

2000

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

**Public Sector Management Amendment Bill
2000**

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(As presented)

(Chief Minister)

**Public Sector Management Amendment Bill
2000**

A BILL

FOR

An Act to amend the *Public Sector Management Act 1994*

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

1 Name of Act

This Act is the *Public Sector Management Amendment Act 2000*.

5 2 Commencement

This Act commences on 1 January 2001.

Note The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

3 **Act amended**

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

4 **Interpretation**

5 Section 3 is amended by inserting in subsection (1) the following definitions:

“detached officer means—

(a) an officer not performing duty in an administrative unit or autonomous instrumentality who is, in addition to being an officer—

10 (i) employed by the Territory otherwise than under this Act, whether or not as the holder of an office or appointment; or

15 (ii) employed by another entity (including the Commonwealth, a State or another Territory), whether or not as the holder of an office or appointment; or

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

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

disciplinary action means a disciplinary action mentioned in section 183.

25 ***inefficiency action***—see section 182.

inefficient—see section 178.

misconduct—see section 179.

promotion decision—see subsection 234 (3).

relevant classification—see subsection 234 (2).

30 ***relevant offence***—see section 188.

request for review—see subsection 226 (1).”.

5 Repeals

Sections 84 to 87, 92, 102 to 105 and 147 are repealed.

6 Substitution

Part 9 is repealed and the following Part substituted:

5 “PART 9—INEFFICIENCY AND MISCONDUCT

“Division 9.1—Interpretation

“178 Meaning of *inefficient*

“(1) For this Act, an officer is *inefficient* if, in performing his or her duties, the officer fails to reach or maintain the standard of efficiency that a person with those duties may reasonably be expected to reach or maintain (the *appropriate standard*).
10

“(2) Without limiting the matters that may be considered to decide whether an officer has failed to reach or maintain the appropriate standard—

15 (a) regard must be had to—

(i) any written selection criteria or job specifications for the duties; and

(ii) any duty statement describing those duties; and

20 (iii) any written work standards or instructions about the way the duties are to be performed; and

(b) regard may be had to—

(i) any written selection criteria or job specifications for similar duties; and

(ii) any duty statements describing similar duties; and

25 (iii) any written work standards or instructions about the way similar duties are to be performed.

“179 Meaning of *misconduct*

For this Act, an officer is guilty of *misconduct* if the officer—

- (a) fails to comply with section 9 (General obligations of public employees); or
- (b) is wilfully inefficient.

“180 Meaning of relevant chief executive

5 A reference in a provision of this Part to the *relevant chief executive* for an officer is a reference to the relevant chief executive at the time the provision is to be applied, or action is to be taken under the provision.

“181 Presumption that an action is not taken under this Part

10 If an action by a chief executive that could have been taken under this Part could also have been taken under another law or under an agreement, and the action was not stated in an instrument to have been taken under this Part, it is presumed that the action was taken under the other law or agreement.

15 **“Division 9.2—Powers of the chief executive**

“182 Inefficiency action

“**(1)** If the relevant chief executive is satisfied that an officer has been inefficient, the chief executive may take action (*inefficiency action*) against the officer that includes 1 or more of the following:

- 20 (a) deferring a salary increment;
- (b) reducing the officer’s salary by reducing his or her incremental status;
- (c) transferring the officer to other public sector employment at the same or a lower classification;
- 25 (d) retiring the officer.

“**(2)** Inefficiency action must be proportionate to the degree of inefficiency concerned.

30 “**(3)** In taking inefficiency action, the chief executive must comply with this Act, the management standards and any procedural directive of the commissioner, and must act according to the principles of natural justice.

"183 Disciplinary action

5 "(1) If the relevant chief executive is satisfied that an officer has been guilty of misconduct, regardless of the administrative unit where the officer was performing the duties concerned, the chief executive may take action (*disciplinary action*) against the officer that includes 1 or more of the following:

- (a) reprimanding the officer;
- (b) deferring a salary increment;
- 10 (c) reducing the officer's salary by reducing his or her incremental status;
- (d) transferring the officer to other public sector employment at the same or a lower classification;
- (e) imposing a financial penalty of not more than 4 weeks pay and directing that this be deducted from the officer's salary over a
15 reasonable period;
- (f) dismissing the officer.

"(2) Disciplinary action must be proportionate to the degree of misconduct concerned.

