Regulations* (Cwlth), regulation 16 (3)—
- (a) order that a copy of the document be given to, or that the document be shown to, the appellant or person requesting a review before it is used in the proceeding; or
 - (b) if the document is a document to which subsection (2) applies—order that a copy of the document be given to a medical practitioner nominated for the purpose by the appellant or person requesting a review; or
 - (c) order the document not be used in the proceeding; or

(d) permit the document to be used in the proceeding;
and in so doing may make any orders in relation to the giving of a copy of the document to the appellant or person requesting a review (including, without limiting the generality of the foregoing, orders adjourning the proceeding) that the committee thinks fit.

(7) In this section:

document includes any part of a document.

215 Recording of action taken

- (1) Subject to this section, if action other than counselling is taken under, or under the application of, section 187, 188, 191, 195, 196, 197 or 219 in relation to an officer, the relevant chief executive shall cause a record of the action so taken to be entered in an official conduct record kept in respect of the officer.
- (2) Notwithstanding subsection (1), the relevant chief executive shall not enter under that subsection a record of action taken in relation to an officer while that action is, or may become, the subject of an appeal to a disciplinary appeal committee under section 191 or 199.
- (3) Subject to subsection (5), a record of action entered under subsection (1) in the official conduct record of an officer shall be kept—
 - (a) for admonition—for a period of 2 years; or
 - (b) in any other case—for a period of 5 years;after the day the action was taken and at the end of that period the relevant chief executive shall cause the record of that action to be destroyed.
- (4) If an officer is promoted or transferred from one administrative unit to another, the appropriate officer of the administrative unit from which the officer is promoted or transferred shall transmit the official conduct record of the officer to the appropriate officer of the

administrative unit to which the officer is promoted or transferred and that record shall be maintained in accordance with this section.

- (5) Notwithstanding subsection (3), if—
- (a) a record of action is entered under subsection (1) in the official conduct record of an officer; and
 - (b) a record of action that had previously been taken in relation to that officer is contained in that record; and
 - (c) the period of time for which the record of the action referred to in paragraph (b) is to be kept under subsection (3) has not ended;

the record of action referred to in paragraph (b) shall be kept until the record of action referred to in paragraph (a) is to be destroyed in accordance with subsection (3).

- (6) If, under this part, an officer is dismissed from the service or reduced to an office of lower classification, the provisions of this section do not operate so as to require the expunging of a reference to the dismissal or reduction from any record kept in relation to the officer other than his or her official conduct record or so as to require the destruction of any record other than his or her official conduct record.
- (7) Nothing in this section affects the taking, keeping or maintaining of any record, other than an official conduct record, in relation to an officer under the provisions of this Act or the management standards.
- (8) If, before the commencement of this section, a record of a punishment has been made in the official conduct record of an officer under the *Public Service Regulations* (Cwlth), and that record has not been destroyed, the record shall be deemed to have been made under this section and the provisions of this section apply to that record as if this section had been in operation at the time the record was made.

216 Amendment of official conduct record

If an official conduct record is kept in relation to an officer under section 215 and—

- (a) a conviction of the officer is, under section 192, to be regarded as having been nullified; or
- (b) a disciplinary appeal committee, on a review, quashes a finding in respect of the officer; or
- (c) the commissioner takes action to recompense an officer in relation to a finding against the officer or to mitigate the severity of action taken in respect of a charge against the officer;

the relevant chief executive shall cause the entry in the official conduct record in relation to that conviction or finding to be deleted or amended accordingly.

217 Delegation

The director may delegate to a person any of the director's powers under this division.

Division 9.7 Miscellaneous

218 Imprisonment

- (1) If an officer is imprisoned because of his or her having been convicted of an offence or is in custody awaiting trial for an offence—
 - (a) he or she shall be deemed, for the duration of his or her imprisonment or custody, unless and until he or she is dismissed, to be on leave of absence without pay; and
 - (b) except if he or she is dismissed in relation to the offence—any service before that period of imprisonment or custody shall, for

all purposes, be regarded as being continuous with any service after that period; and

- (c) the period of his or her imprisonment or custody shall not, unless the commissioner otherwise determines, be regarded as service for any purposes under this Act or any other Act; and
 - (d) he or she shall not, during that period of imprisonment or custody, be suspended from duty under this Act; and
 - (e) any suspension from duty under this Act that was in force in relation to him or her immediately before that period of imprisonment or custody commenced shall be taken, on that period so commencing, to have been removed.
- (2) If an officer is imprisoned because of having been convicted of an offence or is in custody awaiting trial for an offence, the relevant chief executive may, subject to the management standards, if he or she is satisfied that the officer is suffering or has suffered hardship, direct, notwithstanding subsection (1), that the officer be paid the whole or part of his or her salary for the whole or part of that period of imprisonment or custody.

219 Application to unattached officers performing duty in an administrative unit

- (1) In this section, a reference to an unattached officer does not include a reference to a person who is a detached officer for division 9.4.
- (2) Without prejudice to their effect in relation to unattached officers apart from this section, divisions 9.1 and 9.3 and this division also have effect in relation to an unattached officer as provided by this section.
- (3) Divisions 9.1 and 9.3 and this division have, by force of this subsection, the effect that they would have if—

- (a) an unattached officer who is performing duties in an administrative unit were occupying an office in that administrative unit; and
 - (b) the duties of that office were duties corresponding to the duties that he or she is performing in the administrative unit as an unattached officer; and
 - (c) the office had a classification corresponding to his or her classification as an unattached officer.
- (4) In addition to the effect that divisions 9.1 and 9.3 and this division have in relation to unattached officers as provided by subsection (2), the divisions have, by force of this subsection, the effect they would have if—
- (a) there were included among the kinds of action specified in section 187 (6) (a) the following kinds of action:
 - (i) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer;
 - (ii) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer and causing a sum, not exceeding \$500, to be deducted from his or her salary;
 - (iii) if a range of salary is applicable to the officer and the salary payable to him or her is not the minimum salary of that range—action by way of causing the officer to

perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or the range of salary applicable to him or her as an unattached officer, reducing the salary of the officer to a specified salary and then, at the end of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his or her salary had not been so reduced, or to a lesser salary specified in the direction;

- (iv) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is lower than the salary or range of salary applicable to him or her as an unattached officer and, if there is a range of salary applicable to the performance of those duties, determining that he or she be paid a specified salary within that range; and
- (b) there were included among the kinds of action specified in section 188 (1) (c) the following kinds of action:
- (i) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer;
 - (ii) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in

relation to the performance of which there is applicable a salary or range of salary that is lower than the salary or range of salary applicable to him or her as an unattached officer and, if there is a range of salary applicable to the performance of those duties, determining that he or she be paid a specified salary within that range.

220 Deduction of pecuniary penalty from salary

- (1) If the officer who pays the salary of an officer or employee is notified that, under the authority of this Act, a pecuniary penalty has been imposed on the officer or employee, an order for the payment of money has been made against the officer or employee or a direction has been given for the deduction of an amount from the salary of the officer or employee, he or she shall deduct from the salary payable to the officer or employee the amount of the penalty, the sum ordered to be paid or the amount directed to be deducted, unless he or she is satisfied that payment of that amount has been made by the officer or employee.
- (2) The deduction may be made by instalments equal as nearly as practicable to $\frac{1}{4}$ of the salary due from time to time to the officer or employee.

Part 10 Forfeiture of office

221 Forfeiture of office

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

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

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

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

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

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

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

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

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

222 Reappointment of officers taken to have retired under s 221

- (1) A person who is to be taken to have retired from the service in accordance with section 221 (2) or (4) may apply to the relevant chief executive, in writing, for reappointment to the service.
- (2) A chief executive to whom an application is made under subsection (1) shall—
 - (a) if the chief executive is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent, reappoint the applicant to the service to fill—

- (i) the office occupied by the applicant immediately before the applicant was to be taken to have retired from the service, or an equivalent office; or
 - (ii) if such an office is not available—an available office as nearly as possible equivalent to the office occupied by the applicant immediately before he or she was to be taken to have retired from the service; or
 - (iii) with the written consent of the person, another office; or
- (b) if the chief executive is not so satisfied—refuse the application.
- (3) If a chief executive refuses an application—
 - (a) he or she shall notify the applicant in writing accordingly and give the applicant and the commissioner his or her reasons for the refusal; and
 - (b) an application may be made to the merit protection agency for review of the decision of the chief executive to refuse the application.
- (4) A decision under subsection (2) to refuse an application may be reviewed under the Merit Protection Act, section 43.
- (5) If a person who is to be taken to have retired from the service in accordance with section 221 (2) or (4) is reappointed to the service under this section, the person shall be taken, during the period commencing on the day immediately following the day the person is so to be taken to have retired from the service and ending on the day immediately before the day the person was so reappointed, to have continued in the service and to have been absent from duty on leave of absence without pay, and the relevant chief executive shall determine whether that period, or any part of that period, is to form part of the officer's period of service for any purposes under this Act or any other Act and, if so, the purposes for which it is to form part of the period of the officer's service.
- (6) In this section:

relevant chief executive, in relation to a person who is to be taken to have retired from the service in accordance with section 221 (2) or (4), means the chief executive of the administrative unit in which the person held an office, or was included, immediately before being taken to have so retired or, if that administrative unit has ceased to exist, the chief executive of such administrative unit as the commissioner directs.

Part 11 Review of certain decisions and investigation of grievances

Division 11.1 Preliminary

223 Definitions for pt 11

In this part:

action—see the Merit Protection Act, section 46 (1).

authorised person, in relation to a decision made under this Act or the management standards, means a person who is authorised under this Act or those standards to make that decision.

decision—see the Merit Protection Act.

employee means an officer or employee in—

- (a) an administrative unit; or
- (b) a Territory instrumentality specified in schedule 2;

but does not include a chief executive or an executive.

internal appeal officer means—

- (a) for a decision of, or action taken by, the relevant chief executive—the commissioner or another chief executive nominated by the commissioner; or
- (b) for a decision of, or action taken by, a delegate of the relevant chief executive—
 - (i) a delegate of the relevant chief executive, being a delegate who holds, or performs the duties of, an office having a higher classification than the office held by, or the duties of which are performed by, the delegate who

made the relevant decision or who took the relevant action; or

(ii) the relevant chief executive; or

(c) in any other case—the relevant chief executive.

study bank means a scheme to enable employees to undertake tertiary study in accordance with the management standards.

