



Australian Capital Territory

# **Public Sector Management Act 1994**

**A1994-37**

**Republication No 31**

**Effective: 1 July 2012 – 7 November 2012**

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Last amendment made by A2012-26

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Public Sector Management Act 1994* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2012. It also includes any amendment, repeal or expiry affecting the republished law to 1 July 2012.

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

### Kinds of republications

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

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

### Editorial changes

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

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

### Uncommenced provisions and amendments

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

### Modifications

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

### Penalties

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



Australian Capital Territory

# Public Sector Management Act 1994

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Australian Capital Territory

# Public Sector Management Act 1994

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

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## Part 1 Preliminary

### 1 Name of Act

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

### 2 Dictionary

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

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

For example, the signpost definition '*appellable decision*—see section 223.' means that the term 'appellable decision' is defined in that section.

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

### 2A Notes

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

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

### 3A Declaration of territory instrumentalities

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

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

### 4 Operation of Act

This Act operates both within and outside the ACT.

## **5 Application**

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

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

## **Part 2 Administration of the public sector**

### **Division 2.1 Values and general principles**

#### **6 Values and principles**

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

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

#### **7 General principles of public administration**

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

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



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

## **8 General principles of management in employment matters**

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

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

## **9 General obligations of public employees**

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

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

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

**9A Misconduct**

The misconduct procedures that apply to a public employee are—

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

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

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

**11 Legal effect**

- (1) Nothing in this division is to be taken to create any legal rights not in existence before the enactment of this part or to affect any rights in existence before that enactment or that would, apart from this part, have come into existence after that enactment.
- (2) Subsection (1) does not prevent a contravention of section 9 (a) to (p) by an officer or employee from being dealt with under the misconduct procedures that apply to a public employee or section 122 (Termination of employment).

**Division 2.2 ACT Public Service**

**12 ACT Public Service**

- (1) The ACT Public Service is established.

*Note* **Establish** includes constitute and continue in existence (see Legislation Act, dict, pt 1).

- (2) The ACT Public Service is made up of the administrative units established under section 13.

- (3) The members of the ACT Public Service are—
  - (a) the head of service; and
  - (b) the directors-general; and
  - (c) the executives; and
  - (d) other employees; and
  - (e) officers.
- (4) The Territory is the employer of all members of the service.

## **Division 2.3                      Administrative arrangements**

### **13                      Administrative units**

- (1) The Chief Minister may establish administrative units.
- (2) An administrative unit is made up of the offices within the administrative unit.

*Note*        The office of director-general for an administrative unit is established when the administrative unit is established (see s 27 (1)).

- (3) An instrument under subsection (1) is a notifiable instrument.

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

### **14                      Ministerial responsibility and functions of administrative units**

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

- (2) An instrument under subsection (1) is a notifiable instrument.

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

## 15 Machinery of government changes—officers

- (1) If an administrative unit is abolished, the head of service 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 head of service 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 head of service may direct in writing that—
- (a) if subsection (1) (a) applies—an employee who was employed in the administrative unit immediately before the abolition is to be employed in another administrative unit; or
  - (b) if subsection (1) (b) applies—an employee who was employed in the losing area immediately before the arrangements took effect is to be employed in the gaining area;
- and, if such a direction is given, an employee shall be taken as from that time to be employed as so directed, in the same capacity and subject to the same conditions as were applicable immediately before that time.
- (3) Without limiting subsection (2), that subsection does not extend the term of employment of a person beyond the time when it would have ended if the employment had not been affected by a direction under that subsection.
- (4) An instrument made for subsection (2) may be made before the abolition takes effect.



## **Part 3**                      **Management of the service**

### **Division 3.1**              **Preliminary**

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

In this part:

*officer* includes an employee.

### **Division 3.2**              **Role of commissioner**

#### **18**              **Appointment of commissioner**

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

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

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

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

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

- (3) An appointment is a notifiable instrument.

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

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

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

## **20 General functions**

The commissioner shall—

- (a) advise the Chief Minister on the management of the service as a whole; and
- (b) exercise any other functions given to the commissioner by this Act or any other law.

## **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) 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) The commissioner must notify the head of service and the relevant agency manager in writing before starting the review.
- (4) On completion of the review, the commissioner may make recommendations to the head of service and the relevant agency manager on the action that should be taken, or could be taken, to give effect to any proposals arising from the review.

- (5) If the relevant agency manager disagrees with the recommendations or does not implement them within a reasonable time, the relevant agency manager must—
- (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) give a copy of the reasons to the commissioner and the head of service.
- (6) The commissioner shall, from time to time, report to the Chief Minister on the operation of this section.
- (7) In this section:
- relevant agency manager* means—
- (a) in relation to an administrative unit—the director-general of the unit; or
  - (b) in relation to a territory instrumentality, including the officers and employees employed, or to be employed, in the territory instrumentality—the person who has the powers mentioned in section 24 (2) (a) in relation to the staff; or
  - (c) in relation to a statutory office, including the officers and employees employed, or to be employed, to assist the statutory office-holder—the statutory office-holder, if the office-holder has the powers mentioned in section 25 (3) (a) in relation to the staff.

## **22 Investigative powers of commissioner**

- (1) The commissioner may, for the purpose of carrying out the commissioner's functions—
- (a) conduct inspections of, or make inquiries or investigations into the operations of, government agencies; and
  - (b) enter premises occupied by a government agency at any time.

- (2) For an inspection, inquiry or investigation, the commissioner, or a person authorised in writing by the commissioner, may, by written notice given to a person, require the person to appear before the commissioner, at a stated time and place, to do either or both of the following:
- (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.
- (3) The commissioner may require a witness appearing before the commissioner to give evidence for an inspection, inquiry or investigation to do 1 or more of the following:
- (a) to take an oath;
  - (b) to answer a question relevant to the inspection, inquiry or investigation;
  - (c) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.

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

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

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

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

## **22AA Investigative powers of commissioner and Office of the Legislative Assembly**

- (1) The commissioner—
  - (a) must not conduct an inspection of, or make an inquiry or investigation into the operations of, the Office of the Legislative Assembly under section 22 unless the commissioner has the Speaker's written approval to conduct the inspection or make the inquiry or investigation; and
  - (b) is not subject to direction by the Speaker, the Executive, any Minister or the head of service in conducting the inspection or making the inquiry or investigation.
- (2) If the commissioner conducts an inspection or makes an inquiry or investigation mentioned in subsection (1), the commissioner must prepare a report for the Speaker about the inspection, inquiry or investigation.
- (3) The commissioner must give the report to the Speaker—
  - (a) within 6 months after the day the Speaker gives the approval under subsection (1) (a) for the inspection, inquiry or investigation; or
  - (b) if the commissioner asks the Speaker for an extension of time to give the report, and the Speaker agrees to an extension—within the period (not longer than 12 months after the day mentioned in paragraph (a)) stated by the Speaker.
- (4) In subsection (3):

*Speaker* includes—

  - (a) if the Speaker is unavailable—the Deputy Speaker; or
  - (b) if both the Speaker and Deputy Speaker are unavailable—the clerk of the Legislative Assembly.

*unavailable*—a person is *unavailable* if—

- (a) the person is absent from duty; or
- (b) there is a vacancy in the person's position.

## **22A Witness expenses**

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

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

## **23 Records of members**

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

- (3) In the application of this section to an officer, or employee, of an autonomous instrumentality, the reference to the commissioner is a reference to the chief executive officer of the instrumentality.

## **Division 3.2A      Head of service**

### **23A      Office of head of service**

The office of Head of Service is established.

### **23B      Head of service—functions**

- (1) The head of service is responsible for the service as a whole.
- (2) Without limiting subsection (1), the head of service has the following functions:
  - (a) management of the service;
  - (b) development and implementation of whole-of-government strategies;
  - (c) provision of advice and reports to the Chief Minister about whole-of-government issues;
  - (d) coordination of activities and outcomes across administrative units;
  - (e) direction of administrative units in relation to critical or potentially critical issues;
  - (f) approval of the structure of the administrative units;
  - (g) management of the employment of members of the service;
  - (h) management of the exercise by directors-general of their functions;
  - (i) any other function given to the head of service—
    - (i) by the Chief Minister; or

(ii) under this Act or another territory law.

**23C Head of service—engagement**

- (1) The Chief Minister may engage a person as the head of service.
- (2) The person must be engaged under a contract with the Territory.
- (3) The contract must—
  - (a) be in writing; and
  - (b) be signed by the person and the Chief Minister, on behalf of the Territory; and
  - (c) state the period during which the person is engaged as head of service.
- (4) The period mentioned in subsection (3) (c) must not be longer than 5 years.
- (5) Subject to this Act, the employment of the head of service under this section is governed by the contract under which the head of service is engaged.

**23D Head of service may also be engaged as director-general of Chief Minister’s administrative unit**

- (1) The person engaged as the head of service may also be engaged by the Chief Minister as the director-general (the *CM director-general*) of the administrative unit administered by the Chief Minister.
- (2) The engagement of the person as the CM director-general under this section is governed by the contract made under section 23C.



### **23E Head of service—contract variation**

- (1) The head of service's contract may be varied at any time by a written agreement signed by the head of service and the Chief Minister, on behalf of the Territory.

*Note* If the head of service is transferred or assigned under s 23N, the head of service's contract is taken to be varied by the transfer or assignment (see s 23N (3)).

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

### **23F Head of service—early termination of contract**

- (1) The head of service's contract may include provision for termination of the head of service's employment before the end of the period of employment stated in the contract (a *termination provision*).
- (2) If the head of service's contract includes a termination provision, the contract must state the grounds for termination.
- (3) The grounds must not include—
- (a) the ground that the head of service is incompatible with another person; or

- (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a termination provision, no benefit is payable in relation to the termination other than the benefit, if any, prescribed for this subsection.
- (5) The head of service's employment may not be terminated on the ground of invalidity unless—
  - (a) if the head of service is an eligible employee for the *Superannuation Act 1976* (Cwlth)—
    - (i) the head of service has not reached the head of service's maximum retiring age within the meaning of the Act; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the head of service; or
  - (b) if the head of service is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
    - (i) the head of service is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the head of service; or
  - (c) if the head of service is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
    - (i) the head of service is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the head of service.

(6) In this section:

*invalidity* means—

- (a) for an eligible employee for the *Superannuation Act 1976* (Cwlth)—invalidity under the Act; or
- (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under the Act; or
- (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under the Act.

**23G Head of service—effect of contract on responsibilities of Ministers**

Nothing in the head of service's contract limits 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.

**23H Head of service—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 exercise the functions of the office of head of service if—

- (a) the period of the second or subsequent engagement is to start immediately on the day after the previous engagement ends; and
- (b) the Chief Minister has certified in writing that the Chief Minister is satisfied that it would be in the interests of the service for the person to be re-engaged to exercise those functions.

**23I Head of service—notice or payment if not re-engaged**

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

*Note* Section 248C provides that the Territory must not, without consulting the commissioner, within 3 months after the day the contract ends, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (3) The amount must be paid within 3 months after the day the head of service's contract ends.
- (4) This section does not apply if the head of service's contract is terminated before the end of the period of employment stated in the contract.

*Note* For the termination of the head of service's contract, see s 23F (Head of service—early termination of contract).

- (5) In this section:

*final annual salary*, for the head of service, means the head of service's annual remuneration under the head of service's contract as at the day the contract ends, but does not include cash payments (for example, cash payments instead of employer-provided benefits).

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

### **23J Head of service—temporary contract**

- (1) This section applies if—
- (a) the head of service cannot for any reason exercise the head of service's functions; or
  - (b) the office of head of service is vacant.
- (2) A director-general may be engaged to act as head of service.
- (3) The person must be engaged under a contract with the Territory.
- (4) The contract—
- (a) must be in writing; and
  - (b) must be signed by the person and the Chief Minister, on behalf of the Territory; and
  - (c) must state the period during which the person is to act as head of service; and
  - (d) may vary the terms of the person's contract under section 28 (Directors-general—engagement).
- (5) The period mentioned in subsection (4) (c) must not be longer than 2 years.
- (6) Subject to this Act, the employment of a person under this section is governed by the contract under which the person is engaged.

**23K Head of service—termination of temporary contract**

- (1) A contract under section 23J may be terminated at any time by one party giving written notice to the other.
- (2) A person is not entitled to any compensation for the termination of a contract under this section.

**23L Head of service—variation of temporary contract**

- (1) A contract under section 23J may be varied at any time by a written agreement signed by the acting head of service and the Chief Minister, on behalf of the Territory.
- (2) However, a variation that extends the period of employment under the contract to longer than 2 years is void.

**23M Head of service—presentation of contract and contract variations**

The Chief Minister must present a copy of the following contracts and any contract variation to the Legislative Assembly within 6 sitting days after the day the contract or variation is made:

- (a) the head of service's contract under section 23C;
- (b) any temporary contract under section 23J.

**23N Head of service—transfer or assignment**

- (1) The Chief Minister may, in writing—
  - (a) transfer the person engaged as the head of service under section 23C from that office to an office of director-general; or
  - (b) assign the person to exercise other stated functions in the public sector.
- (2) The Chief Minister may transfer or assign the person only if the Chief Minister has—

- (a) given the person an opportunity to state the person's views about the transfer or assignment; and
  - (b) considered the person's views, if any.
- (3) The transfer or assignment is taken to be a variation of the head of service's contract.
- (4) The transfer or assignment of a person under this section does not affect—
- (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
  - (b) the period of the person's employment under the contract; or
  - (c) the right to terminate the person's employment if the contract provides for termination under section 23F (Head of service—early termination of contract).
- (5) If a person engaged as the head of service is transferred to an office of director-general, or assigned to exercise stated functions, under this section, the person must exercise the functions of the office or exercise the stated functions.

**230 Head of service—notification of head of service's engagement etc**

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

- (a) the making of the head of service's contract under section 23C;
- (b) any termination of the contract;
- (c) the end of the period of engagement of the head of service;
- (d) any transfer or assignment of the head of service under section 23N.

**23P Head of service—paid employment outside the service**

The head of service must not, except in accordance with the written approval of the Chief Minister, accept or engage in any paid employment other than in relation to the exercise of the head of service's functions in the service.

**23Q Head of service—engagement or transfer not affected by defect etc**

- (1) An engagement or transfer, or anything done in relation to the engagement or transfer, is not invalid only because of a defect or irregularity in or in relation to the engagement or transfer.

- (2) In this section:

*engagement* means an engagement of the head of service under section 23C (Head of service—engagement) or section 23J (Head of service—temporary contract).

*transfer* means a transfer or assignment of the head of service under section 23N (Head of service—transfer or assignment).

**Division 3.3 Exercise of head of service powers in relation to certain public employees**

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

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, of a territory instrumentality (the *instrumentality staff*) must be employed under this Act.
- (2) The chief executive officer of the territory instrumentality has the following powers in relation to the instrumentality staff as if the staff were employed in an administrative unit:
  - (a) the powers of the head of service relating to the appointment, engagement and employment of people;



- (b) the powers of a director-general.