20 "(3) In taking disciplinary action, the chief executive must comply with this Act, the management standards and any procedural directive of the commissioner, and must act according to the principles of natural justice.

"184 Investigations into misconduct

25 "(1) If an allegation is made that an officer is guilty of misconduct, the relevant chief executive must ensure (for example by delegation) that the investigation of the misconduct is not conducted by an individual who made the allegation or was otherwise involved in the allegation.

"(2) The relevant chief executive may appoint another entity, including a person or body not a member of the public sector, to conduct the investigation, or any part of it, if satisfied that—

- 30 (a) it is desirable, to avoid conflicts of interest or for any other reason; and
- (b) confidentiality can be assured.

“(3) A person acting honestly and without negligence under an appointment made under subsection (2), so that the chief executive’s agency is liable to a third party for the action, is not liable to the third party for the action..

5 “(4) In this section:

chief executive’s agency means—

- (a) if the chief executive is chief executive of a Territory instrumentality—the instrumentality; or
- (b) in any other case—the Territory.

10 **“185 Suspension from duties during investigation**

“(1) The relevant chief executive may suspend an officer from duties if—

(a) either—

- (i) the officer has been charged with a criminal offence; or
- 15 (ii) it appears to the chief executive that the officer may be guilty of misconduct; and
- (b) and the chief executive is satisfied that it is in the officer’s interest, the public interest, or the interest of other officers, the service or the administrative unit concerned, that the officer be
- 20 suspended.

“(2) The chief executive must review a suspension under this section at reasonable intervals.

“(3) If the chief executive proposes to suspend an officer for a period, the chief executive may allow the officer instead to take leave to which the officer is entitled for all or part of the period.

“(4) An officer who is allowed to take leave, other than sick leave, instead of being suspended under this section, and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct, is entitled to be recredited with the period of leave that was taken instead of the suspension.

“(5) The chief executive may temporarily reduce the salary of an officer who is suspended under this section by any amount.

“(6) An officer whose salary is reduced under this section is entitled to engage in employment outside the service while his or her salary is so reduced.

5 “(7) An officer whose salary is reduced under this section and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct, is entitled to be repaid the amount by which his or her salary was reduced.

“(8) If an officer suspended under this section—

10 (a) is later found guilty of the criminal offence (whether or not a conviction is recorded), or found to have been guilty of the misconduct; and

(b) is dismissed because of the offence or misconduct;

a period of suspension under this section does not count as service for any purpose, unless the chief executive decides otherwise.

15 **“186 Procedure for action under this Part**

Before suspending an officer from duties or taking inefficiency or disciplinary action against the officer, the relevant chief executive must, unless satisfied that it would be impracticable or inappropriate in the circumstances, give the officer—

20 (a) written notice of the action to be taken, setting out briefly the reasons for the action and stating the time when the action will take effect; and

(b) an opportunity to be heard on the matter.

“187 Reinstatement after dismissal

25 “(1) The relevant chief executive may direct that a dismissed officer be re-engaged or reappointed.

“(2) If a dismissed officer is re-engaged or reappointed under this section, then, unless otherwise agreed with the officer, or an order of a court or tribunal otherwise provides—

30 (a) the officer is employed on the same terms as before the dismissal; and

(b) the officer is taken to have been on leave without pay for the period between the dismissal and the reinstatement; and

(c) the officer's service is taken to have been continuous for all purposes.

“(3) If a court or tribunal, on reviewing a decision to dismiss an officer, orders the reinstatement of the dismissed officer, the relevant chief executive must re-engage or reappoint the person under this section.

“(4) In this section:

dismiss means dismiss or retire under this Division.

dismissed officer means a former officer who was dismissed.

relevant chief executive, for a dismissed officer, means the chief executive who dismissed the officer.

“Division 9.3—Effect of criminal charges and imprisonment

“188 When an offence is relevant

If it is alleged that an officer has committed a criminal offence, the alleged offence is a *relevant offence* if there are reasonable grounds for believing that the interests of the service might be adversely affected, taking into consideration—

- (a) the circumstances and seriousness of the alleged offence; and
- (b) the duties of the officer.

Example 1

A minor traffic offence is a relevant offence only if driving is part of the officer's duties.

Example 2

An offence against a law administered by the officer's administrative unit is a relevant offence.

Example 3

An offence that is likely to result in a sentence of imprisonment for the officer is a relevant offence.