Division 11.2 Review of certain decisions

224 Application of div 11.2

This division applies to—

- (a) a decision of an authorised person refusing approval for an employee to undertake a scheme of study under study bank; and
- (b) a decision of the relevant chief executive—
 - (i) not to grant reimbursement, in full or in part, of study costs incurred by an approved student in respect of a scheme of study, or a study program, undertaken under study bank, or a subject included in such a scheme of study; or
 - (ii) not to grant payment, in full or in part, before the completion of such a scheme of study, or a subject included in such a scheme of study, of study costs incurred or likely to be incurred by an approved student in respect of the scheme of study or subject; and
- (c) a decision of the relevant chief executive—
 - (i) not to grant reimbursement, in full or in part, of study costs incurred by an award holder in respect of a scheme of study, or a study program, undertaken under study bank; or

- (ii) not to grant payment, in full or in part, before completion of such a scheme of study or a study program, of study costs likely to be incurred by an award holder in respect of the scheme of study or study program; and
- (d) a decision of an authorised person specifying, in relation to an employee who is directed to perform only part of the duties of an office, the classification that shall be deemed to be the classification of that office; and
- (e) a decision of the relevant chief executive, in relation to an application for the grant of leave of absence to undertake a scheme of study, or a study program, under study bank—
 - (i) not to grant the leave; or
 - (ii) to grant the leave for a period other than for the period requested; or
 - (iii) to grant the leave subject to conditions; and
- (f) a decision under section 225 (3) of the internal appeal officer on his or her review of a decision referred to in paragraph (a), (b), (c) or (d); and
- (g) a decision under section 225 (3) of the internal appeal officer upon his or her review of a decision referred to in paragraph (e).

225 Review by internal appeal officer

- (1) An employee aggrieved by a decision referred to in section 224 (a), (b), (c), (d) or (e) made in relation to the employee may request the internal appeal officer to review the decision.
- (2) A request under subsection (1) by an employee for the review of a decision shall—
 - (a) be in writing; and
 - (b) set out the decision; and

- (c) set out the reasons why the employee is aggrieved by the decision; and
 - (d) be given to the internal appeal officer.
- (3) As soon as practicable after receiving a request for the review of a decision made in relation to an employee, the internal appeal officer shall review the decision and shall, by written decision—
- (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute another decision for the decision so set aside.
- (4) For the purpose of reviewing a decision made in relation to an employee, the internal appeal officer may request any person, including the employee, to provide information or documents relevant to the decision.

226 Review by merit protection agency

- (1) For the Merit Protection Act, section 39 in its application under section 235, application may be made to the merit protection agency for review of—
- (a) a decision referred to in section 224 (a), (b), (c), (d) or (e) made in relation to an employee that has been reviewed under section 225 by the internal appeal officer; or
 - (b) a decision referred to in section 224 (f) or (g) made in relation to an employee by the internal appeal officer.
- (2) An application under subsection (1) for review of a decision shall—
- (a) be in writing; and
 - (b) be addressed to the director; and
 - (c) set out the decision; and

- (d) set out the reasons why the application is made; and
- (e) be given to the internal appeal officer with a request that the internal appeal officer give the application to the director.

227 Documents to be given by internal appeal officer

Within 14 days after receiving an application under section 226 for review by the merit protection agency of a decision made in relation to an employee, the internal appeal officer shall—

- (a) give to the director—
 - (i) the application; and
 - (ii) the request by the employee under section 226 for review by that internal appeal officer of that decision; and
 - (iii) a copy of that decision; and
 - (iv) any other document relevant to that decision or that review; and
 - (v) if necessary, a report on anything done by that internal appeal officer in connection with that decision or that review; and
- (b) give to the employee—
 - (i) a copy of any document referred to in paragraph (a) (iv); and
 - (ii) a copy of any report referred to in paragraph (a) (v).

228 Review to be under Merit Protection Act, s 42 or s 43

On receipt by the director of an application under section 226 for review by the merit protection agency of a decision, that decision may be reviewed—

- (a) for a decision referred to in section 224 (e) or (g)—under the Merit Protection Act, section 43; or

- (b) in any other case—under that Act, section 42.

229 Official directions to be carried out

If—

- (a) under section 225 an employee requests the internal appeal officer to review an official direction to the employee; or
- (b) under section 226 application is made to the merit protection agency for review of an official direction to an employee;

the employee shall, as far as practicable, carry out the direction unless, on review, the direction—

- (c) is varied or set aside; or
- (d) if made subject to reconsideration—is subsequently withdrawn.

Division 11.3 Investigation of grievances by merit protection agency

230 Application of div 11.3

This division applies to—

- (a) action taken in relation to an employee other than—
- (i) classifying an office; and
 - (ii) fixing the rate of salary applicable to an office; and
 - (iii) fixing the conditions of service or employment of employees, so far as those conditions are set out in, or under, this Act, the management standards or another Act, otherwise than applying those conditions to the employee; and
 - (iv) action arising under—

- (A) the *Australian Security Intelligence Organisation Act 1979* (Cwlth); or
 - (B) the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth); or
 - (C) an Act of the Commonwealth made with respect to superannuation; and
- (v) action in respect of which the employee has under part 6 a right of appeal whether or not that right has been exercised; and
 - (vi) the termination of the appointment of an employee on probation; and
 - (vii) refusal to permit an employee to decline a transfer within an administrative unit or within a Territory instrumentality; and
 - (viii) the appointment, promotion or transfer of a person to an office to which the person had applied to be promoted or transferred; and
 - (ix) termination of the employment of a person engaged as an employee in a temporary capacity under this Act; and
- (b) action taken in relation to an employee that is part of the procedure adopted for the purpose of action referred to in paragraph (a) (v), (vi), (vii), (viii) or (ix) taken in relation to the employee;

but does not apply to a decision to which division 11.2 applies.

231 Investigation by internal appeal officer

- (1) An employee aggrieved by action to which this division applies taken in relation to the employee may request the internal appeal officer to investigate the action.

- (2) A request under subsection (1) by an employee for investigation of action taken shall—
- (a) be in writing; and
 - (b) describe the action; and
 - (c) set out the reasons why the employee is aggrieved by the action; and
 - (d) be given—
 - (i) for action that concerns the conduct of the supervisor of the employee—to the internal appeal officer; or
 - (ii) in any other case—to the supervisor of the employee who shall, as soon as practicable, refer the request to the internal appeal officer.
- (3) As soon as practicable after receiving a request under subsection (1) to investigate action taken in relation to an employee, the internal appeal officer shall—
- (a) investigate the action in any way that he or she thinks fit; and
 - (b) cause the employee to be advised, in writing, of the results of the investigation, of any decision of the internal appeal officer consequent on the investigation and of the reasons for that decision.
- (4) For the purposes of an investigation under this section by the internal appeal officer into action taken in relation to an employee, the internal appeal officer may request any person, including the employee, to provide information or documents relevant to the action.

232 Investigation by merit protection agency

- (1) For the Merit Protection Act, section 47 in its application under section 235, application may be made to the merit protection agency for the investigation, in accordance with that Act, part 2, division 2

of an action to which this division applies taken in relation to an employee that has been investigated by the internal appeal officer under section 231 if the employee remains aggrieved by the action.

- (2) An application under subsection (1) for investigation of an action shall—
- (a) be in writing; and
 - (b) be addressed to the director; and
 - (c) describe the action; and
 - (d) set out the reasons why the application is made; and
 - (e) be given to the internal appeal officer with a request that that officer give the application to the director.

233 Documents to be given by internal appeal officer

Within 14 days after receiving an application under section 232 for investigation by the merit protection agency of action taken in relation to an employee, the internal appeal officer shall—

- (a) give to the director—
 - (i) the application; and
 - (ii) the request by the employee under section 231 for investigation by the internal appeal officer of the action; and
 - (iii) a copy of the advice given under section 231 (3) by the internal appeal officer to the employee as a result of that investigation; and
 - (iv) any other document relevant to the action or that investigation; and
 - (v) if necessary, a report on anything done by the internal appeal officer in connection with that action or that investigation; and

- (b) give to the employee—
 - (i) a copy of any document referred to in paragraph (a) (iv);
and
 - (ii) a copy of any report referred to in paragraph (a) (v).

234 Official directions to be carried out

If—

- (a) under section 231 an employee requests the internal appeal officer to investigate an official direction to the employee; or
- (b) under section 232 application is made to the merit protection agency for the investigation of an official direction to an employee;

the employee shall, as far as practicable, carry out the direction unless, following investigation, it is withdrawn.

Division 11.4 Merit protection

235 Application of Merit Protection Act

- (1) The provisions of the Merit Protection Act apply by force of this subsection to the Territory and to officers and employees as if—
 - (a) the Territory were a Commonwealth authority within the meaning of that Act; and
 - (b) each officer or employee were a Commonwealth employee within the meaning of that Act; and
 - (c) a reference in that Act to the merit protection commissioner or the merit protection and review agency were a reference to the merit protection commissioner under the *Public Service Act 1999* (Cwlth).
- (2) The Merit Protection Act applies under subsection (1) subject to—

- (a) the modifications set out in schedule 2; and
 - (b) any modifications prescribed under the management standards.
- (3) This Act applies as if—
- (a) a reference to the director or the merit protection agency were a reference to the merit protection commissioner under the *Public Service Act 1999* (Cwlth); and
 - (b) a reference to the Merit Protection Act were a reference to that Act as in force on 1 July 1999.

Part 13 Miscellaneous

241 Returns and information generally

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

242 Improper influence

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

243 Protection of persons in respect of work reports on officers or employees

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

244 Second jobs

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

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

245 Remuneration additional to salary

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

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

246 Payments to officers

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

247 Personation etc at examinations

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

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

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

248 Contracts

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

248A Engagement of certain former officers and employees prohibited

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

249 Occupational health and safety

The provisions of the *Occupational Health and Safety Act 1989* apply in relation to public employees—

- (a) subject to the modifications and adaptations specified in schedule 3; and
- (b) unless the contrary intention appears, as if—
 - (i) each public employee were an employee within the meaning of that Act; and
 - (ii) the Territory and each Territory instrumentality were an employer within the meaning of that Act.