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

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, assisting a statutory office-holder (the *office staff*) must be employed under this Act.
- (2) Subsection (3) applies if—
  - (a) the Chief Minister makes a declaration under subsection (4); or
  - (b) this Act or another territory law gives (however expressed) the powers mentioned in subsection (3) to the statutory office holder.

### **Examples—par (b)**

- 1 the clerk under the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*, s 7 (2) (Staff of office)
- 2 the auditor-general under the *Auditor-General Act 1996*, section 23
- 3 the director of public prosecutions under the *Director of Public Prosecutions Act 1990*, section 30

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

- (3) The statutory office-holder has the following powers in relation to the office staff as if the staff were employed in an administrative unit:
  - (a) the powers of the head of service relating to the appointment, engagement and employment of people;
  - (b) the powers of a director-general.
- (4) The Chief Minister may declare that the statutory office-holder has the powers mentioned in subsection (3) in relation to the office staff.
- (5) A declaration under subsection (4)—
  - (a) is a notifiable instrument; and

- (b) has effect subject to the Act under which the statutory office-holder holds office.

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

## **26 Powers relating to certain Calvary Health Care staff**

- (1) This section applies if an agreement is in force between the Territory and Calvary Health Care ACT Limited for staff at Calvary Health Care ACT Limited (Public Division) to be employed under this Act.
- (2) The chief executive officer, Calvary has the following powers in relation to the people employed in Calvary public health care as if the people were employed in an administrative unit:
- (a) powers of the head of service relating to the appointment, engagement and employment of people;
- (b) powers of a director-general.
- (3) In this section:

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

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

## **Division 3.4 Directors-general**

### **27 Office of director-general**

- (1) An office of director-general for an administrative unit is established when the administrative unit is established.
- (2) An office of director-general for an administrative unit ceases to exist if the administrative unit ceases to exist.

## **28 Directors-general—engagement**

- (1) The head of service may engage a person to exercise the functions of an office of director-general.

*Note* The head of service may also be engaged as the director-general (the **CM director-general**) of the administrative unit administered by the Chief Minister (see s 23D (1)). The engagement of the head of service as the CM director-general is governed by the contract made under section 23C (see s 23D (2)).

- (2) The person must be engaged under a contract with the Territory.
- (3) The contract must—
  - (a) be in writing; and
  - (b) be signed by the person and the head of service, on behalf of the Territory; and
  - (c) state the period during which the person is engaged as a director-general.
- (4) The period mentioned in subsection (3) (c) must not be longer than 5 years.
- (5) Subject to this Act, the employment of a director-general under this section is governed by the contract under which the director-general is engaged.

## **28AA Directors-general—functions**

- (1) A director-general has the following functions in relation to the administrative unit under the director-general's control:
  - (a) under the relevant Minister, management of the administration and business of the unit;
  - (b) provision of advice and reports to the relevant Minister on all matters relating to the unit;

- (c) implementation, at the direction of the head of service of—
    - (i) whole-of-government strategies; and
    - (ii) responses to critical or potentially critical issues;
  - (d) any other function given to the director-general—
    - (i) by the head of service; or
    - (ii) under this Act or another territory law.
- (2) A director-general must, in exercising the director-general's functions, take into account—
- (a) whole-of-government strategies and issues; and
  - (b) how the exercise of those functions will impact on the service as a whole.

### **28AB Directors-general—contract variation**

- (1) A contract under section 28 may be varied at any time by a written agreement signed by the director-general and the head of service, on behalf of the Territory.

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

- (2) However, a variation of a contract under section 28 that would do either of the following is void:
- (a) extend the period of employment under the contract—
    - (i) to longer than 5 years, unless the contract as varied requires the person employed to be on leave for the period of employment that is longer than 5 years; or
    - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the person employed to be on leave for the period of employment that is longer than 5 years;

- (b) increase the rate at which remuneration or an allowance is payable to the person employed otherwise than in accordance with the management standards.

## **28A Directors-general—early termination of contract**

- (1) A contract under section 28 may provide for termination of the employment of the person employed before the end of the period of employment specified in the contract.
- (2) A contract under section 28 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.
- (3) The grounds specified under subsection (2) shall not include—
  - (a) the ground that the person employed under the contract is incompatible with another person; or
  - (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in relation to the termination other than the benefit (if any) prescribed for this subsection.
- (5) The employment of a director-general who is employed under a contract under section 28 is not capable of being terminated on the ground of invalidity unless—
  - (a) if the director-general is an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—
    - (i) the director-general has not reached the director-general's maximum retiring age within the meaning of the Act; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the director-general; or

- (b) if the director-general is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
    - (i) the director-general is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the director-general; or
  - (c) if the director-general is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
    - (i) the director-general is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the director-general.
- (6) In this section:
- invalidity*** means—
- (a) for an eligible employee for the purposes of the *Superannuation Act 1976* (Cwlth)—invalidity under the Act; or
  - (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under the Act; or
  - (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under the Act.

**28B Directors-general—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 Directors-general—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 director-general, or an office of director-general 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 head of service has certified in writing that he or she is satisfied that it would be in the interests of the service for the person to be re-engaged to perform those duties.

**28D Directors-general—notice or payment if not re-engaged**

- (1) This section applies in relation to a person engaged by a contract under section 28 (Directors-general—engagement) if the head of service does not intend to re-engage the person under that section to exercise the functions of the same office of director-general or another office of director-general.

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

*Note* For the termination of a contract under s 28, see s 28A (Directors-general—early termination of contract).

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

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

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

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

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



**30 Directors-general—temporary contracts**

- (1) If—
  - (a) a person employed to perform the duties of an office of director-general 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) The contract must—
  - (a) be in writing; and
  - (b) be signed by the person and the head of service, on behalf of the Territory; and
  - (c) state the period during which the person is engaged to act as a director-general.
- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.

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

**30A Directors-general—variation of temporary contracts**

- (1) A contract under section 30 may be varied at any time by a written agreement signed by the director-general and the head of service, on behalf of the Territory.
- (2) However, a variation of a contract under section 30 that extends the period of employment under the contract to longer than 2 years is void.

**31 Head of service must consult with Ministers about engagements etc**

- (1) This section applies to the engagement, or proposed engagement, of a person to exercise the functions of an office of director-general.
- (2) The head of service must have regard to the advice of the Chief Minister and the Minister responsible for the administrative unit about the proposed engagement before entering into a contract with the person, or any variation of the contract.
- (3) In this section:

*engagement* means an engagement under section 28 (Directors-general—engagement) or section 30 (Directors-general—temporary contracts).

**31A Directors-general—presentation of contracts and variations of contracts**

The Chief Minister shall present a copy of—

- (a) each contract made under section 28 or section 30; and

(b) each instrument by which such a contract is varied;

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

**32 Directors-general—engagements not affected by defects etc**

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

**33 Directors-general—employment to perform duties of multiple positions**

A person may be employed to perform the duties of more than 1 office of director-general.

**33A Directors-general—transfer or assignment**

- (1) The head of service may, in writing, for a person engaged by a contract under section 28 (Directors-general—engagement)—
  - (a) transfer the person from the office of director-general under the contract to—
    - (i) another office of director-general; or
    - (ii) any other office (including an executive office) in an administrative unit; or
  - (b) assign the person to exercise other stated functions in the public sector.
- (2) The head of service may transfer or assign the person only if the head of service has—
  - (a) given the person an opportunity to state the person's views about the transfer or assignment; and

- (b) considered the person's views (if any).
- (3) A transfer under subsection (1) (a) (i) may be made only to an office that has the same classification as, or a lower classification than, the office from which the person was transferred.
- (4) The transfer or assignment is taken to be a variation of the contract.
- (5) The transfer or assignment of a person under this section does not affect—
  - (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
  - (b) the period of the person's employment under the contract; or
  - (c) the right to terminate the person's employment if the contract provides for termination under section 28A (Directors-general—early termination of contract).
- (6) If a person engaged by a contract under section 28 is transferred to an office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the office or exercise the stated functions.

**33B Directors-general—transfers or assignments under s 33A not affected by defects etc**

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

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

**34 Directors-general—notification of engagement etc**

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

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

**35 Directors-general—paid employment outside the service**

A director-general shall not, except in accordance with the written approval of the head of service, accept or engage in any remunerative employment other than in relation to the performance of his or her duties in the service.

**Division 3.5 Powers of delegation**

**36 Meaning of *public sector officer*—div 3.5**

In this division:

*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.

**36A Delegation by head of service**

The head of service may—

- (a) delegate to a public sector officer the head of service's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer the functions delegated to the head of service under a law other than this Act.

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

**36B Delegation by commissioner**

The commissioner may—

- (a) delegate to a public sector officer the commissioner's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer the functions delegated to the commissioner under a law other than this Act.

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

**36C Delegation by directors-general**

A director-general may—

- (a) delegate to a public sector officer the director-general's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer—
  - (i) the functions in relation to the appointment or employment of people delegated to the director-general by the head of service under this Act; and
  - (ii) the functions under the management standards delegated to the director-general by the head of service under this Act; and

- (iii) the functions delegated to the director-general under a law other than this Act.

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

**36D Delegations by head of service, commissioner and directors-general—generally**

- (1) A delegator must not delegate a function under this division to a non-service delegate unless the delegator considers that the tasks to be undertaken by the non-service delegate require the exercise of that function.
- (2) A delegator who has delegated or subdelegated a function under this division may give directions to the delegate or subdelegate in relation to the exercise of the function.
- (3) Subsection (4) applies if the delegation or subdelegation of a function under this division is expressed to be given to people who occupy or exercise the functions of an office of a kind described in the delegation or subdelegation.
- (4) The delegation or subdelegation extends to any person who occupies, or exercises the functions of, an office of a kind described in the delegation or subdelegation, even if the office does not come into existence until after the delegation or subdelegation is given.
- (5) In this section:

***delegator*** means—

- (a) the commissioner; or  
(b) the head of service; or  
(c) a director-general.

***non-service delegate*** means a person exercising a function on behalf of the Territory otherwise than as—

- (a) an officer or employee; or

(b) a statutory office-holder.

### 37 Delegations in autonomous instrumentalities

The chief executive officer of an autonomous instrumentality may delegate 1 or more of the officer's powers under this Act to a member of the staff of the instrumentality.

## Division 3.7 Whole-of-government management responsibilities

### 39 Definitions for div 3.7

In this division:

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

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

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

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

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

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

*employment matters* means—

- (a) the selection of people for appointment as officers, or for employment as employees, in the service; and



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

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

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

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

## **40 Equal employment opportunity programs**

- (1) The commissioner must—
  - (a) after giving relevant unions and any other people the commissioner considers appropriate an opportunity to put their views, cause to be developed an equal employment opportunity program for the service; and

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

#### **41 Access and equity programs**

- (1) The commissioner must—
- (a) after giving relevant unions and any other people the commissioner considers appropriate an opportunity to put their views, cause to be developed an access and equity program for the service; and
  - (b) cause to be prepared a written statement setting out the program so developed; and
  - (c) give a copy of the statement to the Chief Minister and the head of service.
- (2) The management standards may provide for an access and equity program for the service to implement a statement provided to the Chief Minister and the head of service under subsection (1).

#### **42 Industrial democracy programs**

- (1) The commissioner must—
- (a) in consultation with the joint council, relevant unions and with any other people the commissioner considers appropriate, cause to be developed an industrial democracy program for the service; and
  - (b) cause to be prepared a written statement setting out the program so developed; and

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

#### **43 Development of programs in autonomous instrumentalities**

- (1) 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 Chief Minister and the head of service is taken to be a reference to the Chief Minister, the relevant Minister and the head of service.
- (2) In this section:  
*autonomous instrumentality* does not include the Office of the Legislative Assembly.

#### **44 Joint council**

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

- (4) The joint council shall have the functions in relation to the service that are prescribed.

## **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 head of service may, in writing, create or abolish an executive office in an administrative unit or other branch of the service.
- (2) The head of service shall, in the instrument creating an office under subsection (1), state that the office is created as an executive office.
- (3) In the application of this section to an autonomous instrumentality, a reference to the head of service is a reference to the chief executive officer of the instrumentality.

#### **Division 4.1A**              **Creation and abolition of non-executive offices**

#### **54B**              **Meaning of *office*—div 4.1A**

In this division:

*office* means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

#### **55**              **Creation and abolition of offices**

- (1) For the purpose of enabling an administrative unit to exercise its functions, the head of service may in writing—
  - (a) create an office in an administrative unit; or

- (b) abolish an office in an administrative unit.
- (2) An instrument under subsection (1) creating an office shall specify the classification of the office, being a classification that is an approved classification under section 56 (1).

## **56 Classification of offices and officers**

- (1) A classification is an approved classification for this Act only if—
  - (a) an industrial agreement is in force in relation to an officer holding an office having that classification, and the agreement states the salary payable in relation to offices having that classification; or
  - (b) in a case to which paragraph (a) does not apply—the head of service declares, in writing, that the classification is an approved classification for this subsection.
- (2) If the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to 2 offices is the same, the classifications of the 2 offices shall be taken to be equal.
- (3) If the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to an office is greater than the rate of salary, or the maximum rate of salary, as the case requires, payable in relation to another office, the classification of the firstmentioned office shall be taken to be higher than the classification of the secondmentioned office.
- (4) 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 head of service is a reference to the chief executive officer of the instrumentality.

## **58            Reclassification of offices**

- (1) Subject to the management standards, the head of service may, in writing, alter the classification of an office in an administrative unit to the classification stated in the instrument.
- (2) The stated classification must be an approved classification under section 56 (1).
- (3) Subject to subsection (4), if—
- (a) the classification of an office is altered; and
  - (b) the rate of salary, or the maximum rate of salary, payable in relation to the office immediately after the alteration is different from the rate of salary, or the maximum rate of salary, payable in relation to the office immediately before the alteration;

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

- (4) The head of service 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.

## **Division 4.2            Part-time offices**

### **59A            Meaning of *office*—div 4.2**

In this division:

*office* means an office other than—

- (a) the office of head of service; or

- (b) an office of director-general; or
- (c) an executive office.

## **60 Part-time offices**

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

## **61 Hours of attendance of part-time officers**

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



- (4) Subject to subsection (2), the hours of attendance applicable to an officer who holds an office in relation to which there is in force a declaration under section 60 (1) shall, notwithstanding anything in the management standards, be the hours of attendance specified in the declaration.

## **62 Hours of attendance of certain unattached officers**

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

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

- (2) Subject to subsection (4), if—
- (a) a person who had previously ceased to be an officer is reappointed to the service as an unattached officer under section 118A; 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 head of service is satisfied that the person will, when he or she ceases to be an unattached officer, be appointed to a part-time office;

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

## **Part 5**                      **Employment in the service**

### **Division 5.1**              **Preliminary**

#### **63**              **Interpretation for pt 5**

(1) In this part:

*employment matters* means—

- (a) the selection of people for appointment as officers, or for employment as employees, in the service; and
  - (b) the transfer or promotion of officers to offices in the service; and
  - (c) any other prescribed matters related to the employment of officers or employees in the service.
- (2) In this part, a reference to a vacant office includes a reference to an office that is expected to become vacant and a reference to a vacancy includes a reference to a vacancy that is expected to occur.
- (3) For this part, an appeal shall be taken to become inoperative if—
- (a) the appeal is withdrawn; or
  - (b) the appeal lapses under section 89 or section 90; or
  - (c) the appellant or the officer against whose promotion the appeal was made ceases to be an officer; or
  - (d) the appellant or the officer against whose promotion the appeal was made ceases, by reason of his or her promotion to another office having taken effect or for any other reason, to be eligible for promotion to the office concerned; or
  - (e) the promotion against which the appeal was made lapses under management standards made for section 91.