“189 Officer must report relevant criminal charges

An officer must tell the relevant chief executive in writing if—

- (a) the officer is charged, summonsed or issued with a Voluntary Agreement to Attend Court notice in relation to a relevant offence; or

- (b) the officer has taken part in diversionary conferencing in relation to a relevant offence.

“190 Effect of conviction of an officer

If an officer found guilty of a relevant offence—

- 5 (a) the officer must give a written statement about the circumstances of the offence to the relevant chief executive within 5 business days after the conviction or finding; and
- (b) the chief executive may take disciplinary action against the officer as if the officer were guilty of misconduct.

10 **“191 Effect of imprisonment of an officer**

“(1) An officer is taken to be on leave of absence without pay while in custody.

“(2) If an officer has not been dismissed in relation to an offence, any service before a period of custody relating to the offence is, for all
15 purposes, taken to be continuous with any service after that period.

“(3) A period of custody of an officer is not service for any purpose under this or any other Act, unless the chief executive decides otherwise.

“(4) An officer must not be suspended from duty under this Act during a period of custody.

20 “(5) An officer who is suspended from duty under this Act is taken not to be suspended while in custody.

“(6) Despite subsection (1), if a chief executive is satisfied that an officer who is in custody is suffering or has suffered financial hardship, the chief executive may, subject to the management standards—

- 25 (a) direct that the officer be paid all or part of his or her salary for all or part of the period of custody; or
- (b) allow the officer to take paid leave to which the officer is entitled to cover all or part of the period of custody.

30 “(7) For this section, an officer is in *custody* only if the officer cannot perform his or her duties because the officer is in custody—

- (a) awaiting trial for an offence; or
- (b) on conviction for an offence.

“Division 9.4—Application of Part to certain individuals

“192 Application of pt 9 to certain employees

This Part applies to persons engaged under Part 5, Division 7 for a fixed term of at least 12 months as if a reference to an *officer* were a reference to such an person.

“193 Application of Part to detached officers

“(1) This Part does not apply to a detached officer except as provided in this section.

“(2) The relevant chief executive may take disciplinary action against a detached officer in accordance with this Part—

(a) in relation to misconduct by the officer before the officer became a detached officer; or

(b) if the detached officer engages in conduct that brings the service into disrepute—as if that conduct were misconduct.

“(3) Section 187 and Division 9.3 apply to a detached officer.

“(4) In this section:

relevant chief executive, for a detached officer, means the relevant chief executive immediately before the officer became a detached officer.”.

20 7 Substitution

Part 11 is repealed and the following Part substituted:

“PART 11—REVIEW OF EMPLOYMENT DECISIONS

“Division 11.1—Interpretation

“223 Definitions for pt 11

25 In this Division:

public employee does not include a chief executive or an executive.

relevant chief executive, for a public employee seeking review of a decision, means the chief executive responsible for making the decision.

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

5 If a public employee asks a person with the necessary power to do something in relation to the employee’s employment and the thing is not done within a time that is reasonable in the circumstances, the failure to do the thing is, for this Part, taken to be a decision to refuse the request.

“Division 11.2—Internal review of decisions by chief executive

“225 Statement of reasons for a decision

10 If a public employee asks the relevant chief executive in writing for a statement of reasons for a decision in relation to the employee’s employment, the chief executive must provide the statement as soon as practicable.

“226 Right of internal review

15 “(1) A public employee who is dissatisfied with a decision in relation to the employee’s employment may ask the relevant chief executive in writing for a review of the decision (*a request for review*).

“ (2) A request for review must address the statement of reasons for the decision and set out the grounds for varying or revoking the decision.

20 “ (3) On receiving a request for review, the chief executive must review the decision, and confirm, vary or revoke it.

“227 Decision has effect while under review

A public employee who has made a request for review must, as far as practicable, comply with the decision while it is being reviewed, unless the decision is stayed by the chief executive.

25 **“228 Excluded decisions**

“ (1) This Division does not entitle a person who has applied to be appointed or engaged as a public employee to make a request for review of a decision not to appoint or engage the person.

30 “ (2) This Division does not entitle a public employee to make a request for review of a decision if the employee has previously requested a review of the decision.