250 Attachment of salary of officers and employees

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

251 Management standards

- (1) The commissioner may, with the Chief Minister's written approval, make management standards for this Act.
- (2) The management standards may make provision with respect to—
 - (a) the structure and organisation of the service; and
 - (b) appointment to and employment in the service, including entry to and advancement in the service; and
 - (c) terms and conditions of employment of officers and employees; and
 - (d) the implementation of the access and equity principles referred to in section 7 (f) in the provision of services; and

- (e) the improvement of management practices and accountability; and
- (f) reviews or inquiries into the administration of the service; and
- (g) public sector industrial relations; and
- (h) terms and conditions on which statutory offices are held; and
- (i) ethics and conduct of officers and employees; and
- (j) discipline of officers and employees; and
- (k) procedures for hearing grievances and appeals; and
- (l) the redeployment, retirement, resignation and redundancy of officers and employees; and
- (m) arrangements for superannuation in relation to officers and employees; and
- (n) equal employment opportunity in the service; and
- (o) mobility of employment—
 - (i) between the public sector of the Territory and any body over which the Territory is in a position to exercise control in the Territory; and
 - (ii) between the public sectors of the Territory and the Commonwealth, a State or another Territory; and
 - (iii) between the public sectors of the Territory and a foreign country or a part of a foreign country; and
- (p) occupational health and safety in the service; and
- (q) training of officers and employees; and
- (r) performance appraisal of officers and employees; and
- (s) industrial democracy in the service; and

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

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

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

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

specified defence service—see section 70 (12).

- (6) An approval by the Chief Minister under subsection (1) may be given in respect of all management standards to be made for a specified purpose.
- (7) An approval of the kind referred to in subsection (6) may be given subject to conditions to be complied with by the commissioner in making management standards to which the approval relates.
- (8) A management standard is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 14 Totalcare

252 Definitions for pt 14

In this part:

employee, of Totalcare, includes a public servant whose functions are to work for Totalcare.

Totalcare means Totalcare Industries Limited.

transfer, of an employee, means an appointment or engagement under this Act.

253 Transfer of employees

- (1) The commissioner may, in writing, declare that a person employed by Totalcare is appointed or engaged under this Act and no longer employed by Totalcare.
- (2) The declaration must state—
 - (a) for an appointment—the office to which the person is appointed; and
 - (b) for an appointment on probation—the probation period; and
 - (c) for an engagement other than as a casual employee—the term of the engagement; and
 - (d) the person's classification on appointment or engagement.
- (3) As far as possible—
 - (a) a person must be appointed or engaged with the same tenure and classification the person had immediately before the transfer; and

- (b) a person on probation immediately before the transfer must be appointed on probation for the unexpired part of the person's probation period.
- (4) A declaration may create an office.
- (5) A classification mentioned in a declaration that is not an approved classification is taken to be an approved classification.
- (6) The commissioner may make a declaration in relation to a person even if the person was employed under this Act before becoming an employee of Totalcare.

254 How rest of Act applies

- (1) The following provisions do not apply in relation to an appointment or engagement under this part (including an appointment mentioned in section 257):
- section 65 (Application of merit principle)
 - section 66 (Notification of certain matters related to appointment, transfer or promotion)
 - section 68 (Appointments generally)
 - section 69 (Classification of unattached officers)
 - section 70 (1), (2) and (3) (Appointments to be on probation)
 - section 106 (Power to engage employees).
- (2) To remove any doubt, section 108 (Temporary employment—generally) applies in relation to a person engaged under this part.

255 Employees appointed on probation

- (1) This section applies to a person appointed under this part on probation for a period (the *remaining probation period*).
- (2) Subject to section 70 (8), the relevant chief executive may confirm the appointment at any time after the end of the remaining probation period.

- (3) Section 70 (4) to (12) applies in relation to the person as if the person's date of appointment on probation were the date the person began employment on probation with Totalcare.

256 Entitlements of transferred employees

The following provisions apply as far as possible in relation to a person transferred under this part:

- (a) the person retains any leave entitlements that—
 - (i) had accrued to the person immediately before the transfer; and
 - (ii) had not been paid out to the person;
- (b) any leave entitlements that would, apart from this section, accrue to the person on the person's appointment or engagement under this Act (or on the anniversary of that appointment or engagement), accrue instead on the anniversary of the date when the leave entitlement would have accrued to the person if his or her employment with Totalcare had continued;
- (c) the person's period of employment with Totalcare is taken into account when working out any entitlement to long service leave, personal leave or maternity leave under this Act;
- (d) the person otherwise has entitlements that are no less favourable to the person than the entitlements the person had immediately before the transfer.

257 Later appointment of temporary employees

If a person is engaged under this part, the commissioner may later appoint the person under this Act if—

- (a) the person had been employed by Totalcare for at least 5 years; or

- (b) the commissioner considers it otherwise desirable to appoint the person.

258 Transfer of personnel files

Personnel files for employees transferred under this part may be transferred with the employee and the information may be used as if it had been collected under this Act.

259 Management standards

- (1) The management standards may make provision in relation to anything arising from or connected with the transfer of Totalcare employees under this part.
- (2) The management standards may determine conditions of employment applying to a particular transferred employee.

260 Transitional regulations

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this part.
- (2) Regulations made for this section must not be taken to be inconsistent with this Act so far as they can operate concurrently with this Act.
- (3) This section is additional to and does not limit section 261.

261 Modification of pt 14's operation

The regulations may modify this part to make provision in relation to any matter that, in the Executive's opinion, is not adequately dealt with in this part.

262 Regulation-making power

The Executive may make regulations for this part.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

263 Expiry of pt 14

This part expires on—

- (a) 31 December 2005; or
- (b) if a later date is prescribed under the regulations for this section—that date.

Schedule 1 Modifications and adaptations of part 9 in its application to employees

(see s 202)

[1.1] Interpretation for pt 9 Section 178 (1), definition of *original office*

substitute

original office means, for a person who has been—

- (a) dismissed from employment under section 187, 188 or 197; or
- (b) transferred to other duties under section 187, 188 or 191;
the duties performed by him or her immediately before his or her dismissal or transfer.

[1.2] Section 178 (2) and (3)

omit

[1.3] Inquiries into misconduct Section 187 (6) (a) (iii)

omit

occupies an office

substitute

performs duties

[1.4] Section 187 (6) (a) (iv)

omit everything after

Schedule 1 Modifications and adaptations of part 9 in its application to employees

Amendment [1.5]

to

substitute

other duties for which he or she is qualified (whether at the same or a different locality); or

[1.5] Section 187 (6) (a) (v)

omit everything after

officer

substitute

to other duties for which he or she is qualified (whether at the same or a different locality) and causing a sum, not exceeding \$500, to be deducted from his or her salary; or

[1.6] Section 187 (6) (a) (vi)

omit

occupies an office

substitute

performs duties

[1.7] Section 187 (6) (a) (vi)

omit

to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and that has the same classification as the classification of the office held by him or her

substitute

to other duties for which he or she is qualified (whether at the same or a different locality)

[1.8] Section 187 (6) (a) (vii)

omit everything after 1st mention of

officer

substitute

to other duties for which he or she is qualified (whether at the same or a different locality) and the salary or salary range applicable to which is lower than his or her salary immediately before the inquiry; or

[1.9] Section 187 (6) (b)

omit

the service

substitute

his or her employment

**[1.10] Convictions by courts
Section 188 (1) (c)**

substitute

- (c) direct that there be taken, for an employee, action by way of transferring him or her to other duties for which he or she is qualified (whether at the same or a different locality) and the salary or salary range applicable to which is the same as or lower than that applicable to the duties of the employee immediately before the chief officer so directs; or

[1.11] Section 188 (1) (d)

omit

the service

substitute

Schedule 1 Modifications and adaptations of part 9 in its application to employees

Amendment [1.12]

his or her employment

**[1.12] Nullification of conviction
Section 192 (2)**

omit 1st mention of

the service

substitute

his or her employment

[1.13] Section 192 (2)

omit

reappointment to the service

substitute

re-employment or re-engagement

[1.14] Section 192 (3)

omit

another office

substitute

other duties

[1.15] Section 192 (4) (a)

omit

the service

substitute

his or her employment

[1.16] Section 192 (4) (b)

omit

reappointed to the service

substitute

re-employed or re-engaged by the Territory or a Territory
instrumentality

[1.17] Section 192 (6) (a)

omit

reappointed to the service, or transferred or promoted

substitute

re-employed or re-engaged, or transferred

[1.18] Section 192 (6) (a)

omit

reappointed, transferred or promoted

substitute

re-employed, re-engaged or transferred

[1.19] Section 192 (8) (b)

omit

reappointed to the service, or be transferred or promoted

substitute

re-employed or re-engaged, or be transferred

[1.20] Section 192 (9) (a) (i)

omit everything after

Schedule 1 Modifications and adaptations of part 9 in its application to employees

Amendment 188—□

188—

substitute

employ or engage the applicant; or

[1.21] Section 192 (9) (a) (ii)

omit everything after

employment—

substitute

employ or engage the applicant as an employee on leave without pay; or

[1.22] Section 192 (9) (a) (iii)

omit everything after

employment—

substitute

employ or engage the applicant; or

[1.23] Section 192 (10)

after 1st mention of

service

insert

or re-engaged or re-employed

[1.24] Section 192 (10)

after 2nd mention of

service

insert

, re-engage or re-employ the person

[1.25] Section 192 (11)

omit

the service, is reappointed to the service

substitute

his or her employment, is re-employed or re-engaged

[1.26] Section 192 (11)

omit

so reappointed

substitute

so re-employed or re-engaged

[1.27] Section 192 (11)

omit

in the service

substitute

in that employment

[1.28] Section 192 (12)

omit everything after

means

substitute

employment the duties of which were performed by that person or officer, equivalent employment, or, if such employment is not available, employment determined by the commissioner to be as

nearly as possible equivalent to the duties in which that person or officer was previously employed or engaged.

[1.29] Review of findings
Section 193 (1) (a) (iii)

omit

another office

substitute

other duties

[1.30] Section 193 (1) (a) (iv) and (b)

omit

the service

substitute

his or her employment

[1.31] Section 193 (7) (a)

omit everything after

dismissed from

substitute

his or her employment—re-employ or re-engage the person in employment that is an appropriate office within the meaning of section 192 (12) in its application to employees; or

[1.32] Section 193 (7) (b)

substitute

(b) in relation to a person who has been transferred—direct that he or she be transferred to employment that is an appropriate

office within the meaning of section 192 (12) in its application
to employees.