## 64 Application to autonomous instrumentalities

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

## Division 5.2 Personnel management

### 65 Application of merit principle

- (1) This section applies if a function under this Act is exercised in relation to any of the following employment matters:
- (a) an appointment;
  - (b) an engagement under section 23C (Head of service—engagement);
  - (c) an engagement under section 28 (Directors-general—engagement) or section 72 (Executives—engagement);
  - (d) an engagement by a contract under section 23J (Head of service—temporary contract), section 30 (Directors-general—temporary contracts) or section 76 (Executives—temporary contracts), if the period of engagement is more than 9 months;
  - (e) a transfer to an office of a higher classification for a period of more than 3 months;
  - (f) a promotion;
  - (g) a fixed term engagement if the period of engagement is for more than 12 months.

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

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

***approved program*** means—

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

***designated group***—see section 39.

***equal employment opportunity program***—see section 39.

*identified position* means a position that the head of service has decided, in accordance with a prescribed process, must be filled by—

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

**65A Exception for returning officers**

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

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

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

The head of service 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—div 5.3**

This division does not apply in relation to the engagement of the head of service, a director-general 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 23C or section 23J to exercise the functions of the office of the head of service; or
- (b) by engagement under section 28 or section 30 to exercise the functions of an office of director-general; or
- (c) by engagement under section 72 or section 76 to exercise the functions of an executive office; or
- (d) by appointment to be an officer; or
- (e) by engagement for temporary employment in accordance with division 5.7.

**U 68 Appointments generally**

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

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

**70 Appointment on probation**

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



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

- (6) The head of service must not, without consulting the commissioner, appoint an officer, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

**71 Appointment on probation—prescribed training office**

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

- (b) the officer has undergone a medical examination to assess their standard of health and fitness and an authorised doctor provides a report that the standard of health and fitness of the officer is not satisfactory; or
  - (c) on the basis of a report from the officer's supervisor, or another appropriate officer—the performance of the officer's duties is not satisfactory; or
  - (d) the officer is not a fit and proper person to remain an officer of the service; or
  - (e) the officer is an excess officer; or
  - (f) the officer has not successfully completed the course of training required for the prescribed training office.
- (5) An appointment on probation must not be ended unless the officer has been given at least 14 days written notice of—
- (a) the reason for ending the appointment; and
  - (b) the day the appointment will end.
- (6) The head of service must not, without consulting the commissioner, appoint an officer, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

### **71A Appointment on probation—teachers**

- (1) The appointment of a person as a teacher is subject to a period of probation under this section.
- (2) Probation begins on the day the person is appointed and is taken to be confirmed 18 months after the day the person is appointed unless—
  - (a) the appointment is earlier confirmed under this section; or
  - (b) the appointment is earlier ended under this section; or
  - (c) the probationary period is earlier extended under section 71B.

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

(6) The head of service must not, without consulting the commissioner, appoint an officer as a teacher, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

(7) In this section:

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

### **71B Extension of period of probation**

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

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

#### **Examples—par (b)**

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

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

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

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

### **71C Appointment without probation**

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

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

## **Division 5.4 Engagement of executives**

### **72 Executives—engagement**

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

### **72A Executives—contract variation**

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

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



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

### **73 Early termination of contract**

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

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

**74 Effect of contracts on responsibilities of Ministers**

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

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

**75 Application of merit principle to re-engagements**

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

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

**75A Notice or payment if executive not re-engaged**

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

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

- (3) Three months or more before the day the contract ends, the head of service may give the person written notice that the person will not be re-engaged.

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

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

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

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

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

## 76 Executives—temporary contracts

- (1) If—
- (a) a person employed to perform the duties of an executive office is absent from duty or is, for any other reason unable to perform the duties of that office; or

- (b) no person is employed to perform the duties of such an office; an executive, an officer or another person may be engaged by a contract under this section to temporarily perform the duties of that office.
- (2) The parties to a contract under this section shall be the Territory and the person engaged.
- (3) A contract under this section shall—
- (a) be in writing; and
  - (b) specify the period during which the person engaged is to perform the duties of the office; and
  - (c) be signed by or on behalf of each party.
- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.
- (5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.
- (6) If a contract under this section is made with an executive, the contract may vary the terms and conditions of the current contract with the executive under section 72.
- (7) If a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.
- (8) A contract under this section may be terminated at any time by one party giving written notice to the other party.
- (9) A person is not entitled to any compensation for the termination of a contract under subsection (8).

**76A Executives—variation of temporary contracts**

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

**77 Chief executive officer, Calvary**

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

**78 Executives—negotiation and execution of contracts**

- (1) The following contracts and contract variations must be signed for the Territory by the head of service:
  - (a) a contract under section 72 (Executives—engagement) or section 76 (Executives—temporary contracts);
  - (b) a variation of a contract under section 72A (Executives—contract variation) or section 76A (Executives—variation of temporary contracts);

- (c) a contract under section 72 or section 76 to engage a person to exercise the functions of the position of chief executive officer, Calvary;
  - (d) a variation of a contract mentioned in paragraph (c) under section 72A or section 76A.
- (2) In this section:
- chief executive officer, Calvary*—see section 26 (3) (Powers relating to certain Calvary Health Care staff).

## **79 Tabling of contracts and variations of contracts**

The Chief Minister shall present a copy of—

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

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

## **80 Executive engagements not affected by defects etc**

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

## **80A Executives—transfer or assignment**

- (1) The head of service may, in writing, for a person engaged by a contract under section 72 (Executives—engagement)—
  - (a) transfer the person from the executive office under the contract to another executive office that has the same classification; or
  - (b) assign the person to exercise other stated functions in the public sector.

- (2) The head of service may transfer or assign the person only if the head of service has—
  - (a) consulted—
    - (i) the relevant agency manager that would gain the person; and
    - (ii) the relevant agency manager that would release the person; and
  - (b) given the person an opportunity to state the person's views about the transfer or assignment; and
  - (c) considered the person's views (if any).
- (3) The transfer or assignment is taken to be a variation of the contract.
- (4) The transfer or assignment of a person under this section does not affect—
  - (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
  - (b) the period of the person's employment under the contract; or
  - (c) the right to terminate the person's employment if the contract provides for termination under section 73 (Early termination of contract).
- (5) If a person engaged by a contract under section 72 is transferred to another executive office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the executive office or exercise the stated functions.
- (6) In this section:  
*relevant agency manager*—see section 21 (7) (Review of government agencies or functions).



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

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

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

**81 Notification of executive's engagement etc**

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

- (a) the making of a contract under section 72 (Executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 80A (Executives—transfer or assignment).

**Division 5.5 Promotion of officers**

**82 Definitions—div 5.5**

In this division:

*appellable level position* means an office—

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

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

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

*office* means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

### **83                    Promotion to vacant office**

- (1) The head of service may promote an officer to fill a vacant office if the prescribed requirements are met.
- (2) If an officer is promoted under this division the head of service must give written notice of the promotion to the officer.

### **84                    Promotion appeal**

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

- (3) In deciding the appeal a decision-maker must apply the criteria set out in—
- (a) if an industrial instrument applies to the officer and includes criteria for decision making for promotion appeals—the promotion appeals decision making criteria in the industrial instrument; or
  - (b) in any other case—the prescribed promotion appeals decision making criteria.

## **85 Promotion appeal by excess officer**

- (1) This section applies if an officer has been told in writing by the head of service that he or she is an excess officer within the meaning of section 139.
- (2) The officer may appeal against the promotion of another person to a vacant office if—
- (a) the promotion is to an appellable level position; and
  - (b) the excess officer applied for transfer to the vacant office the classification of which is equal to or lower than the classification of the office occupied by the excess officer.
- (3) An appeal under this section does not affect the operation of part 6 (Retirement and redeployment of officers).
- (4) The appeal must be made in accordance with—
- (a) if an industrial instrument applies to the officer and includes a procedure for promotion appeals—the promotion appeals procedures in the industrial instrument; or
  - (b) in any other case—the prescribed promotion appeals procedure.

- (5) In deciding the appeal a decision-maker must apply the criteria set out in—
- (a) if an industrial instrument applies to the officer and includes criteria for decision making for promotion appeals—the decision making criteria in the industrial instrument; or
  - (b) in any other case—the prescribed decision making criteria.

**86 Review of certain promotion decisions**

- (1) An officer may apply for review of a promotion if—
- (a) the promotion is to a reviewable level office; and
  - (b) the officer applied for promotion to the reviewable level office.
- (2) The review must be conducted in accordance with—
- (a) if an industrial instrument applies to an officer and includes a review of promotion procedure—the review procedure in the industrial instrument; or
  - (b) in any other case—the prescribed review of promotion procedure.
- (3) In deciding the review, a decision-maker must apply the criteria set out in—
- (a) if an industrial instrument applies to the officer and includes criteria for review of promotion decisions—the criteria for review in the industrial instrument; or
  - (b) in any other case—the prescribed criteria for review of promotion decisions.
- (4) If the head of service cancels the promotion as a result of the review—
- (a) the officer whose promotion is cancelled must for all purposes be treated as having held the office from the date the promotion took effect to the date of the cancellation; and

- (b) the head of service—
  - (i) must transfer the officer to an office with a classification that is equal to the classification that the officer had immediately before the promotion took effect; and
  - (ii) may if necessary create an office to allow the transfer mentioned in subparagraph (i).

(5) In this section:

*reviewable level office* means an office—

- (a) with a maximum salary level that is equal to or higher than the minimum salary level for the senior officer grade C classification; and
- (b) for which teaching qualifications are not required.

## **87 Promotion on advice of joint selection committee**

- (1) The head of service may promote an officer to fill a vacant office if—
  - (a) a joint selection committee is established in relation to the promotion; and
  - (b) the committee recommends the promotion.
- (2) If a joint selection committee makes a recommendation to the head of service about a promotion the head of service may—
  - (a) accept the recommendation; or
  - (b) not accept the recommendation.
- (3) If an officer is promoted under this section the head of service must—
  - (a) notify the promotion in the gazette; and

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

**88 How promotions take effect**

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

**89 Death of officer before appeal decided**

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

**90 Cancellation of promotion**

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

## Division 5.6 Transfer of officers

### 91 Definitions—div 5.6

In this division:

*appellable level position* means an office—

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

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

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

*office* means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

### 92 Transfer to vacant office

- (1) This section applies if 2 or more officers from an administrative unit apply to transfer to a vacant office within the unit.
- (2) The head of service may transfer an officer from within an administrative unit to fill a vacant office in the unit if—
  - (a) the head of service consults with the director-general of the administrative unit; and
  - (b) the prescribed requirements are met.
- (3) If an officer is transferred under this division, the head of service must give written notice of the transfer to the officer.



- (4) A decision to transfer under this section is not an appellable decision or a reviewable decision.

**93 Simultaneous transfer within administrative unit**

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

**94 Transfer between administrative units**

The head of service may transfer an officer in an administrative unit to a vacant office in another administrative unit, if the head of service consults—

- (a) the director-general of the administrative unit that would gain the officer; and
- (b) the director-general of the administrative unit that would release the officer.

**95 Management initiated transfer—within administrative unit**

- (1) This section applies if the head of service is satisfied on reasonable grounds that the efficient administration of an administrative unit requires the transfer of an officer from one part of the unit to another.

- (2) The head of service may transfer an officer to fill a vacant office in the administrative unit if—
  - (a) the head of service consults the director-general of the unit; and
  - (b) gives the officer an opportunity to state the officer's views in relation to the transfer; and
  - (c) considers the views of the officer.
- (3) A decision to transfer under this section is not an appellable decision or a reviewable decision.
- (4) In this section:  
*officer* includes—
  - (a) an unattached officer; and
  - (b) an employee.

**96 Management initiated transfer—between administrative units**

- (1) This section applies if the head of service is satisfied on reasonable grounds that the efficient administration of the service requires the transfer of an officer from 1 administrative unit to another.
- (2) The head of service may transfer the officer from one administrative unit to another if the head of service—
  - (a) consults—
    - (i) the officer; and
    - (ii) the director-general of the administrative unit that would gain the officer; and
    - (iii) the director-general of the administrative unit that would release the officer; and

- (b) considers whether the transfer is in the interests of the efficient administration of the service; and
  - (c) is satisfied that the efficient administration of the service requires the transfer of an officer from 1 administrative unit to another.
- (3) A direction under subsection (2) must specify—
- (a) the date of effect of the transfer; and
  - (b) whether the transfer is temporary or permanent; and
  - (c) if the transfer is temporary—the duration of the transfer.
- (4) A decision to transfer under this section is not an appellable decision or a reviewable decision.
- (5) In this section:
- officer* includes—
- (a) an unattached officer; and
  - (b) an employee.

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

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

**96B            Transfer on advice of joint selection committee**

- (1) The head of service may transfer an officer to fill a vacant office in an administrative unit if—
  - (a) a joint selection committee is established in relation to the transfer; and
  - (b) the committee recommends the transfer.
- (2) The joint selection committee must make a recommendation to the head of service about the transfer.
- (3) The head of service must consult the director-general of the administrative unit about the recommendation.
- (4) The head of service may—
  - (a) accept the recommendation; or
  - (b) not accept the recommendation.
- (5) If an officer is transferred in accordance with a recommendation under subsection (2) the head of service must notify the transfer in the gazette.
- (6) If an officer is transferred on the recommendation of a union agreed joint selection committee—the decision to transfer is not an appellable decision or a reviewable decision.
- (7) In this section:  
*union agreed joint selection committee*—see section 87.

**96C            How transfer takes effect**

A transfer takes effect as prescribed.

**96D Cancellation of transfer**

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

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

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

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

- (4) If—
  - (a) in circumstances specified in relation to a class of offices under subsection (1) there is a vacancy in an office or offices included in that class; and
  - (b) an examination applies to that class of officers under a declaration under subsection (2);then, if the head of service—
  - (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 head of service is entitled to occupy an office (the *relevant higher office*) having a specified classification.

- (2) If an officer is promoted under section 83 or transferred under section 92 to a training office, another officer—
- (a) who holds an office the classification of which is not higher than the classification of the relevant higher office; or
  - (b) who, being an unattached officer, performs duties in relation to which there is payable to him or her a salary that is, or the maximum rate of which is, not higher than the salary or the maximum rate of salary applicable to the relevant higher office;
- may appeal against the transfer or promotion of that firstmentioned officer to the training office.
- (3) A decision to transfer or promote under this section is an appellable decision.
- (4) Subject to subsection (5), if there is a vacancy in an office that is, in relation to a training office, a relevant higher office, the head of service must—
- (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 head of service, 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 the head of service from promoting an officer under section 83, or transferring an officer under section 92, 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 92 to a vacant training office shall be notified in the Gazette.
- (11) If an officer is transferred under section 92 from an office held by him or her to a training office, no person shall be appointed or transferred to that firstmentioned office, and no promotion to that firstmentioned office shall take effect, until—
- (a) if paragraph (b) does not apply—the period for appealing against the transfer of that officer to the training office ends without any appeal having been made; or
  - (b) if any such appeal is, or 2 or more such appeals are, made within that period—that appeal or each of those appeals has been determined or has become inoperative.