“ (3) This Division does not entitle a public employee to make a request for review of—

- 5 (a) a decision of a Minister; or
- (b) a decision made on the recommendation of a joint selection committee; or
- (c) a decision not to renew the employee's contract of employment when it expires; or
- 10 (d) unless the employee is not entitled to a review of the decision under the *Workplace Relations Act 1996* (Cwlth)—a decision to terminate the employment of the employee; or
- (e) a refusal to allow the employee to decline a transfer to another position within the public sector; or
- 15 (f) a decision made on 1 of the following matters:
- (i) the policy, strategy, nature, scope, resources for, or direction of the public sector;
 - (ii) superannuation or workers' compensation;
 - 20 (iii) the employee's probationary arrangements;
 - (iv) the classification of an office;
 - (v) the employee's rate of salary;
 - (vi) a direction that another employee perform the duties of employment with a higher classification for a period of not longer than 3 months;
 - 25 (vii) a direction that another employee perform the duties of employment with a higher classification for a period of longer than 3 months, if the vacancy was advertised and the employee was not an applicant;
 - (viii) setting conditions of employment under this Act or under a workplace agreement.

“(4) In this section:

30 *workplace agreement* includes an industrial agreement such as a certified agreement, Australian workplace agreement or award under the *Workplace Relations Act 1996* (Cwlth).

“(5) A chief executive who refuses to a request to review a decision because the decision is excluded by this section must give the public employee the reasons why the decision is excluded.

“229 The person who conducts a review

5 “(1) In dealing with a request for review, the relevant chief executive must ensure (for example by delegation) that the review is not conducted by an individual who—

(a) made the original decision; or

10 (b) made a recommendation to the individual who made the original decision.

“(2) Subsection (1) does not prevent the person who made the original decision from confirming, varying or revoking the decision.

“(3) If the chief executive is satisfied that—

15 (a) it is desirable, in order to avoid conflicts of interest or for any other reason; and

(b) confidentiality can be assured;

the chief executive may appoint another entity, including an entity not a part of the public sector, to conduct the review, or any part of it.

20 “(4) A person acting honestly and without negligence under an appointment made under subsection (3), so that the chief executive’s agency is liable to a third party for the action, is not liable to the third party for the action.

“(5) In this section:

chief executive’s agency means—

25 (a) if the chief executive is chief executive of a Territory instrumentality—the instrumentality; or

(b) in any other case—the Territory.

“230 Procedure for review

30 “(1) The chief executive may make any investigations and gather any evidence necessary to conduct properly a review of a decision subject to a request for review.

“(2) The chief executive may decide on procedures to be followed in the review.

5 “(3) The chief executive may require the public employee who made the request for review to answer questions, or provide further information, within 14 days after being told of the requirement, or a longer period allowed by the chief executive.

“(4) The chief executive may decide that another public employee should be regarded as having an interest in the review, and that the review should be conducted accordingly.

10 “(5) The chief executive must comply with this Act, the management standards and any procedural directive of the commissioner, and must act according to the principles of natural justice

“(6) The chief executive must act as quickly and with as little formality as is consistent with a fair and proper consideration of the issues.

15 **“231 When the chief executive may refuse to review a decision**

“(1) The chief executive may refuse to review a decision on receiving a request for review from a public employee if—

(a) the request is received more than—

20 (i) for a promotion decision—14 days after the decision was notified in the Gazette; or

(ii) for a decision to make a direction to which section 101 applies—14 days after the circulation or display of the direction in accordance with that section; or

25 (ii) for any other decision—28 days after the employee was told of the decision; or

(b) the employee has applied to a court or tribunal in relation to the decision, whether or not the application has been fully decided; or

(c) the chief executive is satisfied that the request would be better dealt with by an application to a court or tribunal; or

30 (d) the chief executive is satisfied that the employee does not have sufficient direct personal interest in the decision to justify a review; or

(e) the chief executive is satisfied that the request—

- (i) is frivolous or vexatious; or
- (ii) is misconceived or lacks substance; or
- (iii) should not be heard for some other compelling reason.

5 “(2) The chief executive must give the public employee written reasons for refusing to review a decision.

“232 **Withdrawal of request for review**

A public employee who has made a request for review may withdraw it at any time before it has been decided by the chief executive.

“233 **Lapse of request for review**

10 “(1) Unless the relevant chief executive decides otherwise, a request for review by a public employee lapses—

- (a) if the employee fails to answer a question or provide information required by the chief executive in accordance with section 230; or
- (b) unless the request is for the review of a termination decision—on
15 the termination of the employee’s employment; or
- (c) on the death of the employee.