[1.33] Section 193 (8)

omit

the service, is reappointed to the service

substitute

his or her employment, is re-employed or re-engaged

[1.34] Section 193 (8)

omit

so reappointed

substitute

so re-employed or re-engaged

[1.35] Section 193 (8)

omit

in the service

substitute

in that employment

**[1.36] Interpretation for div 9.4
Section 194 (1), definition of *detached officer***

omit

**[1.37] Misconduct committed before becoming detached officer
Section 195 (3)**

omit

the service

Schedule 1 Modifications and adaptations of part 9 in its application to employees

Amendment [1.38]

substitute

his or her employment

**[1.38] Misconduct while detached officer
Section 196 (3)**

omit 2nd mention of

the service

substitute

his or her employment

**[1.39] Criminal offences
Section 197 (1)**

omit 2nd mention of

the service

substitute

his or her employment

Schedule 2 Modifications of Merit Protection Act in its application under section 235

(see s 235 (2))

[2.1] Interpretation **Section 3 (1), definition of *Commonwealth authority***

omit

not include the Australian Federal

substitute

not include—

- (e) the Australian Federal Police; or
- (f) an authority that is an enactment authority as defined by the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 3 and incorporated or established for a public purpose.

[2.2] Section 3 (1), definitions of *enactment* and *officer*

substitute

enactment means—

- (a) an Act passed by the Legislative Assembly for the Australian Capital Territory; or
- (b) an instrument (including determinations, management standards, rules, regulations or by-laws) made under such an Act.

officer has the same meaning as in the Public Sector Management Act.

[2.3] Section 3 (1), definition of *the Service*

omit

[2.4] Section 3 (1), new definitions

insert

administrative unit means an administrative unit of the service.

chief executive means a person for the time being holding, or performing the duties of, an office of chief executive in the service.

Chief Minister means the Chief Minister for the Australian Capital Territory elected under the *Australian Capital Territory (Self-Government) Act 1988*, section 40.

commissioner means the Commissioner for Public Administration appointed under the Public Sector Management Act, section 18.

employee has the same meaning as in the Public Sector Management Act.

Executive means the Australian Capital Territory Executive established by the *Australian Capital Territory (Self-Government) Act 1988*, section 36.

Legislative Assembly means the Legislative Assembly for the Australian Capital Territory.

management standards means management standards made under the Public Sector Management Act, section 251.

principal relevant staff organisation, in relation to the promotion of an officer to a position, means—

- (a) if there is only 1 relevant staff organisation in relation to that position—that organisation; or

- (b) in any other case—the relevant staff organisation the membership of which includes the largest number of persons occupying positions similar to the firstmentioned position.

Public Sector Management Act means the *Public Sector Management Act 1994* of the Australian Capital Territory.

relevant chief executive has the same meaning as in the Public Sector Management Act.

relevant staff organisation, in relation to a position, means an organisation—

- (a) that is registered under the *Industrial Relations Act 1988*; and
(b) for membership of which a person occupying the position would be eligible; and
(c) that is a party to an industrial award that applies in relation to the salary payable in respect of the position.

service has the same meaning as in the Public Sector Management Act.

Territory instrumentality has the same meaning as in the Public Sector Management Act.

**[2.5] Object
Section 4**

substitute

4 Object

- (1) In relation to officers and employees of the Australian Capital Territory, the object of the Act is to ensure that actions taken and decisions made in relation to an officer or employee in connection with his or her employment are fair and equitable and are taken or made in accordance with sound personnel management practices and with due regard being had to—

- (a) the efficiency of the relevant authority; and
 - (b) the need to ensure good relations between the relevant authority and its officers and employees.
- (2) In subsection (1):
- relevant authority*, in relation to an officer or employee, means—
- (a) in the case of an officer or employee who is performing duty with a Territory instrumentality—the Territory instrumentality; or
 - (b) in any other case—the Australian Capital Territory.

[2.6] Promotion Appeal Committees
Section 9 (a)

omit

50B or 50H of the *Public Service Act 1922*

substitute

the Public Sector Management Act , section 84 or 86

[2.7] Section 9 (b)

omit

regulations made for the purposes of section 51A

substitute

section 102

[2.8] Constitution of Promotion Appeal Committees
Section 10 (1) (b)

omit

Secretary of the Department

substitute

chief executive of the administrative unit

[2.9] Section 10 (1) (c)

omit

regulations

substitute

management standards

**[2.10] Places of sitting of Committee
Section 14**

omit

Australia

substitute

the Australian Capital Territory

**[2.11] Disciplinary Appeal Committees
Section 16**

omit

Divisions 6 and 6A of part III of the *Public Service Act 1922*

substitute

the Public Sector Management Act, parts 9 and 10

**[2.12] Constitution of Disciplinary Appeal Committees
Section 17 (1)**

omit

section 63D, 63F or 63P of the *Public Service Act 1922*

substitute

the Public Sector Management Act, section 181, 182 or 189

Amendment [2.13]

[2.13] Section 17 (1)

omit

section 63G

substitute

section 193

[2.14] Section 17 (1) (b)

omit

Secretary

substitute

chief executive

[2.15] Section 17 (1) (c)

omit

regulations

substitute

management standards

[2.16] Section 17 (3)

omit

section 61 of the *Public Service Act 1922*

substitute

the Public Sector Management Act, section 186

[2.17] Section 17 (3)

omit

subsection 63 (1)

substitute

subsection 188 (1)

[2.18] Section 17 (4)

omit

section 63D, 63F or 63P of the *Public Service Act 1922*

substitute

the Public Sector Management Act, section 191, 192 or 199

[2.19] Section 17 (4)

omit

section 65

substitute

section 220

[2.20] Section 17 (5)

substitute

- (5) A reference in this section to the relevant chief executive, in relation to a person who has been dismissed from the service under the Public Sector Management Act, part 9 is a reference to the chief executive of the administrative unit in which the person held an office, or was included, immediately before being dismissed or, if that administrative unit has ceased to exist, the chief executive of the administrative unit that the commissioner directs.

**[2.21] Redeployment and Retirement Appeal Committees
Section 22**

omit

Divisions 8B and 8C of part III of the *Public Service Act 1922*

Amendment substitute □

substitute

the Public Sector Management Act, divisions 6.2 and 6.3

**[2.22] Constitution of Redeployment and Retirement Appeal Committees
Section 23 (1) (b)**

substitute

- (b) a person nominated by—
- (i) if the Committee is constituted for the purpose of an appeal under the Public Sector Management Act, division 6.2 or an appeal under division 6.3 of that Act against the giving of a notice by the commissioner—the commissioner; or
 - (ii) if the Committee is constituted for the purpose of any other appeal by the officer under the Public Sector Management Act, division 6.3—the relevant chief executive; and

[2.23] Section 23 (1) (c)

omit

regulations

substitute

management standards

[2.24] Section 23 (2)

omit

Division 8C of part III of the *Public Service Act 1922*

substitute

the Public Sector Management Act, division 6.3

**[2.25] Member ceasing to act
Section 25 (2)**

omit

or (2), as the case requires,

**[2.26] Re-appointment Review Committees
Section 27**

insert at the end

in its application to officers under the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* of the Australian Capital Territory, section 15

**[2.27] Constitution of Re-appointment Review Committees
Section 28 (1) (b)**

omit

Public Service Commissioner

substitute

commissioner

[2.28] Section 28 (1) (c)

omit

regulations

substitute

management standards

[2.29] Section 28 (2)

omit

Public Service Commissioner

substitute

commissioner

[2.30] Section 28 (2)

after

Public Service Act 1922

insert

in its application to officers under the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* of the Australian Capital Territory, section 15

[2.31] Interpretation
Section 31, definition of *application*

omit

subsection 17 (2) or 24 (2)

substitute

section 13B (1)

[2.32] Section 31, definition of *relevant Act*

omit

Members of Parliament (Staff) Act 1984

substitute

Legislative Assembly (Members' Staff) Act 1989 of the Australian Capital Territory

[2.33] Re-integration Assessment Committees
Section 32

omit

Parts III and IV

substitute

part 3A

**[2.34] Constitution of Re-integration Assessment Committees
Section 33 (b)**

omit

Public Service Commissioner

substitute

commissioner

[2.35] Section 33 (c)

omit

regulations

substitute

management standards

**[2.36] Procedure of Joint Selection Committees and Review
Committees
Section 37 (1) (b)**

omit

and to the regulations made under those Acts

substitute

, the regulations made under those Acts and the management standards

[2.37] Section 37 (2) (a) and (c)

substitute

- (a) in relation to a Promotion Appeal Committee, Disciplinary Appeal Committee or Redeployment and Retirement Appeal Committee—the Public Sector Management Act;

Amendment [2.38]

- (b) in relation to a Reappointment Review Committee—the *Public Service Act 1922*; and
- (c) in relation to a Re-integration Assessment Committee—the *Legislative Assembly (Members' Staff) Act 1989* of the Australian Capital Territory.

**[2.38] Review by Agency that may give rise to recommendation only
Section 43 (5)**

omit

Prime Minister

substitute

Chief Minister

[2.39] Section 43 (6)

substitute

- (6) Where the Agency has, in accordance with subsection (5), furnished information to the Chief Minister in relation to a recommendation, the Agency may also forward to the Speaker of the Legislative Assembly, for presentation to the Legislative Assembly, copies of a report prepared by it about the recommendation for presentation to the Legislative Assembly.