## **100 Temporary transfer**

- (1) The head of service may temporarily transfer an officer from an administrative unit to exercise the whole, or part, of the functions of another office in the unit if—
- (a) the head of service consults the director-general of the unit; and
  - (b) the prescribed requirements are met.
- (2) A temporary transfer, other than a transfer requiring notification under section 101 (2), takes effect on—
- (a) the day written notice is given; or
  - (b) if a later day is stated in the written notice of the transfer—on that later day.

- (3) Written notice of a temporary transfer must be expressed to continue in force until—
  - (a) the end of a stated day; or
  - (b) occurrence of a stated event.
- (4) Written notice of the temporary transfer must not be expressed to operate—
  - (a) indefinitely; or
  - (b) until a notice terminating the transfer is given.
- (5) The head of service may, in writing—
  - (a) revoke the temporary transfer at any time; or
  - (b) vary the temporary transfer at any time.
- (6) The head of service may temporarily transfer an officer from an administrative unit to exercise the whole, or part, of the functions of an office in another unit if the prescribed requirements are met.

**101 Notification of certain temporary transfers to higher office**

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

**102 Appeal against temporary transfer to higher office**

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

**103 Lapsing or discontinuing of appeal**

- (1) An appeal against a temporary transfer under section 102 lapses if—
  - (a) the temporary transfer finishes under section 100 (3); or
  - (b) the temporary transfer finishes because the person transferred stops being an officer; or
  - (c) the temporary transfer is revoked under section 100 (5); or
  - (d) the appellant stops being an officer; or
  - (e) the office that is the subject of the appeal is no longer a higher office for the appellant.

- (2) An appeal against a temporary transfer under section 102 must be discontinued if the appellant gives written notice that the appeal has been withdrawn to the person or body that considers the appeal under the temporary transfer appeal procedure mentioned in section 102 (2).
- (3) If an appeal lapses or is discontinued under this section the person or body that considers the appeal under the temporary transfer appeal procedure mentioned in section 102 (2) must give written notice of the lapse or discontinuance to the appellant.

**104 Temporary transfer if appeal successful**

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

- (b) must be expressed to continue in force for the same period for which the revoked temporary transfer would have operated; and
- (c) is not subject to appeal.

## **Division 5.7            Temporary employment**

### **105            Meaning of *office*—div 5.7**

In this division:

*office* means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

### **106            Power to engage temporary employee**

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

**107            Temporary employment—fixed term less than 12 months**

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

**108            Temporary employment—fixed term not more than 5 years**

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

**109 Entry to the workforce programs**

- (1) A person may be engaged for temporary employment in the performance of duties under a prescribed scheme, being a scheme for enabling people to gain ability for the purposes of participating in the Australian workforce.
- (2) The head of service 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 head of service shall, on application by the person within 2 months after the declaration of the result of the election, employ

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

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

## **112 Termination of temporary employment**

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

## **112A Temporary employee on maternity leave**

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



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

(3) In this section:

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

**113 Work performed after termination of temporary employment**

If—

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

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

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

The head of service must not, without consulting with the commissioner—

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

if the person has—

- (c) within the previous year been retired from the service under section 143 as an excess officer without having volunteered to accept retirement on that basis; or
- (d) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;

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

## **Division 5.8 Miscellaneous**

### **117 Reappointment of retired officers**

- (1) Subject to this section, the head of service may reappoint to an office in an administrative unit a person who has ceased to be an officer.
- (2) Subsection (3) applies to a person if—
  - (a) the person has—
    - (i) 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
    - (ii) 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
  - Note* Section 144 provides for the date retirement under section 143 takes effect.
  - (b) the person received a payment from the Territory or a territory instrumentality for being retired.
- (3) The head of service must not, without consulting the commissioner, reappoint the person to the service.

- (4) The head of service 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.
- (5) Subsection (4) 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.
- (6) For subsection (4)—
- (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 section 122; and
  - (b) a person shall be taken to have been dismissed from employment prescribed for subsection (4) (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 section 122.
- (7) For subsection (5), 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 head of service 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 head of service 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 same administrative unit or, if such an office is not available, as an unattached officer having the same classification as the person had immediately before resigning.
- (4) A reference in subsection (1) or (3) to the declaration of the result of an election is, in relation to an election the result of which is challenged, a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

### **118A Quashing etc of conviction**

- (1) This section applies if—
  - (a) a person who is a member of the service has been convicted of an offence; and
  - (b) disciplinary action is taken against the person in accordance with the misconduct procedures applying to a public employee; and
  - (c) after the disciplinary action—
    - (i) the person's conviction is quashed, nullified or set aside; or
    - (ii) the person receives a pardon or is released from prison as a result of an inquiry into the conviction.

- (2) The person may apply to the head of service for—
  - (a) if the disciplinary action involved termination of employment from the service—reappointment to the service; or
  - (b) if the disciplinary action involved other actions—reconsideration of those actions.
- (3) The head of service—
  - (a) must consider the application; and
  - (b) may do 1 or more of the following:
    - (i) reappoint the person to an appropriate office;
    - (ii) transfer the person to an appropriate office;
    - (iii) promote the person;
    - (iv) take other action to address the disciplinary action;
    - (v) refuse the application.
- (4) The head of service must give the applicant written notice of a decision made under subsection (3) and reasons for the decision.
- (5) A person who is reappointed under this section is taken to have—
  - (a) continuity of service as prescribed; and
  - (b) recognition of prior service as prescribed.
- (6) In this section:

***appropriate office*** means an office that—

  - (a) was occupied by the person immediately before the disciplinary action was taken; or
  - (b) is, in the reasonable belief of the head of service, equivalent to the office occupied by the person immediately before the disciplinary action was taken.

**119 Unattached officers**

- (1) The head of service may, with the written consent of an officer who holds an office in an administrative unit, declare in writing that the officer will become an unattached officer on a day stated in the declaration.
- (2) If the head of service makes a declaration under subsection (1), the office held by the officer becomes vacant on the day stated in the declaration.
- (3) Except as otherwise directed by the head of service 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 head of service 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 head of service.
- (2) Subject to subsection (4), the head of service 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 head of service.

- (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 head of service and not otherwise.
- (4) The head of service 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 head of service and not otherwise.

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

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

**122 Termination of employment**

- (1) This section applies if under the misconduct procedures that apply to a public employee, the public employee has engaged in misconduct.
- (2) The head of service may terminate the employment of the public employee.



- (3) A decision to terminate employment for misconduct is not an appellable decision or a reviewable decision.

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

## Part 6 Retirement and redeployment of officers

### 139 Definitions—pt 6

In this part:

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

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

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

*excess officer* includes—

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

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

- (a) the officer does not hold an essential qualification; or

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

*officer* does not include—

- (a) an officer whose appointment to the service on probation has not been confirmed; or
- (b) the head of service; or
- (c) a director-general; or
- (d) an executive.

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

#### **140 Power to reduce officer's classification**

The power given by this part to the head of service to reduce an officer's classification is a power—

- (a) to assign the officer to an office of a lower classification in an administrative unit; or
- (b) to declare the officer to be an unattached officer of a lower classification; or
- (c) if the officer is an unattached officer—direct that the officer be included in an administrative unit.

#### **141 Retirement—minimum retiring age**

- (1) An officer who has attained the age of 55 years is entitled to retire from the service at any time at which the officer desires to do so.
- (2) In subsection (1):

*officer* includes—

- (a) an officer whose appointment to the service on probation has not been confirmed; and
- (b) a person engaged as an employee for a fixed term.

### **143 Redeploy or retire officer from service**

- (1) This section applies to an officer (other than an officer mentioned in subsection (2)) if the head of service is satisfied on reasonable grounds that the officer—
  - (a) is unable to perform duties appropriate to the officer's classification because of physical or mental incapacity; or
  - (b) is not qualified to perform the officer's duties; or
  - (c) is an excess officer.
- (2) This section applies to an officer who is a member of the staff of the Office of the Legislative Assembly if the clerk of the Legislative Assembly—
  - (a) is satisfied on reasonable grounds about a matter mentioned in subsection (1); and
  - (b) tells the head of service about the matter.
- (3) The head of service must take reasonable steps to identify a vacant position in an administrative unit that the officer is capable of performing and qualified to fill.
- (4) If the head of service identifies a position under subsection (3) the head of service must—
  - (a) offer the position to the officer; and
  - (b) if the officer consents to be redeployed—redeploy the officer to the position.

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

**144 Date of effect of redeployment or retirement**

- (1) If the officer agrees with the action proposed under section 143 (9) the date of effect of the action is—
  - (a) for an officer unable to perform duties appropriate to the officer's classification because of physical or mental incapacity—a day agreed in writing between the officer and the head of service; or
  - (b) for an officer not qualified to perform duties or an excess officer—a day not earlier than the day the notice was given under section 143 (9) that is agreed in writing between the officer and the head of service.
- (2) If the officer does not agree with the action proposed under section 143 (9) the date of effect of the action is—
  - (a) for an officer unable to perform duties appropriate to the officer's classification because of physical or mental incapacity—
    - (i) if an industrial instrument applies to the officer and states a retention period for the circumstances—the day after the end of the retention period; or
    - (ii) if paragraph (i) does not apply—the latest of the following:
      - (A) the day stated in the notice given under section 143 (9);
      - (B) the day 1 month after the day the notice under section 143 (9) was given to the officer;
      - (C) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
      - (D) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided; and

- (b) for an officer not qualified to perform duties—the latest of the following:
  - (i) the day stated in the notice given under section 143 (9);
  - (ii) the day 1 month after the day the notice under section 143 (9) was given to the officer;
  - (iii) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
  - (iv) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided; and
- (c) for an excess officer—
  - (i) if an industrial instrument applies to the officer and states a retention period for the circumstances—the day after the end of the retention period; or
  - (ii) if paragraph (i) does not apply—the latest of the following:
    - (A) the day stated in the notice given under section 143 (9);
    - (B) the day 1 month after the day the notice under section 143 (9) was given to the officer;
    - (C) if the officer appeals, but then withdraws the appeal—the day the appeal is withdrawn;
    - (D) if the officer appeals and the appeal upholds the giving of the notice—the day the appeal is decided.

**145 Limitation on retirement on ground of invalidity**

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



**146 Unattachment of officers**

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

**147 Underperformance**

The procedures that apply to underperformance by an officer are—

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

**U** **Part 8** **Maternity leave**

**U** **167** **Definitions—pt 8**

In this part:

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

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

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

*officer* includes—

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

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

**U** **168** **People in relation to whom pt 8 applies**

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

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

**U 169**      **Absence on maternity leave**

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

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

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

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

**U 170 Entitlement to paid maternity leave**

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

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

**U 171 Unauthorised absences**

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

**U 172 Absence on leave without pay**

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

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

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

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

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

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

**U 174 Other applications to resume duty**

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



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

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

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

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

**U** 176 **Officers on maternity leave**

- (1) Notwithstanding anything in this Act, if—
- (a) an officer is absent on maternity leave; and
  - (b) that absence is after her confinement and is without pay;
- the head of service 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 head of service is not required to comply with the provisions of subsection (2) until the firstmentioned period has ended.

**U 177 Temporary employees on maternity leave**

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

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

## Part 10                      Forfeiture of office

### 221                      Forfeiture of office

- (1) If an officer is absent from duty without permission, and has been so absent for a continuous period of not less than 4 weeks, the head of service may send to the officer by post addressed to him or her at his or her address last known to the head of service 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 head of service 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 head of service 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 head of service for any further period of absence, the head of service 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 head of service, 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.

## **222 Reappointment of officers taken to have retired under s 221**

- (1) A person who is taken to have retired under section 221 may apply to the head of service, in writing, for reappointment to the service.
- (2) If the head of service is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the head of service must reappoint the applicant to the service to fill—
- (a) the office occupied by the applicant immediately before the applicant is taken to have retired; or
  - (b) if that office is not available—an equivalent office, or an office as nearly as possible equivalent, to that office; or

- (c) with the written consent of the applicant—another office.
- (3) If the head of service is not satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the head of service must refuse the application.
- (4) If the head of service refuses an application the head of service must give the applicant written notice of the refusal and the reasons for the refusal.
- (5) A person who is reappointed under this section is taken to have—
  - (a) continuity of service as prescribed; and
  - (b) recognition of prior service as prescribed.

## Part 11 Review and appeal

### 223 Definitions—pt 11

In this part:

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

*officer*—means an officer or employee in an administrative unit or territory instrumentality, but does not include the head of service, a director-general or an executive.

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

### 224 Reviewable decision—notice and review

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

### 225 Appellable decision—notice and appeal

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



## Part 13                      Miscellaneous

### 241                      Returns and information—generally

- (1) A person must give any returns or other information to the head of service required for the purposes of the exercise of the head of service's functions under this Act.
- (2) A person must give any returns or other information to the commissioner required for the purposes of the exercise of the commissioner's functions under this Act.

### 242                      Improper influence

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

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

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

**244 Second jobs**

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

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

#### **245 Remuneration additional to salary**

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

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

**246 Payments to officers**

Payments to an officer or employee in relation to his or her employment, other than by way of salary, allowances or expenses payable under this Act or the management standards, may only be made under the authority of the head of service 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 director-general or by a contract under section 72 as an executive; and
  - (b) whose employment under that contract was terminated under a provision of the kind referred to in section 28A (1) or section 73 (1); and
  - (c) who received in relation to that termination a benefit prescribed for section 28A (4) or section 73 (4) that included a sum of money calculated by reference to the salary payable in relation to a period of employment of the person (the *benefit period*), being a sum that was not payable for services performed or in relation to leave.
- (2) The Territory or a territory instrumentality must not, without consulting the commissioner, employ a person to whom this section applies within the period immediately after his or her retirement from the service that corresponds to the length of his or her benefit period.

**248B Engagement of certain former directors-general and executives prohibited**

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

**248C Engagement of certain former heads of service prohibited**

- (1) This section applies to a person if the person was engaged by a contract under section 23C (Head of service—engagement) and has received, or is entitled to, an amount mentioned in section 23I (2) (Head of service—notice or payment if not re-engaged) in relation to the contract.
- (2) The Territory must not, without consulting the commissioner, employ the person within the 3-month period after the day the contract ends.

**249 Imprisonment**

- (1) This section applies if an officer in the service is—
  - (a) in custody awaiting trial for an offence; or
  - (b) in prison following conviction for an offence.