**[2.40] Agency may seek views of Public Service Commissioner
Section 44 (1)**

omit

Public Service Commissioner

substitute

commissioner

[2.41] Section 44 (2)

omit

Public Service Commissioner

substitute

commissioner

**[2.42] Interpretation
Section 46 (1), definition of *principal officer*,
paragraph (b) (i)**

omit

regulations

substitute

management standards

[2.43] Section 46 (2) (a)

omit

the Governor-General, a Minister or the Secretary of a Department

substitute

a Minister or a chief executive

[2.44] Section 46 (2) (b)

omit

being a Judge of a court of, or a magistrate of, a State or a Territory

substitute

being—

- (i) a judge of a court of the Commonwealth, or a State or another Territory; or

Amendment [2.45]

(ii) a magistrate of a State or another Territory:

[2.45] Section 46 (2)

omit

Department

substitute

administrative unit

[2.46] Section 46 (3)

omit

the Governor-General, a Minister or the Secretary of a Department

substitute

a Minister or a chief executive

[2.47] Section 46 (3)

omit

regulations

substitute

management standards

[2.48] Section 46 (3)

omit 2nd mention of

Department

substitute

administrative unit

**[2.49] Reports to Prime Minister
Section 52 (1), (2) and (3)**

omit

Prime Minister

substitute

Chief Minister

**[2.50] Special reports to the Parliament
Section 53**

omit

Prime Minister

substitute

Chief Minister

[2.51] Section 53

omit

President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively

substitute

Speaker of the Legislative Assembly, for presentation to the Legislative Assembly

[2.52] Section 53

omit

both Houses of the Parliament

substitute

the Legislative Assembly

Amendment [2.53]

[2.53] Conduct of investigations
Section 54 (1)

omit

such officer in the Department or authority as the Agency considers appropriate

substitute

the commissioner

[2.54] Inquiries by Agency
Section 56 (1)

before

Minister

insert

Chief

[2.55] Section 56 (1)

omit

Public Service Commissioner

substitute

commissioner

[2.56] Section 56 (2)

before

Minister

insert

Chief

[2.57] Section 56 (2)

omit

Public Service Commissioner

substitute

commissioner

**[2.58] Procedure
Section 58 (1) and (2)**

omit

regulations

substitute

management standards

**[2.59] Power to obtain information and documents
Section 59 (4)**

after

Attorney-General

insert

of the Australian Capital Territory

[2.60] Section 59 (4) (a) to (d)

substitute

- (a) because it would involve the disclosure of communications between a Minister of the Australian Capital Territory and a Commonwealth Minister or a Minister of a State or of the Northern Territory, being a disclosure that would prejudice relations between the Australian Capital Territory and the Commonwealth Government or the Government of a State or the Northern Territory, as the case may be; or

Amendment [2.61]

- (b) because it would involve the disclosure of deliberations or decisions of the Executive or a committee of the Executive;

**[2.61] Power to enter premises
Section 61 (2) and (3)**

omit

[2.62] Section 61 (4)

after

Attorney-General

insert

of the Australian Capital Territory

**[2.63] Agency not to be sued
Section 80**

insert at the end

or the Public Sector Management Act

**[2.64] Officers to observe secrecy
Section 84 (3) (b) (i)**

after

Minister

insert

of the Australian Capital Territory

Schedule 3 Modifications and adaptations of Occupational Health and Safety Act 1989 in its application to public employees

(see s 249 (a))

[3.1] Interpretation Section 5 (1), definition of *approved code of practice*

after

approved

insert

, or taken to be approved,

[3.2] Section 5 (1), definition of *designated work group*

substitute

designated work group means—

(a) a group of employees established as a designated work group by an employer under section 37 (4A); and

(b) such a group as varied by an employer under section 37 (4B);

and, in relation to an employer, means such a group that consists entirely of employees of the employer.

[3.3] Section 5 (1), new definitions

insert

annual report means the annual report (if any) of an administrative unit of the public service or of a Territory instrumentality to the responsible Minister for the administrative unit or the instrumentality relating to the activities, operations, business or affairs of the administrative unit or the instrumentality.

public employee—see the *Public Sector Management Act 1994*, section 3.

Territory instrumentality—see the *Public Sector Management Act 1994*, section 3.

[3.4] Duties of employers in relation to employees
Section 27 (2) (e)

after

maintain

insert

, in consultation with any involved unions in relation to the employees of the employer, and with any other persons the employer considers appropriate,

[3.5] Section 27 (3)

substitute

- (3) A policy relating to occupational health and safety of the kind referred to in subsection (2) (e) that is developed in consultation with involved unions shall provide for the making of an agreement between the employer and the involved unions that—
- (a) provides appropriate mechanisms for continuing consultation, between the employer, the involved unions and the employees, on occupational health and safety matters; and
 - (b) provides for any other matters (if any) that are agreed between the employer and the involved unions.

[3.6] Small employers not affected
Section 36

omit

[3.7] Work groups designated by employers
Section 37 (1), (2), (3) and (4)

substitute

- (1) A request to an employer to enter into consultations to establish designated work groups in respect of employees of the employer, or to vary designated work groups that have already been established, may be made by—
 - (a) if there are involved unions in relation to employees of the employer—any such involved union; or
 - (b) if there are no involved unions in relation to any employee of the employer—any such employee.
- (2) The employer may, at any time, and shall, within 14 days after receiving such a request, enter into such consultations with—
 - (a) if there are any involved unions in relation to employees of the employer—each such involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—the employee who made the request.
- (3) If an employer believes that designated work groups should be varied, the employer may, at any time, enter into consultations about the variation of the designated work groups with—
 - (a) if there are involved unions in relation to employees of the employer—each such involved union; or
 - (b) if there is no involved union in relation to an employee of the employer—the health and safety representative of each designated work group proposed to be varied.

Schedule 3 Modifications and adaptations of Occupational Health and Safety Act 1989 in its application to public employees

Amendment [3.8]

- (4) If in the course of consultations under subsection (2) or (3), there is a disagreement between any of the parties to the consultation about the matter of establishing or varying a designated work group, any party may, for the purposes of facilitating that consultation, refer the matter of disagreement to the review authority for resolution as it considers appropriate and, if this is done, the parties to the disagreement shall complete the consultation in accordance with the resolution of that matter by the authority.
- (4A) Within 14 days after the completion of consultations about the establishment of the designated work groups, the employer shall, by notice in accordance with subsection (10), establish the designated work groups in accordance with the outcome of the consultations.
- (4B) Within 14 days after the completion of consultations about the variation of designated work groups that have already been established, the employer shall, if it has been determined that the variation of some or all of those designated work groups is justified, by notice in accordance with subsection (10), vary the designated work groups in accordance with the outcome of the consultations.

[3.8] Section 37 (7)

omit

[3.9] Section 37 (9)

omit

subsections (5), (6) and (7)

substitute

subsections (5) and (6)

[3.10] Section 37 (10)

omit

subsection (1) or (2)

substitute

subsection (4A)

[3.11] Section 37 (10)

omit

subsection (4)

substitute

subsection (4B)

**[3.12] Work groups designated by commissioner
Section 38**

omit

**[3.13] Selection
Sections 40 (3), (4), (5), (6) and (7)**

substitute

- (3) A person is to be taken to have been selected as the health and safety representative for a designated work group if—
- (a) all of the employees included in the group unanimously agree to the selection of the person as the health and safety representative of the group; or
 - (b) the person is elected as the health and safety representative of the group.
- (4) An election for a health and safety representative for the designated work group may be conducted—
- (a) if there is only 1 involved union in relation to the group—by that involved union; or

- (b) if there is more than 1 involved union and all the involved unions are in agreement that a specified 1 of those unions should conduct the election—by that specified union; or
 - (c) if there is no involved union in relation to the group—by a person authorised by the commissioner to conduct elections under this section.
- (5) An employee in the designated work group may be a candidate in the election only if—
- (a) the employee is not disqualified under section 48; and
 - (b) if an involved union in relation to the group is conducting the election—the employee is nominated by an involved union in relation to the group.
- (6) All the employees in the designated work group are entitled to vote in the election.
- (7) If there is only 1 candidate for the election, that person is to be taken to have been elected.
- (8) If a person is selected as the health and safety representative for a designated work group—
- (a) if the person is selected by agreement in accordance with subsection (3) (a)—the person; and
 - (b) if the person is selected by election in accordance with subsection (3) (b)—the involved union or other person authorised under subsection (4) to conduct the election;
- shall, as soon as practicable after the person has been so selected, inform the employer of all the employees included in the group of the name of the person so selected.
- (9) As soon as practicable after being so informed, the employer shall cause a notice that the person so selected is the health and safety representative for the group to be displayed in a prominent place at

the work places, under the employer's control, that will allow all of the employees in the group to be notified of the selection.

**[3.14] Objections to selection
Section 41**

omit

**[3.15] Powers
New section 43 (aa)**

insert after paragraph (a)

- (aa) make a request to an inspector that an investigation be conducted at the workplace; or

[3.16] New section 43 (2), (3), (4) and (5)

insert

- (2) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (3) A health and safety representative for a designated work group shall not—
- (a) be assisted by a consultant at a workplace where work is performed for an employer of the employees in the group; or
 - (b) provide to a consultant information that has been provided to the health and safety representative by an employer under subsection (1) (g) and (h);
- unless the employer or the commissioner has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.
- (4) An employer does not, because of the agreement of the employer under subsection (3) to the provision of assistance by a consultant,

become liable for any remuneration or other expenses incurred in connection with the consultant's activities.

- (5) If a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about health and safety at work, between an employee in the group and—

- (a) an inspector; or
- (b) the employer or a person representing the employer;

only if the employee concerned consents to the presence of the consultant.

[3.17] New section 44A

insert

44A Training of health and safety representatives

A health and safety representative for a designated work group shall undertake a course of training relating to occupational health and safety that is approved under the regulations.

[3.18] Resignation etc Section 47 (2)

substitute

- (2) A person may resign as the health and safety representative for a designated work group—
- (a) if the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—by written notice delivered to the involved union that nominated the person as a candidate in the election; or

- (b) in any other case—by written notice delivered to the employer of all the employees included in the group.
- (3) If a person has resigned as a health and safety representative for a designated work group—
 - (a) if subsection (2) (a) applies—the involved union to which the notice of resignation was delivered; or
 - (b) in any other case—the person;shall notify the employees included in the group, and, if subsection (2) (a) applies, the employer of all those employees, of the resignation.
- (4) If a person has ceased to be the health and safety representative for a designated work group because of subsection (1) (b), the person shall notify in writing—
 - (a) the employees included in the group; and
 - (b) the employer of all those employees; and
 - (c) if the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—the involved union, in relation to the group, that nominated the person as a candidate in the election;that the person has ceased to be the health and safety representative for that designated work group.

[3.19] New section 57A

before section 58 insert

57A Health and safety committees

- (1) A health and safety committee shall be established in respect of the employer's employees at a particular work place if—

Schedule 3 Modifications and adaptations of Occupational Health and Safety Act
1989 in its application to public employees

Amendment [3.19]

- (a) the number of employees of the employer who work at the workplace is normally not less than 50 (whether or not the employees are all at work at the workplace at the same time); and
 - (b) the employees are included in 1 or more designated work groups in respect of the employer; and
 - (c) the employer is requested to establish the committee by—
 - (i) a health and safety representative for the designated work group or for 1 of the designated work groups; or
 - (ii) an involved union in relation to such a group.
- (2) A health and safety committee consists of—
- (a) the number of members specified in an agreement reached between the employer and—
 - (i) the involved unions in relation to the designated work group that includes, or the designated work groups that include, all of the employees; or
 - (ii) if there are no such involved unions—the employees; or
 - (b) if there is no such agreement—an equal number of members, chosen by employees, to represent the interests of the employees and members, chosen by the employer, to represent the interests of management.
- (3) The agreement referred to in subsection (2) (a) may—
- (a) specify the persons who are to be members to represent the interests of management; and
 - (b) provide for the way in which persons who are to be members to represent the interests of employees are to be chosen.
- (4) If regulations made for this section specify procedures for the selection of persons as members of health and safety committees, to

represent the interests of the employees, an agreement referred to in subsection (2) (a) shall not provide for such members to be chosen in a way inconsistent with the regulations.

- (5) A health and safety committee shall hold meetings at least once every 3 months.
- (6) The procedure at meetings of a health and safety committee shall, except to the extent provided for by the regulations, be the procedure agreed by the committee.
- (7) A health and safety committee must cause minutes of its meetings to be kept, and shall retain those minutes for a period of not less than 3 years.
- (8) Nothing in this section is to be taken as preventing an employer from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the employer.

[3.20] New part 15A

insert

Part 15A Inquiries and reports in relation to matters affecting public employees

60A Application of pt 15A

This part does not apply to a Territory owned corporation.

60B Direction by the Minister

The Minister may, by writing, give a direction to the council about the exercise of its functions under this part and the council shall comply with any direction so given.

60C Report of certain investigations

- (1) If an inspector has conducted an investigation in relation to a matter affecting 1 or more public employees, the inspector shall, as soon as practicable, prepare a written report relating to the investigation and submit the report to the council.
- (2) The report shall include—
 - (a) the inspector's conclusions from conducting the investigation and the reasons for those conclusions; and
 - (b) any recommendations that the inspector wishes to make arising from the investigation or those conclusions; and
 - (c) the other matters(if any) that are prescribed.
- (3) As soon as practicable after receiving the report, the council shall—
 - (a) give a copy of the report, together with any written comments that it wishes to make to the employer; and
 - (b) if it considers it appropriate, give a copy of the report, together with those comments (if any), to the responsible Minister in relation to the employer.
- (4) The council may, in writing, request the employer to provide the council, within a reasonable period specified in the request, with particulars of—
 - (a) any action that is proposed to be taken as a result of the conclusions or recommendations contained in the report; and
 - (b) if a notice has been issued by an inspector under section 76 or 77 in relation to work being performed for the employer—any

action that has been taken, or that is proposed to be taken, in respect of that notice;

and the employer shall comply with the request.

- (5) As soon as practicable after the receipt of a report, the employer shall give a copy of the report together with any written comment made by the council relating to the report—
- (a) if there is at least 1 health and safety committee established in respect of some or all of the employer's employees to whose work the report relates—to each such committee; and
 - (b) if there is no such committee established in respect of some or all of the employer's employees to whose work the report relates, but some or all of those employees (in respect of which there is no such committee) are included in at least 1 designated work group for which there is a health and safety representative—to each such health and safety representative.

60D Power to obtain information and documents

- (1) If the council has reason to believe that a person is capable of giving information or producing documents relevant to a matter dealt with in a report under section 60C (1), the council may, at any time after receiving the report and before commencing an inquiry under section 60E, by written notice served on that person, require that person at the place, and within the period or on the date and at the time, specified in the notice, to give to the council any such information or to produce to the council any such documents.

- (2) A person shall not refuse or fail, without reasonable excuse, to give information or produce a document, when so required under subsection (1).

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

Note The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

60E Council may conduct public inquiry

- (1) The council may, at any time after receiving a report under section 60C (1) and before preparing a report under section 60Q, conduct an inquiry into any matter arising out of the firstmentioned report.
- (2) The council may hold the whole or any part of an inquiry in private if, in the opinion of the council, it is necessary or desirable in the public interest to do so.
- (3) If proceedings are held in private, the council may inform itself on any matter in the way it thinks fit.
- (4) If proceedings are held in public—
- (a) evidence in the proceedings must, subject to this subsection, be taken on oath or affirmation; and
 - (b) the council may, if it thinks fit, permit a person appearing as a witness to give evidence by tendering, and verifying by oath or affirmation, a written statement; and
 - (c) if the council considers that the attendance of a person as a witness would cause serious hardship to the person, the council may permit the person to give evidence by sending to the council a written statement, verified in the way the council directs; and

- (d) if evidence is given by a written statement in accordance with paragraph (b) or (c), the council shall make available to the public in the way the council thinks fit the contents of the statement, other than any matter as to which the council is satisfied that its publication would be contrary to the public interest because of its confidential nature or any other reason.
- (5) Subject to this section—
 - (a) the procedure to be followed at an inquiry is within the discretion of the council; and
 - (b) the council is not bound by the rules of evidence.

60F Power to summon witnesses

The council may, in writing, summon a person to appear before the council at a time and place specified in the summons to give evidence and produce the documents (if any) referred to in the summons.

60G Failure of witness to attend

A person served with a summons under section 60F shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the council.

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

60H Power to administer oath or affirmation

The council may cause an oath or affirmation to be administered to a person appearing as a witness.

60J Refusal to be sworn or to answer questions

- (1) A person appearing as a witness shall not, without reasonable excuse—
- (a) refuse or fail to comply with a requirement by the council to be sworn or to make an affirmation; or
 - (b) refuse or fail to answer a question that he or she is required to answer by the council; or
 - (c) refuse or fail to produce a document that he or she was required to produce by a summons served on him or her.

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

- (2) The fact that answering a question or producing a document under a requirement under subsection (1) (b) or (c), as the case may be, may tend to incriminate the person who is subject to such a requirement shall be taken to be a reasonable excuse on the part of that person for subsection (1).

60K Protection of members and witnesses

- (1) A member of the council has, in the exercise of functions as a member in relation to an inquiry, the same protection and immunity as a judge of the Supreme Court.
- (2) Subject to this Act, a person appearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

60L Contempt

A person shall not—

- (a) insult or disturb a member of the council in the exercise of his or her functions as a member of the council; or

- (b) interrupt an inquiry; or
- (c) use insulting language towards a member of the council; or
- (d) create a disturbance, or take part in creating or continuing a disturbance, in a place where the council is holding an inquiry; or
- (e) do any other act or thing that would, if the council were a court of record, constitute a contempt of that court.

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

60M Powers in relation to documents produced

- (1) A member of the council may inspect any books or documents given to the council for the purposes of the exercise of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.
- (2) A book or document so given may be retained by the council for the reasonable period necessary for the purposes of the council, but during that period the council shall permit a person otherwise entitled to possession of the book or document to inspect, make copies of, and take extracts from, the book or document at the places and times the council thinks appropriate.

60N Allowances to witnesses

A person served with a summons under section 60F is entitled to be paid by the Territory the allowances for travelling and other expenses that are prescribed.

60P Witness not to be prejudiced in employment

An employer shall not—

- (a) dismiss, or threaten to dismiss, an employee from his or her employment; or
 - (b) injure, or threaten to injure, an employee in his or her employment; or
 - (c) prejudice, or threaten to prejudice, an employee in his or her employment;
- because the employee—
- (d) has appeared, or proposes to appear, as a witness at an inquiry; or
 - (e) has given, or proposes to give, any evidence at an inquiry.

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

60Q Report to be given to Minister in certain circumstances

- (1) If, under section 60C (4), the council has made a request to an employer for particulars of any action proposed to be taken as a result of conclusions or recommendations contained in a report under section 60C or taken or proposed to be taken in respect of a notice issued under section 76 or 77 and—
 - (a) the employer fails, without reasonable excuse, to provide the particulars within the period specified in the request; or
 - (b) the action taken or proposed to be taken is not, in the council's opinion, adequate having regard to the duties imposed by the Act; or
 - (c) so far as action not yet taken is concerned, the council forms the opinion that the action proposed to be taken as a result of the conclusions or recommendations contained in the report, or proposed to be taken in respect of a notice issued under section 76 or 77, has not been taken within a reasonable time;

the council may prepare and give to the Minister a report to this effect, being a report that includes—

- (d) a copy of the report under section 60C; and
- (e) a copy of any response by the employer to that request; and
- (f) if the council has conducted an inquiry under section 60E—the findings of that inquiry.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) The Minister shall present a copy of the report to the Legislative Assembly within 15 sitting days after the report is given to the Minister.

60R Report to be given to Minister of failures to comply with directions etc

- (1) If the council forms the opinion that an employer has failed to comply with—
 - (a) a direction given under section 78; or
 - (b) a notice issued under section 76 or 77;

the council may prepare and give to the Minister a report to that effect.

- (2) The Minister shall present a copy of the report to the Legislative Assembly within 15 sitting days after the report is given to the Minister.

60S Delegation by council

The council may, in writing, delegate to any person all or any of its powers under this part.

[3.21] Inspections etc
New section 62 (4) and (5)

insert

- (4) An inspector is entitled, in the exercise of his or her powers, to be assisted by a consultant and the consultant may accompany an inspector during any inspection of a work place by that inspector.
- (5) The exercise by an inspector of his or her powers under this section in relation to any matter affecting 1 or more public employees, shall, for part 4A, be taken to be an investigation by that inspector.

[3.22] New section 62A

insert

62A Request for investigation

An involved union may make a request to an inspector or to the commissioner that an investigation be conducted at a work place, being a work place where an employee, who is a member of the union, performs work for an employer.

[3.23] New section 71A

insert

71A Arrangements with Commonwealth or States for services of officers

If the commissioner considers that it is in the public interest to do so, arrangements may be made in accordance with the *Public Sector Management Act 1994*, section 120 for officers or employees of the public service of the Commonwealth, a State or another Territory to exercise the functions of inspectors in relation to the investigation of matters affecting public employees.

[3.24] Codes of practice
New section 87 (7) and (8)

insert

- (7) A code of practice that—
- (a) relates exclusively to the occupational health and safety of public employees; and
 - (b) is specified in the management standards in force at the commencement of the *Public Sector Management Act 1994*, section 249;
- shall be taken to be an approved code of practice for this Act.
- (8) A code of practice that is taken to be an approved code of practice in accordance with subsection (7) shall take effect from the date of the commencement of the *Public Sector Management Act 1994*, section 249.