- (2) The officer is taken to be on leave of absence without pay for the period of custody or imprisonment unless—
  - (a) the employment of the officer is terminated for misconduct; or
  - (b) the head of service is satisfied that the officer is experiencing hardship and is to be paid the whole or part of the officers' salary for a stated time.
- (3) If the officers' employment is not terminated for misconduct—
  - (a) a period of service before the custody or imprisonment must be regarded as continuous with a period of service after the custody or imprisonment; and
  - (b) the period of custody or imprisonment is not to be regarded as service under this Act or any other Act, unless the head of service decides otherwise.
- (4) If, immediately before a period of custody or imprisonment, an officer was suspended from duty—the suspension is taken to be removed from the start of the period of custody or imprisonment.
- (5) An officer must not be suspended from duty during a period of custody or imprisonment.
- (6) In this section:  
*suspended from duty* means suspended under an industrial agreement that applies to the officer and includes a procedure for suspension.

## **250 Attachment of salary of officers and employees**

- (1) The rule of the common law that debts owing by the Crown for the salaries of its officers and employees are not capable of being attached, is, in relation to the Crown in right of the Territory, abolished.

- (2) If an order is made by law attaching a debt owing by the Crown in right of the Territory, or by a territory instrumentality, in relation to the salary of an officer or employee, the order shall be complied with out of money lawfully available.

### **250A Deduction of monetary penalty**

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

### **251 Management standards**

- (1) The commissioner may, with the Chief Minister's written approval, make management standards for this Act.
- (2) The management standards may make provision in relation to—
  - (a) the structure and organisation of the service; and



- (b) appointment to and employment in the service, including entry to and advancement in the service; and
- (c) terms and conditions of employment of officers and employees; and
- (d) the implementation of the access and equity principles referred to in section 7 (f) in the provision of services; and
- (e) the improvement of management practices and accountability; and
- (f) reviews or inquiries into the administration of the service; and
- (g) public sector industrial relations; and
- (h) terms and conditions on which statutory offices are held; and
- (i) ethics and conduct of officers and employees; and
- (j) discipline of officers and employees; and
- (k) procedures for hearing grievances and appeals; and
- (l) the redeployment, retirement, resignation and redundancy of officers and employees; and
- (m) arrangements for superannuation in relation to officers and employees; and
- (n) equal employment opportunity in the service; and
- (o) mobility of employment—
  - (i) between the public sector of the Territory and any body over which the Territory is in a position to exercise control in the ACT; and
  - (ii) between the public sectors of the Territory and the Commonwealth, a State or another Territory; and
  - (iii) between the public sectors of the Territory and a foreign country or a part of a foreign country; and

- (p) occupational health and safety in the service; and
  - (q) training of officers and employees; and
  - (r) performance appraisal of officers and employees; and
  - (s) industrial democracy in the service; and
  - (t) the evaluation of the implementation of government policy; and
  - (u) internal audit; and
  - (v) fraud minimisation; and
  - (w) infrastructure for the effective management and operation of the service.
- (3) Management standards that provide for matters of the kind referred to in subsection (2) (i) take effect subject to any direction in force under the *Director of Public Prosecutions Act 1990*, section 12.
- (4) The management standards may, in relation to a matter, include special conditions that are applicable to officers who are returned soldiers or who are, or have been, on specified defence service, including conditions under which preference may be given to returned soldiers in relation to any proposed appointments or promotions.
- (5) In subsection (4):
- returned soldier*** means a discharged member of the Forces within the meaning of the *Re-establishment and Employment Act 1945* (Cwlth), section 4 or section 139 and any other person who, as a member of the Defence Force, rendered continuous full-time service outside Australia—
- (a) as a member of a unit of the Defence Force that was allotted for duty within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5B (2); or

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

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

***specified defence service***—

(a) means—

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

(ii) service in a part of those forces for a period determined under regulations made under the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth) or the *Air Force Act 1923* (Cwlth); but

(b) does not include service rendered because of a voluntary undertaking and not required under the legislation mentioned in paragraph (a).

(6) An approval by the Chief Minister under subsection (1) may be given in relation to all management standards to be made for a specified purpose.

(7) An approval of the kind referred to in subsection (6) may be given subject to conditions to be complied with by the commissioner in making management standards to which the approval relates.

(8) A management standard is a disallowable instrument.

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

**Part 17** **Transitional—Administrative  
(One ACT Public Service  
Miscellaneous Amendments)  
Act 2011**

**276** **Meaning of *commencement day*—pt 17**

In this part:

*commencement day* means the day the *Public Sector Management (One ACT Public Service) Amendment Act 2011* commences.

**277** **Change of name—identity not affected**

If the context allows and it is consistent with this Act and otherwise appropriate, in any document, including an agreement, order (whether executive, judicial or otherwise) or contract, in force immediately before the commencement day (except in relation to matters that happened before the commencement day):

- (a) a reference to a chief executive is to be read as a reference to a director-general; and
- (b) a reference to a department is to be read as a reference to a directorate.

*Note 1* If a law changes the name of an entity established under a law, the entity continues in existence under the new name and its identity is not affected by the change. A reference in a law to the entity by its previous name is taken, after the change, to be a reference to the entity by its new name (see Legislation Act, s 183).

*Note 2* If a law changes the name of a position established under a law, the position continues in existence under the new name and its identity is not affected by the change. A reference in a law to the position by its previous name is taken, after the change, to be a reference to the position by its new name (see Legislation Act, s 186).

*Note 3* For entities and positions, *law* includes a statutory instrument (see Legislation Act, s 182).

**278 Engagement of certain former officers etc prohibited**

A reference (however expressed) in section 248A (Engagement of certain former officers and employees prohibited) or section 248B (Engagement of certain former directors-general and executives prohibited) to a person who was engaged as a director-general of an administrative unit includes a reference to someone who was engaged as a chief executive of an administrative unit.

**279 Employment powers**

- (1) This section applies if, immediately before the commencement day, an employment action started by a chief executive under this Act in relation to a person employed under this Act has not been finally dealt with.
- (2) The relevant director-general for the person may continue the employment action unless the head of service decides otherwise.
- (3) For subsection (2), the director-general has all the powers of the head of service in relation to the appointment, engagement and employment of the person.
- (4) In this section:

*employment action* means the exercise of a function relating to the appointment, engagement or employment of a person.

**Examples—employment action**

transfer

reduction of classification

reconsideration of disciplinary action

consideration of application for reappointment

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

*finally dealt with*—an employment action is *finally dealt with* if—

- (a) the time for any appeal or review in relation to the action has ended; or
- (b) any appeal or review in relation to the action has been decided or withdrawn.

## **280 Head of service**

- (1) For this Act, in the transitional period, the *head of service* is taken to mean the person who, on the commencement day, is the director-general of the Chief Minister and Cabinet Directorate.
- (2) Section 65 (1) (b) does not apply to the engagement in the transitional period of the person mentioned in subsection (1) under section 23C (Head of service—engagement).
- (3) In this section:

*transitional period* means the period beginning on the commencement day and ending at the earlier of the following:

- (a) the end of the contract of engagement under section 28, as in force immediately before the commencement day, of the person mentioned in subsection (1); and
- (b) the beginning of a contract of engagement under section 23C (Head of service—engagement).

## **281 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Public Sector Management (One ACT Public Service) Amendment Act 2011*.

- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

**282 Expiry—pt 17**

- (1) This part expires 2 years after the day it commences.
- (2) This part, other than sections 280 and 281, is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

## Schedule 1      Reviewable decisions

(see s 224)

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



## Schedule 2 Appellable decisions

(see s 225)

column 1 item	column 2 section	column 3 decision	column 4 officer
1	84	promotion of officer to vacant office	officer who applied for promotion
2	85	promotion of officer to vacant office	excess officer who applied for transfer
3	87 (5)	promotion not in accordance with certain recommendations of joint selection committee	officer who applied for promotion
4	98	promotion or transfer of officer to training office	<ul style="list-style-type: none"> <li>• officer who applied for promotion</li> <li>• unattached officer who applied for promotion</li> </ul>
5	102	temporary transfer to higher office duties	officer who applied for temporary transfer to higher office duties
6	143 (9)	notice to reduce classification or retire from the service	officer given notice

## Dictionary

(see s 2)

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

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

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

***Aboriginal or Torres Strait Islander person*** means a person who—

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

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

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

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

***appeal*** means—

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

***appellable decision***—see section 223.

***appellable level position*** means—

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

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

***authorised doctor*** means a doctor authorised by the head of service 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; or

(c) the Office of the Legislative Assembly.

**chief executive officer** means—

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

**classification** means—

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

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

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

**criminal offence** means—

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

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

**director-general** means a person employed to exercise the functions of an office of director-general under—

- (a) section 28 (Directors-general—engagement); or
- (b) section 30 (Directors-general—temporary contracts).

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

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

**employee** means—

- (a) the head of service; or
- (b) a director-general; or
- (c) an executive; or

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

**employment matters**—

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

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

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

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

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

**executive office** means an office created under section 54A.

**government agency** means—

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

**head of service** means the person employed to exercise the functions of the office of head of service under—

- (a) section 23C (Head of service—engagement); or
- (b) section 23J (Head of service—temporary contracts).

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

**industrial instrument** means an instrument—

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

**joint selection committee** means—

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

**management standards** means the management standards made under section 251.

**misconduct**, by an officer, means—

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

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

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

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

**office** means—

- (a) for division 4.1A (Creation and abolition of non-executive offices)—see section 54B; and
- (b) for division 4.2 (Part-time offices)—see section 59A; and

- (c) for division 5.5 (Promotion of officers)—see section 82; and
- (d) for division 5.6 (Transfer of officers)—see section 91; and
- (e) for division 5.7 (Temporary employment)—see section 105.

**office of director-general** means an office created under section 27.

**office of head of service** means an office created under section 23A.

**officer**—

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

**overseas** means outside Australia and the Territories.

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

**prescribed** means prescribed by the management standards.

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

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



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**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.

**public sector officer**, for division 3.5 (Powers of delegation)—see section 36.

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

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

**reviewable decision**—see section 223.

**service** means the ACT Public Service established under section 12 (1).

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

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

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

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

***unattached officer*** means an officer who does not hold an office.

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

## Endnotes

### 1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 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

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

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

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

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

### **Legislation Amendment Act 2002 No 11 pt 2.40**

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

### **Statute Law Amendment Act 2002 No 30 amdt 3.577**

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

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

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

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

### **Public Sector Management Amendment Act 2003 A2003-62**

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

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

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

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

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

**Emergencies Act 2004 A2004-28 sch 3 pt 3.17**

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

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

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

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

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

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

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

**Public Sector Management Amendment Act 2005 A2005-42**

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

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

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

## Endnotes

3 Legislation history

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**Public Sector Management Amendment Act 2011 A2011-1**

notified LR 23 February 2011

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

s 29 awaiting commencement (s 2)

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

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

**Public Sector Management (One ACT Public Service) Amendment Act 2011 A2011-21**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

remainder commenced 1 July 2011 (s 2)

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.127**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.127 commenced 1 July 2011 (s 2 (1))

**Working with Vulnerable People (Consequential Amendments) Act 2011 A2011-45 sch 1 pt 1.3**

notified LR 8 November 2011

s 1, s 2 commenced 8 November 2011 (LA s 75 (1))

sch 1 pt 1.3 commences on the commencement of Working with Vulnerable People (Background Checking) Act 2011 A2011-44 s 3 (s 2)

**Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.45**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.45 commenced 12 December 2011 (s 2)

**Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.34**

notified LR 22 May 2012

s 1, s 2 commenced 22 May 2012 (LA s 75 (1))

sch 3 pt 3.34 commenced 5 June 2012 (s 2 (1))

**Legislative Assembly (Office of the Legislative Assembly) Act 2012 A2012-26 sch 1 pt 1.8**

notified LR 24 May 2012

s 1, s 2 commenced 24 May 2012 (LA s 75 (1))

sch 1 pt 1.8 commenced 1 July 2012 (s 2)

## Endnotes

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### 4 Amendment history

#### Dictionary

s 2 om 2001 No 44 amdt 1.3478  
ins A2007-3 amdt 3.429  
am A2012-26 amdt 1.36

#### Notes

s 2A ins A2007-3 amdt 3.429

#### Definitions for Act

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

#### Declaration of territory instrumentalities

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

#### Application

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

#### Values and general principles

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

#### General obligations of public employees

s 9 pars renum R4 LA

#### Misconduct

s 9A ins A2011-1 s 4

#### Legal effect

s 11 am A2011-21 s 4

#### ACT Public Service

div 2.2 hdg (prev pt 2 div 2 hdg) renum R3 LA  
sub A2011-21 s 5

#### ACT Public Service

s 12 am 1995 No 51 s 5  
sub A2011-21 s 5

#### Administrative arrangements

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

**Administrative units**

s 13 am 1999 No 55 sch; 2001 No 44 amdt 1.3483; A2009-49  
amdt 3.136  
sub A2011-21 s 6

**Ministerial responsibility and functions of administrative units**

s 14 am 1999 No 55 sch; 2001 No 44 amdt 1.3484, amdt 1.3485;  
A2009-49 amdt 3.137; A2012-21 amdt 3.129

**Machinery of government changes—officers**

s 15 am A2011-21 s 7, s 130

**Machinery of government changes—employees**

s 16 am A2011-21 s 130

**Preliminary**

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

**Role of commissioner**

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

**Appointment of commissioner**

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

**Acting appointment**

s 19 om A2007-3 amdt 3.431

**General functions**

s 20 am A2011-21 s 8, s 9; pars renum R28 LA

**Review of government agencies or functions**

s 21 am A2005-42 s 5; A2011-21 ss 10-12; A2012-26 amdt 1.37,  
amdt 1.38; ss renum R31 LA

**Investigative powers of commissioner**

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

**Investigative powers of commissioner and Office of the Legislative  
Assembly**

s 22AA ins A2012-26 amdt 1.39

**Witness expenses**

s 22A ins A2005-53 amdt 1.125

**Head of service**

div 3.2A hdg ins A2011-21 s 13

**Office of head of service**

s 23A ins A2011-21 s 13

**Head of service—functions**

s 23B ins A2011-21 s 13

## Endnotes

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**Head of service—engagement**

s 23C ins A2011-21 s 13

**Head of service may also be engaged as director-general of Chief Minister's administrative unit**

s 23D ins A2011-21 s 13

**Head of service—contract variation**

s 23E ins A2011-21 s 13

**Head of service—early termination of contract**

s 23F ins A2011-21 s 13

**Head of service—effect of contract on responsibilities of Ministers**

s 23G ins A2011-21 s 13

**Head of service—application of merit principle to re-engagements**

s 23H ins A2011-21 s 13

**Head of service—notice or payment if not re-engaged**

s 23I ins A2011-21 s 13

**Head of service—temporary contract**

s 23J ins A2011-21 s 13

**Head of service—termination of temporary contract**

s 23K ins A2011-21 s 13

**Head of service—variation of temporary contract**

s 23L ins A2011-21 s 13

**Head of service—presentation of contract and contract variations**

s 23M ins A2011-21 s 13

**Head of service—transfer or assignment**

s 23N ins A2011-21 s 13

**Head of service—notification of head of service's engagement etc**

s 23O ins A2011-21 s 13

**Head of service—paid employment outside the service**

s 23P ins A2011-21 s 13

**Head of service—engagement or transfer not affected by defect etc**

s 23Q ins A2011-21 s 13

**Exercise of head of service powers in relation to certain public employees**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R3 LA  
am A2011-21 s 124