[3.25] New sections 91A and 91B

insert

91A Certain matters to be included in annual reports

- (1) The annual report in relation to a financial year—
- (a) of each administrative unit of the public service through which the Territory acts; and
 - (b) of each Territory instrumentality that is required, under the Act or other law by or in accordance with which the instrumentality is established or incorporated, to prepare an annual report of its activities with a view to that report being presented to the Legislative Assembly;

shall include details of the following matters:

Schedule 3 Modifications and adaptations of Occupational Health and Safety Act
1989 in its application to public employees

Amendment 91A

- (c) the occupational health and safety policy of the administrative unit or instrumentality during the financial year, including details of—
 - (i) any agreement made with public employees relating to occupational health and safety; and
 - (ii) the establishment of committees to deal with occupational health and safety matters; and
 - (iii) the selection of health and safety representatives; and
- (d) measures taken during the year to ensure the health, safety and welfare at work of public employees and contractors dealing with the administrative unit or instrumentality; and
- (e) statistics of any accidents or dangerous occurrences during the year that arose out of the conduct of undertakings by the administrative unit or instrumentality and that required the giving of notice under section 85; and
- (f) any investigations conducted during the year that relate to undertakings carried on by the employer, including details of all—
 - (i) tests conducted on any plant, substance or thing in the course of such investigations; and
 - (ii) directions given to the employer under section 78 during the year; and
 - (iii) notices given to the relevant employer under sections 76 and 77; and
- (g) any other matters that are prescribed.

91B Institution of proceedings

- (1) Proceedings for an offence against this Act in relation to a matter affecting public employees may be instituted by the commissioner.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) If proceedings for an offence against this Act of the kind referred to in subsection (1) have not been instituted within 6 months after the occurrence of an act or omission that, in the opinion of a health and safety representative for a designated work group or an involved union in relation to such a designated work group, constitutes an offence against this Act, that health and safety representative or that involved union may, in writing, request the commissioner to institute such proceedings.
- (3) The commissioner shall within 3 months after receiving a request under subsection (2), advise the health and safety representative or the involved union, as the case may be, whether proceedings under subsection (1) have been or will be instituted or give reasons why such proceedings will not be instituted.

[3.26] Schedule 1, part 1.1, item 2, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the notice; or

[3.27] Schedule 1, part 1.1, item 3, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the seizure; or

[3.28] Schedule 1, part 1.1, item 4, column 3, new paragraph (aa)

insert

Schedule 3 Modifications and adaptations of Occupational Health and Safety Act 1989 in its application to public employees

Amendment [3.29]

- (aa) an involved union in relation to an employee whose work is affected by the notice or direction; or

[3.29] Schedule 1, part 1.1, item 6, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.30] Schedule 1, part 1.2, item 5, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the refusal; or

[3.31] Schedule 1, part 1.2, item 6, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the seizure; or

[3.32] Schedule 1, part 1.2, item 7, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the notice or direction; or

[3.33] Schedule 1, part 1.2, item 9, column 3, new paragraph (aa)

insert

- (aa) an involved union in relation to an employee whose work is affected by the refusal; or

Endnotes

1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

| | |
|---|---|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | p = page |
| cl = clause | par = paragraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | prov = provision |
| exp = expires/expired | pt = part |
| Gaz = Gazette | r = rule/subrule |
| hdg = heading | reg = regulation/subregulation |
| IA = Interpretation Act 1967 | renum = renumbered |
| ins = inserted/added | reloc = relocated |
| LA = Legislation Act 2001 | R[X] = Republication No |
| LR = legislation register | RI = reissue |
| LRA = Legislation (Republication) Act 1996 | s = section/subsection |
| mod = modified / modification | sch = schedule |
| No = number | sdiv = subdivision |
| num = numbered | sub = substituted |
| o = order | SL = Subordinate Law |
| om = omitted/repealed | <u>underlining</u> = whole or part not commenced or to be expired |

Endnotes

3 Legislation history

3 Legislation history

Public Sector Management Act 1994 No 37

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
remainder commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

as amended by

Public Interest Disclosure Act 1994 No 108 s 40

notified 22 December 1994 (Gaz 1994 No S289)
s 1, s 2 commenced 22 December 1994 (s 2 (1))
s 40 commenced 21 June 1995 (s 2 (2) and Gaz 1995 No S126)

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

notified 28 June 1995 (Gaz 1995 No S148)
commenced 1 July 1995 (s 2)

Public Sector Management (Amendment) Act 1995 No 51

notified 20 December 1995 (Gaz 1995 No S313)
s 1, s 2 commenced 20 December 1995 (s 2 (1))
remainder commenced 21 December 1995 (s 2 (2) and Gaz 1995 No S315)

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

notified 20 December 1995 (Gaz 1995 No S313)
commenced 21 December 1995 (s 2 and see Gaz 1995 No S315)

Public Sector Management (Amendment) Act 1996 No 24

notified 4 June 1996 (Gaz 1996 No S101)
commenced 1 July 1996 (s 2)

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

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

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

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

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

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

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

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

Statute Law Revision (Penalties) Act 1998 No 54 sch

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

Public Sector Management (Amendment) Act 1999 No 55

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

Public Sector Legislation Amendment Act 1999 No 70 s 3

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

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

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

Public Sector Legislation Amendment Act 2000 No 77 s 3

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

Endnotes

3 Legislation history

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

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

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

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

Legislation Amendment Act 2002 No 11 pt 2.40

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

Statute Law Amendment Act 2002 No 30 amdt 3.577

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

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

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

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

Public Sector Management Amendment Act 2003 A2003-62

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

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

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

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.3478

Definitions for Act

s 3 am 1999 No 55 sch; 2001 No 44 amdt 1.3479, amdt 1.3481
 def **administering chief executive** ins 1995 No 51 s 4
 def **Auditor-General's office** ins 1996 No 24 s 4
 def **autonomous instrumentality** sub 1995 No 7 sch; 1996 No 24 s 4
 def **chief executive** am 1995 No 51 s 4
 def **chief executive officer** ins 1996 No 24 s 4
 def **classification** am 1995 No 51 s 4
 def **criminal offence** am 1999 No 55 s 4; pars renum R4 LA
 def **employee** sub 1995 No 51 s 4
 def **executive** ins 1995 No 51 s 4
 def **executive office** ins 1995 No 51 s 4
 def **Gazette** om 1999 No 55 s 4
 def **office of chief executive** ins 1995 No 51 s 4
 def **officer** am 1995 No 7 sch; 1995 No 51 s 4; pars renum R4 LA
 def **senior executive service office** om 1995 No 51 s 4
 def **senior executive service officer** om 1995 No 51 s 4
 def **service** am 1995 No 51 s 4
 def **Territory Gazette** om 1999 No 55 s 4
 def **Territory instrumentality** am 2001 No 44 amdt 1.3480; A2003-56 amdt 3.176

Declaration of Territory instrumentalities

s 3A ins 2001 No 44 amdt 1.3482

Application

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

Values and general principles

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

General obligations of public employees

s 9 pars renum R4 LA

Constitution of the service

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

ACT Public Service

s 12 am 1995 No 51 s 5

Administrative arrangements

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

Endnotes

4 Amendment history

Constitution of administrative units

s 13 am 1999 No 55 sch; 2001 No 44 amdt 1.3483

Ministerial responsibility and functions of administrative units

s 14 am 1999 No 55 sch; 2001 No 44 amdt 1.3484, amdt 1.3485

Preliminary

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

Role of commissioner

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

Appointment of commissioner

s 18 am 1999 No 55 sch; 2001 No 44 amdt 1.3486; 2002 No 11
amdt 2.80

Investigative powers

s 22 am 1998 No 54 sch; 2002 No 11 amdt 2.81, amdt 2.82

Exercise of chief executive powers in relation to certain public employees

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

Powers relating to certain staff providing services for Calvary Hospital

s 26 am 1995 No 51 s 6

Chief executives

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

Engagement

s 28 sub 1995 No 51 s 7

Early termination of contract

s 28A ins 1995 No 51 s 7

Effect of contracts on responsibilities of Ministers

s 28B ins 1995 No 51 s 7

Application of merit principle to re-engagements

s 28C ins 1995 No 51 s 7

Temporary performance of duties

s 30 sub 1995 No 51 s 8

Negotiation and execution of contracts

s 31 sub 1995 No 51 s 8

Presentation of contracts and variations of contracts

s 31A ins 1995 No 51 s 8

Effect of defects or irregularities

s 32 sub 1995 No 51 s 8

Employment to perform duties of multiple positions

s 33 sub 1995 No 51 s 8

Notification

s 34 sub 1995 No 51 s 8
am 1999 No 55 sch

Powers of delegation

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

Delegations in autonomous instrumentalities

s 37 sub 1996 No 24 s 5

Constitution and role of senior executive service

pt 3 div 6 hdg om 1995 No 51 s 9

The senior executive service

s 38 om 1995 No 51 s 9

Whole-of-government management responsibilities

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

Development of programs in autonomous instrumentalities

s 43 am 1996 No 24 s 6

Clerk of Legislative Assembly

div 3.8 hdg (prev pt 3 div 8 hdg) renum R3 LA

Meaning of *clerk* in div 3.8

s 45 def **Speaker** om R3 LA

Office

s 46 am 1995 No 56 sch; ss renum R4 LA

Retirement

s 51 (4) exp 4 March 1996 (s 51 (5))
(5) om R3 LA

Creation and abolition of executive offices

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

Creation and abolition of offices

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

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

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

Meaning of *office* in div 4.1A

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

Senior executive service classifications

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

Endnotes

4 Amendment history

Reclassification of offices in autonomous instrumentalities

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

Part-time offices

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

Meaning of office in div 4.2

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

Preliminary

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

Application to autonomous instrumentalities

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

Personnel management

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

Application of merit principle

s 65 am 1995 No 51 s 13; pars renum R4 LA

Exception for returning officers

s 65A ins 2001 No 57 s 10

Notification of certain matters related to appointment, transfer or promotion

s 66 am 1999 No 55 sch

Appointment of officers

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

Application

s 66A ins 1995 No 51 s 15

Employment in the service

s 67 am 1995 No 51 s 16; A2003-62 s 4

Appointments generally

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

Classification of unattached officers

s 69 am 1995 No 51 s 18

Appointments to be on probation

s 70 am 1995 No 51 s 19

Appointments on probation—training offices and teaching offices

s 71 am 1999 No 55 s 5

Engagement of executives

div 5.4 hdg (prev pt 5 div 4 hdg) sub 1995 No 51 s 20
renum R3 LA

Engagement

s 72 sub 1995 No 51 s 20

Early termination of contract

s 73 sub 1995 No 51 s 20

Effect of contracts on responsibilities of Ministers

s 74 sub 1995 No 51 s 20

Application of merit principle to re-engagements

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

Temporary performance of duties

s 76 sub 1995 No 51 s 20

Chief executive officer, Calvary Hospital

s 77 sub 1995 No 51 s 20

Negotiation and execution of contracts

s 78 sub 1995 No 51 s 20

Tabling of contracts and variations of contracts

s 79 sub 1995 No 51 s 20

Effect of defects or irregularities

s 80 sub 1995 No 51 s 20

Notification

s 81 sub 1995 No 51 s 20
am 1999 No 55 sch

Promotions and transfers of officers

div 5.5 hdg (prev pt 5 div 5 hdg) am 1995 No 51 s 21
renum R3 LA

Meaning of office in div 5.5

s 82 sub 1995 No 51 s 22

Transfers and promotions

s 83 am 1995 No 51 s 23; 1999 No 55 sch

Determination of appeals

s 85 am 1999 No 55 sch

Review of non-appellable promotion decisions by merit protection agency

s 87 am 1995 No 51 s 24

Transfer or promotion on advice of joint selection committee

s 88 am 1995 No 51 s 25; 1999 No 55 sch

Endnotes

4 Amendment history

Transfer or promotion on advice of management-initiated joint selection committee