**Powers of chief executive officers of certain territory instrumentalities**

s 24 sub A2005-44 s 5  
am A2011-21 s 14

**Powers of certain statutory office-holders**

s 25 sub A2005-44 s 5  
am A2007-37 amdt 2.12; A2009-49 amdt 3.138; A2011-21  
s 15; A2012-26 amdt 1.40

**Powers relating to certain Calvary Health Care staff**

s 26 am 1995 No 51 s 6  
sub A2005-44 s 5  
am A2011-21 s 16; ss renum R28 LA

**Directors-general**

div 3.4 hdg (prev pt 3 div 4 hdg) renum R3 LA  
am A2011-21 s 127

**Office of director-general**

s 27 sub A2011-21 s 17

**Directors-general—engagement**

s 28 hdg sub A2005-44 s 6  
s 28 sub 1995 No 51 s 7  
am A2005-44 s 7; A2009-49 amdt 3.139  
sub A2011-21 s 17

**Directors-general—functions**

s 28AA ins A2005-44 s 8  
(3), (4) exp 8 September 2006 (s 28AA (4))  
sub A2011-21 s 17

**Directors-general—contract variation**

s 28AB ins A2011-21 s 17

**Directors-general—early termination of contract**

s 28A hdg sub A2011-21 s 18  
s 28A ins 1995 No 51 s 7  
am A2007-3 amdt 1.2; A2011-21 s 123, s 128

**Directors-general—effect of contracts on responsibilities of Ministers**

s 28B hdg sub A2011-21 s 19  
s 28B ins 1995 No 51 s 7

**Directors-general—application of merit principle to re-engagements**

s 28C hdg sub A2011-21 s 20  
s 28C ins 1995 No 51 s 7  
am A2011-21 s 123, s 129

**Directors-general—notice or payment if not re-engaged**

s 28D hdg sub A2011-21 s 21  
s 28D ins A2005-44 s 9  
(7), (8) exp 8 September 2006 (s 28D (8))  
am A2011-21 s 123, s 127, s 129

## Endnotes

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### **Chief executives—responsibilities**

s 29 sub A2005-44 s 10  
om A2011-21 s 22

### **Directors-general—temporary contracts**

s 30 hdg sub A2005-44 s 11  
am A2011-21 s 127  
s 30 sub 1995 No 51 s 8  
am A2005-44 s 12, s 13; A2011-21 s 23, s 123

### **Directors-general—variation of temporary contracts**

s 30A hdg am A2011-21 s 127  
s 30A ins A2005-44 s 14  
(3), (4) exp 8 September 2006 (s 30A (4))  
am A2011-21 s 24

### **Head of service must consult with Ministers about engagements etc**

s 31 sub 1995 No 51 s 8  
am A2005-44 s 15  
sub A2011-21 s 25

### **Directors-general—presentation of contracts and variations of contracts**

s 31A hdg sub A2011-21 s 26  
s 31A ins 1995 No 51 s 8

### **Directors-general—engagements not affected by defects etc**

s 32 hdg sub A2005-44 s 16; A2011-21 s 27  
s 32 sub 1995 No 51 s 8  
am A2011-21 s 123

### **Directors-general—employment to perform duties of multiple positions**

s 33 hdg sub A2011-21 s 28  
s 33 sub 1995 No 51 s 8  
am A2011-21 s 123

### **Directors-general—transfer or assignment**

s 33A ins A2005-44 s 17  
(7), (8) exp 8 September 2006 (s 33A (8))  
am A2011-21 s 123, s 127, s 129

### **Directors-general—transfers or assignments under s 33A not affected by defects etc**

s 33B hdg sub A2011-21 s 29  
s 33B ins A2005-44 s 17

### **Directors-general—notification of engagement etc**

s 34 hdg sub A2011-21 s 30  
s 34 sub 1995 No 51 s 8  
am 1999 No 55 sch  
sub A2005-44 s 18  
am A2011-21 s 127, s 129

**Directors-general—paid employment outside the se**

s 35 hdg sub A2011-21 s 31  
s 35 am A2011-21 s 123, s 129

**Powers of delegation**

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

**Meaning of *public sector officer*—div 3.5**

s 36 am A2007-3 amdt 3.432  
sub A2011-21 s 32

**Delegation by head of service**

s 36A ins A2011-21 s 32

**Delegation by commissioner**

s 36B ins A2011-21 s 32

**Delegation by directors-general**

s 36C ins A2011-21 s 32

**Delegations by head of service, commissioner and directors-general—generally**

s 36D ins A2011-21 s 32

**Delegations in autonomous instrumentalities**

s 37 sub 1996 No 24 s 5  
am A2012-21 amdt 3.129

**Constitution and role of senior executive service**

pt 3 div 6 hdg om 1995 No 51 s 9

**The senior executive service**

s 38 om 1995 No 51 s 9

**Whole-of-government management responsibilities**

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

**Definitions for div 3.7**

s 39 def ***designated group*** am A2005-20 amdt 3.329  
sub A2011-1 s 5  
am A2011-52 amdt 3.166, amdt 3.167  
def ***disability*** ins A2005-20 amdt 3.330

**Equal employment opportunity programs**

s 40 am A2011-1 s 6; A2011-21 s 33, s 34

**Access and equity programs**

s 41 am A2011-1 s 7; A2011-21 s 35, s 36

**Industrial democracy programs**

s 42 am A2011-1 s 8; A2011-21 s 37, s 38

**Development of programs in autonomous instrumentalities**

s 43 am 1996 No 24 s 6; A2011-21 s 39; A2012-26 amdt 1.41

## Endnotes

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#### **Joint council**

s 44 am A2011-1 s 9

#### **Legislative Assembly—clerk and secretariat**

div 3.8 hdg (prev pt 3 div 8 hdg) renum R3 LA  
sub A2005-42 s 6  
om A2012-26 amdt 1.42

#### **Definitions for div 3.8**

s 45 sub A2005-42 s 7  
om A2012-26 amdt 1.42  
def **clerk** sub A2005-42 s 7  
om A2012-26 amdt 1.42  
def **secretariat** ins A2005-42 s 7  
om A2012-26 amdt 1.42  
def **Speaker** om R3 LA

#### **Clerk of Legislative Assembly**

s 46 am 1995 No 56 sch; ss renum R4 LA  
sub A2005-42 s 8  
om A2012-26 amdt 1.42

#### **Leave of absence**

s 47 om A2012-26 amdt 1.42

#### **Disclosure of interests by clerk**

s 48 sub A2005-42 s 9  
om A2012-26 amdt 1.42

#### **Resignation**

s 49 om A2012-26 amdt 1.42

#### **Suspension and ending of appointment of clerk**

s 50 sub A2005-42 s 10  
om A2012-26 amdt 1.42

#### **Retirement**

s 51 (4) exp 4 March 1996 (s 51 (5))  
(5) om R3 LA  
am A2005-42 s 11; A2007-3 amdt 1.3  
om A2012-26 amdt 1.42

#### **Terms and conditions generally**

s 52 om A2012-26 amdt 1.42

#### **Acting appointment as clerk**

s 53 sub A2005-42 s 12

#### **Legislative Assembly secretariat**

s 53A ins A2005-42 s 12  
om A2012-26 amdt 1.42



**Legislative Assembly—staff**

s 54 sub A2011-21 s 40  
om A2012-26 amdt 1.42

**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; A2011-21 s 41, s 122; ss renum R28 LA

**Creation and abolition of non-executive offices**

div 4.1A hdg (prev pt 4 div 1A hdg) ins 1995 No 51 s 10  
renum R3 LA  
sub A2011-21 s 42

**Meaning of office—div 4.1A**

s 54B ins 1995 No 51 s 10  
sub A2011-21 s 43

**Creation and abolition of offices**

s 55 am A2011-21 s 44

**Classification of offices and officers**

s 56 am A2009-49 amdt 1.23; A2011-21 s 130; A2011-52  
amdt 3.168

**Senior executive service classifications**

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

**Reclassification of offices**

s 58 am A2011-21 s 45, s 130

**Reclassification of offices in autonomous instrumentalities**

s 59 sub 1995 No 7 sch  
am 1996 No 24 s 8  
om A2011-21 s 46

**Part-time offices**

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

**Meaning of office—div 4.2**

s 59A ins 1995 No 51 s 12  
sub A2011-21 s 47

**Part-time offices**

s 60 am A2011-21 s 125

**Hours of attendance of certain unattached officers**

s 62 am A2011-21 s 48, s 131

## Endnotes

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#### **Preliminary**

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

#### **Interpretation for pt 5**

s 63 am A2007-3 amdt 3.433; A2011-52 amdt 3.169, amdt 3.170;  
ss renum R29 LA

#### **Application to autonomous instrumentalities**

s 64 sub 1995 No 7 sch; 1996 No 24 s 9  
am A2011-21 s 130

#### **Personnel management**

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

#### **Application of merit principle**

s 65 am 1995 No 51 s 13; pars renum R4 LA; A2005-44 s 19; pars  
renum R16 LA (see A2005-44 s 20)  
sub A2011-1 s 10  
am A2011-21 s 49, s 50, s 131; pars renum R28 LA; A2011-52  
amdt 3.171

#### **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; A2011-21 s 130

#### **Appointment of officers**

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

#### **Application—div 5.3**

s 66A ins 1995 No 51 s 15  
sub A2011-21 s 51

#### **Employment in the service**

s 67 am 1995 No 51 s 16; A2003-62 s 4; A2004-28 amdt 3.55;  
A2009-49 amdt 3.140; A2011-21 s 52; pars renum R28 LA

#### **Appointments generally**

s 68 am 1995 No 7 sch; 1995 No 51 s 17; A2011-21 s 53, s 131;  
A2011-45 amdt 1.25

#### **Classification of unattached officers**

s 69 am 1995 No 51 s 18; A2011-21 s 54

#### **Appointment on probation**

s 70 am 1995 No 51 s 19; A2004-39 amdt 5.25  
sub A2011-1 s 11  
am A2011-21 s 55, s 131

**Appointment on probation—prescribed training office**

s 71 am 1999 No 55 s 5  
sub A2011-1 s 11  
am A2011-21 s 56, s 131

**Appointment on probation—teachers**

s 71A ins A2011-1 s 11  
am A2011-21 s 57, s 131

**Extension of period of probation**

s 71B ins A2011-1 s 11  
am A2011-21 s 131

**Appointment without probation**

s 71C ins A2011-1 s 11  
am A2011-21 s 58, s 59

**Engagement of executives**

div 5.4 hdg (prev pt 5 div 4 hdg) sub 1995 No 51 s 20  
renum R3 LA

**Executives—engagement**

s 72 hdg sub A2005-44 s 21  
s 72 sub 1995 No 51 s 20  
am A2005-44 s 22; A2009-49 amdt 3.141

**Executives—contract variation**

s 72A ins A2005-44 s 23  
(3), (4) exp 8 September 2006 (s 72A (4))

**Early termination of contract**

s 73 sub 1995 No 51 s 20  
am A2007-3 amdt 1.4

**Effect of contracts on responsibilities of Ministers**

s 74 sub 1995 No 51 s 20

**Application of merit principle to re-engagements**

s 75 sub 1995 No 7 sch; 1995 No 51 s 20  
am A2011-21 s 122

**Notice or payment if executive not re-engaged**

s 75A ins A2005-44 s 24  
(7), (8) exp 8 September 2006 (s 75A (8))  
am A2011-21 s 60, s 61, s 131

**Executives—temporary contracts**

s 76 hdg sub A2005-44 s 25  
s 76 sub 1995 No 51 s 20  
am A2005-44 s 26, s 27

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### **Executives—variation of temporary contracts**

s 76A ins A2005-44 s 28  
(3), (4) exp 8 September 2006 (s 76A (4))

### **Chief executive officer, Calvary**

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

### **Executives—negotiation and execution of contracts**

s 78 sub 1995 No 51 s 20  
am A2005-44 s 30, s 31  
sub A2011-21 s 62

### **Tabling of contracts and variations of contracts**

s 79 sub 1995 No 51 s 20

### **Executive engagements not affected by defects etc**

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

### **Executives—transfer or assignment**

s 80A ins A2005-44 s 33  
(6), (7) exp 8 September 2006 (s 80A (7))  
am A2011-21 s 63, s 64, s 131

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

s 80B ins A2005-44 s 33

### **Notification of executive's engagement etc**

s 81 sub 1995 No 51 s 20  
am 1999 No 55 sch  
sub A2005-44 s 34  
am A2011-21 s 122

### **Promotion of officers**

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

### **Definitions—div 5.5**

s 82 sub 1995 No 51 s 22; A2011-1 s 13  
def **appellable level position** ins A2011-1 s 13  
def **joint selection committee** ins A2011-1 s 13  
def **office** ins A2011-1 s 13  
sub A2011-21 s 65

### **Promotion to vacant office**

s 83 am 1995 No 51 s 23; 1999 No 55 sch  
sub A2011-1 s 13; A2011-21 s 66

### **Promotion appeal**

s 84 sub A2011-1 s 13

**Promotion appeal by excess officer**

s 85 am 1999 No 55 sch  
sub A2011-1 s 13  
am A2011-21 s 131

**Review of certain promotion decisions**

s 86 sub A2011-1 s 13  
am A2011-21 s 124, s 131

**Promotion on advice of joint selection committee**

s 87 am 1995 No 51 s 24  
sub A2011-1 s 13  
am A2011-21 s 67, s 124

**How promotions take effect**

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

**Death of officer before appeal decided**

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

**Cancellation of promotion**

s 90 sub A2011-1 s 13  
am A2011-21 s 126

**Transfer of officers**

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

**Definitions—div 5.6**

s 91 ins A2011-1 s 13  
def **appellable level position** ins A2011-1 s 13  
def **joint selection committee** ins A2011-1 s 13  
def **office** ins A2011-1 s 13  
sub A2011-21 s 68

**Transfer to vacant office**

s 92 sub A2011-1 s 13  
am A2011-21 s 69, s 131

**Simultaneous transfer within administrative unit**

s 93 sub A2011-1 s 13  
am A2011-21 s 70, s 131

**Transfer between administrative units**

s 94 sub A2011-1 s 13; A2011-21 s 71

**Management initiated transfer—within administrative unit**

s 95 sub A2011-1 s 13

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am A2011-21 s 72

### **Management initiated transfer—between administrative units**

s 96 sub A2011-1 s 13  
am A2011-21 s 73, s 130

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

s 96A ins A2011-1 s 13  
am A2011-21 s 130

### **Transfer on advice of joint selection committee**

s 96B ins A2011-1 s 13  
am A2011-21 s 74, s 75, s 124; ss renum R28 LA

### **How transfer takes effect**

s 96C ins A2011-1 s 13

### **Cancellation of transfer**

s 96D ins A2011-1 s 13  
am A2011-21 s 126

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

s 97 am 1999 No 55 sch; 2001 No 44 amdts 1.3487-1.3489;  
A2009-49 amdt 3.142; A2011-21 s 76, s 130

### **Promotion of officers who complete courses of training for special positions**

s 98 am 1999 No 55 sch; A2011-1 s 14; A2011-21 s 77, s 121,  
s 130; A2011-52 amdts 3.172-3.174

### **Definitions for div 5.6**

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

### **Temporary transfer**

s 100 sub A2011-1 s 17  
am A2011-21 s 78, s 79, s 131

### **Notification of certain temporary transfers to higher office**

s 101 sub A2011-1 s 17  
am A2011-21 s 121, s 124

### **Appeal against temporary transfer to higher office**

s 102 sub A2011-1 s 17

**Lapsing or discontinuing of appeal**

s 103 sub A2011-1 s 17  
am A2011-21 s 80

**Temporary transfer if appeal successful**

s 104 sub A2011-1 s 17  
am A2011-21 s 131

**Temporary employment**

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

**Meaning of office—div 5.7**

s 105 sub A2011-1 s 18; A2011-21 s 81

**Power to engage temporary employee**

s 106 am 1995 No 51 s 29  
sub A2011-1 s 18  
am A2011-21 s 82

**Temporary employment—fixed term less than 12 months**

s 107 sub A2011-1 s 19  
am A2011-21 s 83, s 131

**Temporary employment—fixed term not more than 5 years**

s 108 sub A2011-1 s 19  
am A2011-21 s 84, s 124, s 131

**Entry to the workforce programs**

s 109 am A2011-21 s 121

**Employment of unsuccessful election candidates**

s 111 am A2011-21 s 130

**Termination of temporary employment**

s 112 sub A2011-1 s 20  
am A2011-21 s 85, s 124, s 131

**Temporary employee on maternity leave**

s 112A ins A2011-1 s 20

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

s 114 am 1995 No 51 s 30; A2009-49 amdt 3.143; A2011-21 s 86,  
s 87; pars renum R28 LA

**Miscellaneous**

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

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

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

## Endnotes

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### **Mobility rights of certain employees of ACTEW Corporation Limited**

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

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

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

### **Reappointment of retired officers**

s 117 am 1995 No 51 s 33; A2009-49 amdt 3.144; A2011-21 s 88,  
s 89, s 121; ss renum R28 LA

### **Reappointment of unsuccessful election candidates**

s 118 am 1995 No 51 s 34; ss renum R4 LA; A2011-21 s 90, s 126

### **Quashing etc of conviction**

s 118A ins A2011-1 s 22  
am A2011-21 s 91, s 92, s 124, s 131; ss renum R28 LA

### **Unattached officers**

s 119 am A2011-21 s 93, s 130; ss renum R28 LA

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

s 120 am A2011-21 s 130

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

s 121 am A2011-21 s 130

### **Termination of employment**

s 122 om 1995 No 51 s 35  
ins A2011-1 s 23  
am A2011-21 s 131

### **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

**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

**Limitation on retirement on ground of invalidity**

s 138 om 1995 No 51 s 35

**Retirement and redeployment of officers**

pt 6 hdg sub A2011-1 s 24

**Retirement and redeployment of chief executives**

pt 6 div 1 hdg om 1995 No 51 s 35

**Retirement and redeployment of senior executive service officers**

pt 6 div 2 hdg om 1995 No 51 s 35

**Retirement and redeployment of officers other than chief executives and executives**div 6.3 hdg (prev pt 6 div 3 hdg) am 1995 No 51 s 36  
renum R3 LA  
om R4 LA

## Endnotes

### 4 Amendment history

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#### Definitions—pt 6

- s 139 sub A2011-1 s 25  
def **essential qualification** ins A2011-1 s 25  
def **excess officer** ins A2011-1 s 25  
am A2011-21 s 130  
def **not qualified to perform duties** ins A2011-1 s 25  
def **officer** sub 1995 No 51 s 37; A2011-1 s 25  
am A2011-21 s 94; pars renum R28 LA  
def **underperformance** ins A2011-1 s 25

#### Power to reduce officer's classification

- s 140 sub A2011-21 s 95

#### Retirement—maximum retiring age

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

#### Redeploy or retire officer from service

- s 143 sub A2011-1 s 26  
am A2011-21 s 96, s 97, s 124, s 131, s 132; A2012-26  
amdt 1.43, amdt 1.44; ss renum R31 LA

#### Date of effect of redeployment or retirement

- s 144 sub A2011-1 s 26  
am A2011-21 s 131

#### Limitation on retirement on ground of invalidity

- s 145 sub A2007-3 amdt 1.5

#### Unattachment of officers

- s 146 am A2004-39 amdt 5.25; A2011-21 s 131

#### Underperformance

- s 147 sub A2011-1 s 27

#### Long service leave

- pt 7 hdg om A2011-1 s 28

#### Interpretation for pt 7

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

#### Meaning of *public authority*—pt 7

- s 149 om A2011-1 s 28

#### Management standards in relation to previous employment with prescribed authorities etc

- s 150 om A2011-1 s 28

**Meaning of salary**

s 151 om A2011-1 s 28

**Certain payments not included in salary**

s 152 om A2011-1 s 28

**People taken to be employed by the Territory**

s 153 om A2011-1 s 28

**Period of employment**

s 154 om A2011-1 s 28

**Continuity of employment**

s 155 om A2011-1 s 28

**Status of periods of absence**s 156 am A2005-20 amdt 3.331  
om A2011-1 s 28**Concurrent employment**

s 157 om A2011-1 s 28

**Long service leave and payments instead of long service leave**

s 158 om A2011-1 s 28

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

s 159 om A2011-1 s 28

**Calculation of long service leave credit**

s 160 om A2011-1 s 28

**Application of s 160**

s 161 om A2011-1 s 28

**Rate of salary while absent on long service leave**

s 162 om A2011-1 s 28

**Rate of salary in relation to pay instead of leave**

s 163 om A2011-1 s 28

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

s 164 om A2011-1 s 28

**Additional provisions relating to death of officer**

s 165 om A2011-1 s 28

**Provisions relating to members of the teaching service**

s 166 om A2011-1 s 28

**Maternity leave**pt 8 hdg om A2011-1 s 29

## Endnotes

4 Amendment history

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### Definitions—pt 8

s 167 [om A2011-1 s 29](#)  
def **confinement** [om A2011-1 s 29](#)  
def **leave officer** [om A2011-1 s 29](#)  
def **maternity leave** [om A2011-1 s 29](#)  
def **officer** [om A2011-1 s 29](#)  
def **unauthorised absence** [om A2011-1 s 29](#)

### People in relation to whom pt 8 applies

s 168 [om A2011-1 s 29](#)

### Absence on maternity leave

s 169 [om A2011-1 s 29](#)

### Entitlement to paid maternity leave

s 170 [om A2011-1 s 29](#)

### Unauthorised absences

s 171 [am A2011-21 s 131](#)  
[om A2011-1 s 29](#)

### Absence on leave without pay

s 172 [am A2011-21 s 131](#)  
[om A2011-1 s 29](#)

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

s 173 [am A2004-39 amdt 5.25](#)  
[om A2011-1 s 29](#)

### Other applications to resume duty

s 174 [am A2011-21 s 130](#)  
[om A2011-1 s 29](#)

### Grant of maternity leave not to affect continuity of service

s 175 [om A2011-1 s 29](#)

### Officers on maternity leave

s 176 [am A2011-21 s 124, s 131](#)  
[om A2011-1 s 29](#)

### Temporary employees on maternity leave

s 177 [om A2011-1 s 29](#)

### Discipline

pt 9 hdg [om A2011-1 s 30](#)

### Preliminary

div 9.1 hdg (prev pt 9 div 1 hdg) renum R3 LA  
[om A2011-1 s 30](#)

**Interpretation for pt 9**

s 178 om A2011-1 s 30  
def **disciplinary appeal committee** om A2011-1 s 30  
def **eligible public employment** om A2011-1 s 30  
def **employment** om A2011-1 s 30  
def **misconduct** om A2011-1 s 30  
def **original office** om A2011-1 s 30  
def **public office** om A2011-1 s 30  
def **salary** om A2011-1 s 30

**Meaning of failure to fulfil duty as officer**

s 179 am 1995 No 51 s 39  
om A2011-1 s 30

**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 relation to 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  
om A2011-1 s 30

**Interpretation**

s 185 om 1995 No 51 s 42

**Disciplinary action**

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

**Inquiries into misconduct**

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

**Convictions by courts**

s 188 om A2011-1 s 30

## Endnotes

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#### **Suspension**

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

#### **Removal and variation of suspension**

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

#### **Appeals**

s 191 om A2011-1 s 30

#### **Nullification of conviction**

s 192 om A2011-1 s 30

#### **Review of findings**

s 193 om A2011-1 s 30

#### **Officers employed otherwise than in the service**

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

#### **Interpretation for div 9.4**

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

#### **Misconduct committed before becoming detached officer**

s 195 om A2011-1 s 30

#### **Misconduct while detached officer**

s 196 om A2011-1 s 30

#### **Criminal offences**

s 197 om A2011-1 s 30

#### **When directions for dismissal take effect**

s 198 om A2011-1 s 30

#### **Appeals**

s 199 om A2011-1 s 30

#### **Reasons to be given for making finding or giving direction etc**

s 200 om A2011-1 s 30

#### **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  
om A2011-1 s 30

**Definitions for div 9.5**

- s 201 om A2011-1 s 30  
def **authorised officer** am 1995 No 51 s 48  
om A2011-1 s 30  
def **employee** om A2011-1 s 30

**Application of pt 9 to employees**

- s 202 om A2011-1 s 30

**Disciplinary appeal committees**

- div 9.6 hdg (prev pt 9 div 6 hdg) am 1995 No 51 s 49  
renum R3 LA  
om A2011-1 s 30

**Definitions for div 9.6**

- s 203 om A2011-1 s 30  
def **board of inquiry** om 1995 No 51 s 50  
def **chief executive** om A2011-1 s 30  
def **proceeding** sub 1995 No 51 s 50  
om A2011-1 s 30  
def **review** om A2011-1 s 30

**How appeal is made to disciplinary appeal committee**

- s 204 om A2011-1 s 30

**Time for appealing to disciplinary appeal committee**

- s 205 am 1999 No 55 sch  
om A2011-1 s 30

**Giving of documents to appellants and people requesting review**

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

**Hearing to be in public except in special circumstances**

- s 207 om 1995 No 51 s 52

**Witnesses**

- s 208 om 1995 No 51 s 52

**Witnesses expenses**

- s 209 om 1995 No 51 s 52

**Representation of parties**

- s 210 om 1995 No 51 s 52

**Protection of members of boards of inquiry, witnesses etc**

- s 211 om 1995 No 51 s 52

**Notification of findings of board of inquiry**

- s 212 om 1995 No 51 s 52

**Payment of costs**

- s 213 om 1995 No 51 s 52

## Endnotes

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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  
om A2011-1 s 30

#### **Amendment of official conduct record**

s 216 om A2011-1 s 30

#### **Delegation**

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

#### **Miscellaneous**

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

#### **Imprisonment**

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

#### **Application to unattached officers performing duty in an administrative unit**

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

#### **Deduction of pecuniary penalty from salary**

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

#### **Forfeiture of office**

s 221 am A2011-21 s 98, s 124, s 131

#### **Reappointment of officers taken to have retired under s 221**

s 222 sub A2011-1 s 31  
am A2011-21 s 99, s 124, s 131; ss renum R28 LA

#### **Review and appeal**

pt 11 hdg sub A2011-1 s 32

#### **Preliminary**

div 11.1 hdg (prev pt 11 div 1 hdg) renum R3 LA  
om A2011-1 s 32

#### **Review of certain decisions**

div 11.2 hdg (prev pt 11 div 2 hdg) renum R3 LA  
om A2011-1 s 32

#### **Investigation of grievances by merit protection agency**

div 11.3 hdg (prev pt 11 div 3 hdg) renum R3 LA  
om A2011-1 s 32



**Merit protection**

div 11.4 hdg (prev pt 11 div 4 hdg) renum R3 LA  
om A2011-1 s 32

**Definitions—pt 11**

s 223 sub A2011-1 s 32  
def **action** om A2011-1 s 32  
def **appellable decision** ins A2011-1 s 32  
def **authorised person** am 1995 No 51 s 56  
om A2011-1 s 32  
def **decision** om A2011-1 s 32  
def **employee** sub 1995 No 51 s 56  
om A2011-1 s 32  
def **internal appeal officer** am 1995 No 51 s 56  
om A2011-1 s 32  
def **officer** ins A2011-1 s 32  
am A2011-21 s 100  
def **reviewable decision** ins A2011-1 s 32  
def **study bank** om A2011-1 s 32

**Reviewable decision—notice and review**

s 224 sub A2011-1 s 32

**Appellable decision—notice and appeal**

s 225 sub A2011-1 s 32

**Review by merit protection agency**

s 226 om A2011-1 s 32

**Documents to be given by internal appeal officer**

s 227 om A2011-1 s 32

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

s 228 om A2011-1 s 32

**Official directions to be carried out**

s 229 om A2011-1 s 32

**Application of div 11.3**

s 230 om A2011-1 s 32

**Investigation by internal appeal officer**

s 231 om A2011-1 s 32

**Investigation by merit protection agency**

s 232 om A2011-1 s 32

**Documents to be given by internal appeal officer**

s 233 om A2011-1 s 32

**Official directions to be carried out**

s 234 om A2011-1 s 32

## Endnotes

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#### **Application of Merit Protection Act**

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

#### **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

#### **Returns and information—generally**

s 241 sub A2011-21 s 101

#### **Second jobs**

s 244 am A2011-21 s 131

#### **Remuneration additional to salary**

s 245 am A2011-21 s 131

#### **Payments to officers**

s 246 am A2011-21 s 130

#### **Personation etc at examinations**

s 247 am 1998 No 54 sch

#### **Engagement of certain former officers and employees prohibited**

s 248A ins 1995 No 51 s 58  
am 1999 No 55 s 7; A2011-21 s 102, s 123

#### **Engagement of certain former directors-general and executives prohibited**

s 248B ins A2005-44 s 35  
am A2011-21 s 103, s 104, s 127

#### **Engagement of certain former heads of service prohibited**

s 248C ins A2011-21 s 105

#### **Imprisonment**

s 249 sub A2004-29 amdt 3.1  
om A2009-28 amdt 2.23  
ins A2011-1 s 33  
am A2011-21 s 130, s 131

**Deduction of monetary penalty**

s 250A ins A2011-1 s 34

**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; A2011-1 s 35

**Totalcare**

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

**Definitions for pt 14**

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

**Transfer of employees**

s 253 am 1999 No 55 sch  
om 2001 No 44 amdt 1.3495  
ins A2003-62 s 5  
exp 31 December 2005 (s 263)

**How rest of Act applies**

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

**Entitlements of transferred employees**

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

**Later appointment of temporary employees**

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

**Transfer of personnel files**

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

**Management standards**

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

## Endnotes

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### Transitional regulations