s 89 am 1995 No 51 s 26; 1999 No 55 sch

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

s 97 am 1999 No 55 sch; 2001 No 44 amdts 1.3487-1.3489

Promotion of officers who complete courses of training for special positions

s 98 am 1999 No 55 sch

Temporary performance of duties—offices other than offices of chief executive and executive offices

div 5.6 hdg (prev pt 5 div 6 hdg) am 1995 No 51 s 27
renum R3 LA

Definitions for div 5.6

s 99 def **office** am 1995 No 51 s 28

Temporary employment

div 5.7 hdg (prev pt 5 div 7 hdg) renum R3 LA

Power to engage employees

s 106 am 1995 No 51 s 29

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

s 114 am 1995 No 51 s 30

Miscellaneous

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

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

s 115 am 1995 No 51 s 31; 1999 No 55 sch

Mobility rights of certain employees of ACTEW Corporation Limited

s 115A hdg am 1996 No 33 note

s 115A ins 1995 No 7 sch

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

s 116 sub 1995 No 51 s 32
am 1999 No 55 s 6

Reappointment of retired officers

s 117 am 1995 No 51 s 33

Reappointment of unsuccessful election candidates

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

Retirement and redeployment of chief executives

pt 6 div 1 hdg om 1995 No 51 s 35

Interpretation

s 122 om 1995 No 51 s 35

Retirement—minimum retiring age

s 123 om 1995 No 51 s 35

Retirement—maximum retiring age

s 124 om 1995 No 51 s 35

Retirement of chief executives on the ground of incapacity

s 125 om 1995 No 51 s 35

Termination of appointment

s 126 om 1995 No 51 s 35

Redeployment of unattached chief executives

s 127 om 1995 No 51 s 35

Special benefits available to retiring unattached chief executives

s 128 om 1995 No 51 s 35

Retirement and redeployment of senior executive service officers

pt 6 div 2 hdg om 1995 No 51 s 35

Interpretation

s 129 om 1995 No 51 s 35

Retirement—minimum retiring age

s 130 om 1995 No 51 s 35

Retirement—maximum retiring age

s 131 om 1995 No 51 s 35

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

s 132 om 1995 No 51 s 35

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

s 133 om 1995 No 51 s 35

Appeal to appeal committee

s 134 om 1995 No 51 s 35

Retirement with consent of officer on grounds of incapacity

s 135 om 1995 No 51 s 35

Unattachment of senior executive service officers

s 136 om 1995 No 51 s 35

Special benefits available to retiring officers

s 137 om 1995 No 51 s 35

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Limitation on retirement on ground of invalidity

s 138 om 1995 No 51 s 35

Retirement and redeployment of officers other than chief executives and executives

div 6.3 hdg (prev pt 6 div 3 hdg) am 1995 No 51 s 36
renum R3 LA
om R4 LA

Interpretation for pt 6

s 139 def **officer** sub 1995 No 51 s 37

Retirement—maximum retiring age

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

Interpretation for pt 7

s 148 am 1995 No 51 s 38
def **redundancy** am 1995 No 51 s 38

Preliminary

div 9.1 hdg (prev pt 9 div 1 hdg) renum R3 LA

Meaning of failure to fulfil duty as officer

s 179 am 1995 No 51 s 39

Chief executives and certain unattached officers

pt 9 div 2 hdg om 1995 No 51 s 40

Interpretation

s 180 om 1995 No 51 s 40

Disciplinary action in respect of chief executives

s 181 om 1995 No 51 s 40

Conviction by courts of chief executives

s 182 om 1995 No 51 s 40

Suspension of chief executives

s 183 om 1995 No 51 s 40

Removal and variation of suspension relating to chief executives

s 184 om 1995 No 51 s 40

Officers

div 9.3 hdg (prev pt 9 div 3 hdg) am 1995 No 51 s 41
renum R3 LA

Interpretation

s 185 om 1995 No 51 s 42

Disciplinary action

s 186 am 1995 No 51 s 43

Inquiries into misconduct

s 187 am 1995 No 51 s 44

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s 189 am 1995 No 51 s 45

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s 190 am 1995 No 51 s 46

Officers employed otherwise than in the service

div 9.4 hdg (prev pt 9 div 4 hdg) renum R3 LA

Employees other than chief executives and executives

div 9.5 hdg (prev pt 9 div 5 hdg) am 1995 No 51 s 47
renum R3 LA

Definitions for div 9.5

s 201 def *authorised officer* am 1995 No 51 s 48

Disciplinary appeal committees

div 9.6 hdg (prev pt 9 div 6 hdg) am 1995 No 51 s 49
renum R3 LA

Definitions for div 9.6

s 203 def *board of inquiry* om 1995 No 51 s 50
def *proceeding* sub 1995 No 51 s 50

Time for appealing to disciplinary appeal committee

s 205 am 1999 No 55 sch

Giving of documents to appellants and persons requesting review

s 206 am 1995 No 51 s 51; ss renum R4 LA

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s 207 om 1995 No 51 s 52

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s 208 om 1995 No 51 s 52

Witnesses expenses

s 209 om 1995 No 51 s 52

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s 210 om 1995 No 51 s 52

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s 211 om 1995 No 51 s 52

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s 212 om 1995 No 51 s 52

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s 213 om 1995 No 51 s 52

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Costs of lapsed inquiry

s 214 om 1995 No 51 s 52

Recording of action taken

s 215 am 1995 No 51 s 53

Miscellaneous

div 9.7 hdg (prev pt 9 div 7 hdg) renum R3 LA

Imprisonment

s 218 am 1995 No 51 s 54

Application to unattached officers performing duty in an administrative unit

s 219 am 1995 No 51 s 55; pars renum R4 LA

Deduction of pecuniary penalty from salary

s 220 am 1996 No 26 sch pt 28

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div 11.1 hdg (prev pt 11 div 1 hdg) renum R3 LA

Definitions for pt 11

s 223 def *authorised officer* am 1995 No 51 s 56

def *employee* sub 1995 No 51 s 56

def *internal appeal officer* am 1995 No 51 s 56

Review of certain decisions

div 11.2 hdg (prev pt 11 div 2 hdg) renum R3 LA

Investigation of grievances by merit protection agency

div 11.3 hdg (prev pt 11 div 3 hdg) renum R3 LA

Merit protection

div 11.4 hdg (prev pt 11 div 4 hdg) renum R3 LA

Application of Merit Protection Act

s 235 am 1995 No 51 s 57; 1999 No 70 s 3;
2000 No 77 s 3

Whistle blowing

pt 12 hdg om 1994 No 108 s 40

Interpretation

s 236 om 1994 No 108 s 40

Disclosure of information to auditor-general or ombudsman

s 237 om 1994 No 108 s 40

Disclosure of information to authorised official

s 238 om 1994 No 108 s 40

Disclosure of information in certain circumstances

s 239 om 1994 No 108 s 40

Protection of persons making disclosures under section 237, 238 or 239

s 240 om 1994 No 108 s 40

Personation etc at examinations

s 247 am 1998 No 54 sch

Engagement of certain former officers and employees prohibiteds 248A ins 1995 No 51 s 58
am 1999 No 55 s 7**Management standards**s 251 am 1995 No 51 s 59; 1996 No 33 sch 1; 1999 No 55 s 8; 2001
No 44 amdts 1.3490-1.3494; pars renum R4 LA**Totalcare**pt 14 hdg ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)**Definitions for pt 14**s 252 om 2001 No 44 amdt 1.3495
def **employee** ins A2003-62 s 5
def **Totalcare** ins A2003-62 s 5
def **transfer** ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)**Transfer of employees**s 253 am 1999 No 55 sch
om 2001 No 44 amdt 1.3495
ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)**How rest of Act applies**s 254 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)**Employees appointed on probation**s 255 ins 2001 No 44 amdt 1.3496 (amdt 1.3496 om 2002 No 30 amdt
3.577 before commencement)
ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)**Entitlements of transferred employees**s 256 ins A2003-62 s 5
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exp 31 December 2005 or later date under regs (s 263)

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Management standards

s 259 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)

Transitional regulations

s 260 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)

Modification of pt 14's operation

s 261 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)

Regulation-making power

s 262 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)

Expiry of pt 14

s 263 ins A2003-62 s 5
exp 31 December 2005 or later date under regs (s 263)

Modifications and adaptations of part 9 in its application to employees

sch 1 am R3 (LA s 116 (1) (k) (iii))

Modifications and adaptations of Occupational Health and Safety Act 1989 in its application to public employees

sch 3 am 1998 No 54 sch; 1999 No 82 sch pt 2; 2001 No 44
amds 1.3497-1.3500; R3 (LA s 116 (1) (k) (iii)); 2002 No 11
amdt 2.84, amdt 2.85; A2003-56 amdt 3.177

5 Earlier republications

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

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

| Republication No | Amendments to | Republication date |
|------------------|-----------------------|--------------------|
| 1 | Act 1995 No 56 | 1 January 1996 |
| 2 | Act 1996 No 39 | 30 June 1997 |
| 3 | <u>Act 2001 No 44</u> | 12 September 2001 |
| 4 | Act 2001 No 57 | 24 April 2002 |
| 5 | Act 2002 No 11 | 29 May 2002 |
| 6 | A2002-30 | 17 September 2002 |
| 7* | A2003-30 | 1 July 2003 |
| 8 | A2003-62 | 12 December 2003 |

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