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

### Modification of pt 14's operation

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

### Regulation-making power

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

### Expiry of pt 14

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

### Fire and emergence services

pt 15 hdg ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### Definitions for pt 5

s 264 **chief officer** ins A2004-28 amdt 3.56  
**deputy chief officer** ins A2004-28 amdt 3.56  
**repealed Administration Act** ins A2004-28 amdt 3.56  
**transfer** ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### Transfer of chief officers

s 265 ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### Transfer of fire brigade members'

s 266 ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### Declarations of appointment or engagement

s 267 ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### How rest of Act applies

s 268 ins A2004-28 amdt 3.56  
am A2005-20 amdt 3.333, amdt 3.334  
exp 30 June 2006 (s 273)

### Employees appointed on probation

s 269 ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

### Entitlements on transfer

s 270 ins A2004-28 amdt 3.56  
exp 30 June 2006 (s 273)

**Transfer of personnel files**

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

**Management standards**

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

**Expiry of pt 15**

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

**Transitional**

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

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

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

**Expiry of pt 16**

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

**Transitional—Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011**

pt 17 hdg ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

**Meaning of commencement day—pt 17**

s 276 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

**Change of name—identity not affected**

s 277 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

**Engagement of certain former officers etc prohibited**

s 278 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

**Employment powers**

s 279 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

**Head of service**

s 280 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282)

## Endnotes

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#### Transitional regulations

s 281 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282)

#### Expiry—pt 17

s 282 ins A2011-22 amdt 1.366  
exp 1 July 2013 (s 282 (LA s 88 declaration applies))

#### Reviewable decisions

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

#### Appellable decisions

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

#### Modifications of Occupational Health and Safety Act 1989

sch 3 hdg sub A2004-29 amdt 3.2  
sch 3 am 1998 No 54 sch; 1999 No 82 sch pt 2; 2001 No 44  
amds 1.3497-1.3500; R3 (LA s 116 (1) (k) (iii)); 2002 No 11  
amdt 2.84, amdt 2.85; A2003-56 amdt 3.177; A2004-9  
amdt 1.37, amdt 1.38; A2004-29 amds 3.3-3.17; mod renum  
R12 LA (see A2004-29 amdt 3.18); A2005-53  
amds 1.126-1.130; A2007-31 amds 1.5-1.9  
om A2009-28 amdt 2.24

#### Dictionary

dict ins A2007-3 amdt 3.435  
am A2012-21 amdt 3.130; A2012-26 amdt 1.45  
def **Aboriginal or Torres Strait Islander person** ins  
A2011-52 amdt 3.175  
def **Aboriginal person or Torres Strait Islander** ins A2011-1  
s 38  
om A2011-52 amdt 3.175  
def **access and equity principle** ins A2007-3 amdt 3.435  
def **access and equity program** ins A2007-3 amdt 3.435  
def **action** ins A2007-3 amdt 3.435  
om A2011-1 s 39  
def **administering chief executive** ins 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om A2011-21 s 106  
def **administrative unit** reloc from s 3 A2007-3 amdt 3.428  
def **appeal** ins A2011-1 s 40  
def **appeal committee** ins A2007-3 amdt 3.435  
om A2011-21 s 107  
def **appellable decision** ins A2011-1 s 41  
def **appellable level position** ins A2011-1 s 41  
def **appellable promotion** ins A2007-3 amdt 3.435  
om A2011-1 s 42

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- def **approving authority** ins A2007-3 amdt 3.435  
om A2011-1 s 42
- def **auditor-general's office** ins 1996 No 24 s 4  
reloc from s 3 A2007-3 amdt 3.428
- def **authorised doctor** am A2004-39 amdt 5.25  
reloc from s 3 A2007-3 amdt 3.428  
am A2011-21 s 108
- def **authorised officer** ins A2007-3 amdt 3.435  
om A2011-21 s 109
- def **authorised person** ins A2007-3 amdt 3.435  
om A2011-1 s 43
- def **autonomous instrumentality** sub 1995 No 7 sch; 1996  
No 24 s 4  
reloc from s 3 A2007-3 amdt 3.428  
am A2012-26 amdt 1.46
- def **category A officer** ins A2007-3 amdt 3.435  
om A2011-1 s 44
- def **category B officer** ins A2007-3 amdt 3.435  
om A2011-1 s 44
- def **chief executive** am 1995 No 51 s 4  
sub A2007-3 amdt 3.422  
reloc from s 3 A2007-3 amdt 3.428  
sub A2007-16 amdt 3.137; A2011-1 s 45  
om A2011-21 s 109
- def **chief executive officer** ins 1996 No 24 s 4  
sub A2007-3 amdt 3.423  
reloc from s 3 A2007-3 amdt 3.428  
am A2012-26 amdt 1.47
- def **classification** am 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428
- def **clerk** ins A2005-42 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om A2012-26 amdt 1.48
- def **commissioner** reloc from s 3 A2007-3 amdt 3.428
- def **Commonwealth Long Service Leave Act** ins A2007-3  
amdt 3.435  
om A2011-1 s 46
- def **Commonwealth officer** am A2007-3 amdt 3.424  
reloc from s 3 A2007-3 amdt 3.428
- def **confinement** ins A2007-3 amdt 3.435  
om A2011-1 s 47
- def **criminal offence** am 1999 No 55 s 4; pars renum R4 LA  
reloc from s 3 A2007-3 amdt 3.428
- def **decision** ins A2007-3 amdt 3.435  
om A2011-1 s 48
- def **designated group** ins A2007-3 amdt 3.435

## Endnotes

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- def **detached officer** ins A2007-3 amdt 3.435  
om A2011-1 s 49
- def **direction** ins A2007-3 amdt 3.435  
om A2011-21 s 109
- def **director** reloc from s 3 A2007-3 amdt 3.428  
om A2011-1 s 50
- def **director-general** ins A2011-21 s 110
- def **disability** ins A2007-3 amdt 3.435
- def **disciplinary appeal committee** ins A2007-3 amdt 3.435  
om A2011-1 s 51
- def **discrimination** ins A2007-3 amdt 3.435
- def **eligible public employment** ins A2007-3 amdt 3.435  
om A2011-21 s 111
- def **employee** sub 1995 No 51 s 4; A2007-3 amdt 3.425  
reloc from s 3 A2007-3 amdt 3.428  
am A2007-16 amdt 3.138; A2011-1 s 52  
sub A2011-21 s 112
- def **employment** ins A2007-3 amdt 3.435  
om A2011-1 s 53
- def **employment matters** ins A2007-3 amdt 3.435
- def **equal employment opportunity program** ins A2007-3  
amdt 3.435
- def **essential qualification** ins A2011-1 s 54
- def **excess officer** ins A2007-3 amdt 3.435  
sub A2011-1 s 55
- def **executive** ins 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428
- def **executive office** ins 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428
- def **government agency** reloc from s 3 A2007-3 amdt 3.428
- def **head of service** ins A2011-21 s 113
- def **industrial award** am A2005-20 amdt 3.328; A2007-3  
amdt 1.1  
reloc from s 3 A2007-3 amdt 3.428  
om A2011-1 s 56
- def **industrial democracy program** ins A2007-3 amdt 3.435
- def **industrial instrument** ins A2011-1 s 57
- def **internal appeal officer** ins A2007-3 amdt 3.435  
om A2011-1 s 58
- def **joint selection committee** ins A2011-1 s 59
- def **leave** ins A2007-3 amdt 3.435  
om A2011-1 s 60
- def **leave officer** ins A2007-3 amdt 3.435  
om A2011-1 s 60
- def **Legislative Assembly secretariat** ins A2005-42 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om A2012-26 amdt 1.48



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- def **long service leave** ins A2007-3 amdt 3.435  
om A2011-1 s 61
- def **management standards** reloc from s 3 A2007-3  
amdt 3.428
- def **maternity leave** ins A2007-3 amdt 3.435  
om A2011-1 s 62
- def **Merit Protection Act** reloc from s 3 A2007-3 amdt 3.428  
om A2011-1 s 63
- def **merit protection agency** reloc from s 3 A2007-3  
amdt 3.428  
om A2011-1 s 63
- def **misconduct** ins A2007-3 amdt 3.435  
sub A2011-1 s 64
- def **non-appellable promotion** reloc from s 3 A2007-3  
amdt 3.428  
am A2009-49 amdt 1.24
- def **notified** ins A2007-3 amdt 3.435  
om A2011-21 s 114
- def **not qualified to perform duties** ins A2011-1 s 65
- def **office** ins A2007-3 amdt 3.435  
am A2011-1 s 66; A2011-21 s 115
- def **office of chief executive** ins 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om R28 LA
- def **office of director-general** ins R28 LA
- def **office of head of service** ins A2011-21 s 116
- def **officer** am 1995 No 7 sch; 1995 No 51 s 4; pars renum  
R4 LA  
sub A2007-3 amdt 3.426  
reloc from s 3 A2007-3 amdt 3.428  
sub A2011-1 s 67
- def **original office** ins A2007-3 amdt 3.435  
om A2011-1 s 68
- def **overseas** reloc from s 3 A2007-3 amdt 3.428
- def **part-time office** am A2007-3 amdt 3.427  
reloc from s 3 A2007-3 amdt 3.428
- def **prescribed** reloc from s 3 A2007-3 amdt 3.428
- def **principal union** ins A2011-1 s 69
- def **proceeding** ins A2007-3 amdt 3.435  
om A2011-1 s 70
- def **promotion** reloc from s 3 A2007-3 amdt 3.428
- def **promotion appeal committee** reloc from s 3 A2007-3  
amdt 3.428  
om A2011-1 s 71
- def **public employee** reloc from s 3 A2007-3 amdt 3.428
- def **public office** ins A2007-3 amdt 3.435  
om A2011-1 s 72

## Endnotes

### 4 Amendment history

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- def **public sector** reloc from s 3 A2007-3 amdt 3.428
- def **public sector officer** ins A2011-21 s 116
- def **redundancy** ins A2007-3 amdt 3.435  
om A2011-1 s 73
- def **relevant chief executive** sub A2005-44 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om A2011-21 s 117
- def **relevant staff organisation** am A2005-20 amdt 3.328  
reloc from s 3 A2007-3 amdt 3.428  
om A2011-1 s 75
- def **relevant union** ins A2011-1 s 74
- def **review** ins A2007-3 amdt 3.435  
sub A2011-1 s 76  
om A2011-21 s 117
- def **reviewable decision** ins A2011-1 s 77
- def **salary** ins A2007-3 amdt 3.435  
om A2011-1 s 78
- def **secretariat** ins A2005-42 s 4  
reloc from s 3 A2007-3 amdt 3.428  
om A2012-26 amdt 1.48
- def **service** am 1995 No 51 s 4  
reloc from s 3 A2007-3 amdt 3.428  
sub A2011-21 s 118
- def **specified** ins A2007-3 amdt 3.435  
om A2011-21 s 119
- def **statutory office-holder** reloc from s 3 A2007-3  
amdt 3.428
- def **study bank** ins A2007-3 amdt 3.435  
om A2011-1 s 79
- def **territory instrumentality** am 2001 No 44 amdt 1.3480;  
A2003-56 amdt 3.176  
reloc from s 3 A2007-3 amdt 3.428
- def **unattached officer** reloc from s 3 A2007-3 amdt 3.428  
sub A2011-21 s 120
- def **unauthorised absence** ins A2007-3 amdt 3.435  
om A2011-1 s 80
- def **underperformance** ins A2011-1 s 81

## 5 Earlier republications

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

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

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

## Endnotes

5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R2D 27 Feb 2008	23 June 2000– 30 Dec 2000	A1999-82	amendments by A1999-82
R2E 27 Feb 2008	31 Dec 2000– 11 Sept 2001	A2000-77	amendments by A2000-77
R3 12 Sept 2001	12 Sept 2001– 12 Sept 2001	A2001-44	amendments by A2001-44
R4 24 Apr 2002	13 Sept 2001– 27 May 2002	A2001-57	amendments by A2001-57
R5 29 May 2002	28 May 2002– 16 Sept 2002	A2002-11	amendments by A2002-11
R6 17 Sept 2002	17 Sept 2002– 30 June 2003	A2002-30	amendments by A2001-44 as amended by A2002-30
R7* 1 July 2003	1 July 2003– 11 Dec 2003	A2003-30	amendments by A2003-30
R8 12 Dec 2003	12 Dec 2003– 18 Dec 2003	A2003-62	amendments by A2003-62
R9 19 Dec 2003	19 Dec 2003– 12 Apr 2004	A2003-62	amendments by A2003-56
R10 13 Apr 2004	13 Apr 2004– 30 June 2004	A2004-9	amendments by A2004-9
R11 1 July 2004	1 July 2004– 4 Aug 2004	A2004-28	amendments by A2004-28
R12 5 Aug 2004	5 Aug 2004– 1 June 2005	A2004-29	amendments by A2004-29
R13 2 June 2005	2 June 2005– 6 July 2005	A2005-20	amendments by A2005-20
R14 7 July 2005	7 July 2005– 31 Aug 2005	A2005-20	amendments by A2004-39
R15 1 Sept 2005	1 Sept 2005– 7 Sept 2005	A2005-42	amendments by A2005-42
R16 8 Sept 2005	8 Sept 2005– 22 Nov 2005	A2005-44	amendments by A2005-44

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R17 23 Nov 2005	23 Nov 2005– 31 Dec 2005	A2005-53	amendments by A2005-53
R18 1 Jan 2006	1 Jan 2006– 30 June 2006	A2005-53	commenced expiry
R19 1 July 2006	1 July 2006– 8 Sept 2006	A2005-53	commenced expiry
R20 9 Sept 2006	9 Sept 2006– 11 Apr 2007	A2005-53	commenced expiry
R21 12 Apr 2007	12 Apr 2007– 10 July 2007	A2007-3	amendments by A2007-3
R22 11 July 2007	11 July 2007– 24 Oct 2007	A2007-16	amendments by A2007-16
R23 25 Oct 2007	25 Oct 2007– 22 Nov 2007	A2007-31	amendments by A2007-31
R24 23 Nov 2007	23 Nov 2007– 30 Sept 2009	A2007-37	amendments by A2007-37
R25* 1 Oct 2009	1 Oct 2009– 16 Dec 2009	A2009-28	amendments by A2009-28
R26 17 Dec 2009	17 Dec 2009– 17 Apr 2011	A2009-49	amendments by A2009-49
R27 18 Apr 2011	18 Apr 2011– 30 June 2011	A2011-1	amendments by A2011-1
R28 1 July 2011	1 July 2011– 11 Dec 2011	A2011-22	amendments by A2011-21 and A2011-22
R29 12 Dec 2011	12 Dec 2011– 4 June 2012	A2011-52	amendments by A2011-52
R30 5 June 2012	5 June 2012– 30 June 2012	A2012-21	amendments by A2012-21

## Endnotes

6 Uncommenced amendments

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### 6 Uncommenced amendments

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

**Public Sector Management Amendment Act 2011 A2011-1  
s 29**

**29 Maternity leave  
Part 8**

*omit*

**Working with Vulnerable People (Consequential  
Amendments) Act 2011 A2011-45 sch 1 pt 1.3**

## Part 1.3 Public Sector Management Act 1994

### [1.25] Section 68, new note

*insert*

*Note* If a person is to be appointed to a position that involves a regulated activity and contact with a vulnerable person within the meaning of the *Working with Vulnerable People (Background Checking) Act 2011*, the person may need to be registered under that Act.

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