“(2) In this section:

20 *termination decision*, for a public employee whose employment is terminated, means a decision that relates to, or is part of the circumstances of, the termination.

“Division 11.3—Review of certain promotion decisions

“234 **Application of div 11.2**

“(1) The provisions of Division 11.2 are modified by this Division in the case of a request for review of a promotion decision if—

- 25 (a) the request for review is made by an officer; and
- (b) it would be a promotion for the officer to be given the employment concerned; and
- (c) if applications were invited for the employment—the officer applied for the employment.

“(2) The management standards may specify classifications, which may be different for different administrative units, as the *relevant classifications* for this section.

“(3) In this Act:

5 *promotion decision* means a decision by the chief executive of an administrative unit to—

(a) promote an officer to employment at a relevant classification; or

10 (b) appoint a Commonwealth officer to employment at a relevant classification that is higher than his or her classification as a Commonwealth officer.

“235 Grounds for review of a promotion decision

15 If this Division applies, the only ground on which a chief executive is required to review the promotion decision is that the officer making the request would be more efficient in performing the duties of the position than the person promoted.

“236 Appointment of review panel

20 “(1) If any requests to which this Division applies are made for a review of a promotion decision, the relevant chief executive must appoint a review panel to conduct the review for the requests and make a recommendation to him or her.

“(2) A *review panel* consists of—

(a) a convenor nominated by the commissioner; and

(b) a person nominated by the chief executive; and

25 (c) an independent employee.

“(3) The management standards may prescribe the procedure for appointing panel members.

“237 Conduct of review panel

30 “(1) A review panel constituted to conduct a review in relation to a promotion decision may make any investigations and gather any evidence necessary to conduct the review properly.

“(2) Each officer who requested a review of the promotion decision is a *relevant applicant*.

“(3) A review panel must comply with this Act, the management standards and any procedural directive of the commissioner, and must act according to the principles of natural justice.

“(4) A review panel must act as quickly and with as little formality as is consistent with a fair and proper consideration of the issues.

“(5) In reviewing a promotion decision, a review panel must—

- (a) assess the relative efficiency, in accordance with paragraph 65 (1) (e), of the officer originally promoted or appointed and the relevant applicants; and
- (b) recommend to the chief executive, primarily on the basis of the assessment, that—
 - (i) the promotion decision should be upheld; or
 - (ii) the promotion decision should be replaced by a decision to appoint a specified relevant applicant to the employment concerned; or
 - (iii) the promotion decision should be cancelled and the process of selecting a person for the employment should be started afresh.

“238 Commissioner and panel members not liable to the employee

“(1) If a chief executive appoints a review panel, the chief executive’s agency is liable to a third party for the actions of the commissioner and the review panel under this Division.

“(2) The commissioner or a member of the review panel, acting honestly and without negligence under this Division, is not liable to the third party for the action.

“(3) In this section:

chief executive’s agency means—

- (a) if the chief executive is chief executive of a Territory instrumentality—the instrumentality; or
- (b) in any other case—the Territory.

"Division 11.4—Procedural review by the commissioner

"239 Right of procedural review

"(1) This section applies if—

- 5 (a) a public employee (the *employee*) has made a request for review (the *original request*) of a decision (the *original decision*); and
- (b) the relevant chief executive—
 - (i) caused a review (the *original review*) to be conducted and made a decision (the *decision*) confirming, varying or revoking the original decision; or
 - 10 (ii) made a decision (the *decision*) to refuse to review the original decision; and
- (c) the employee is dissatisfied with the decision.

15 "(2) The employee may ask the commissioner in writing for a review of the decision because the procedure in making the decision or conducting the original review was not fair.

"(3) A request under subsection (2) must state the ways in which it is claimed the procedure was not fair.

"(4) On receiving a request under this section, the commissioner must review the procedure by which—

- 20 (a) the original review was conducted; and
- (b) the decision was made.

"(5) If the commissioner is satisfied that—

- (a) the procedure may not have been fair to the employee; and
- 25 (b) as a result, the decision should be reconsidered, or the original review conducted again in whole or in part;

the commissioner must make an appropriate recommendation to the chief executive.

"240 When commissioner may refuse procedural review

30 "(1) The commissioner may refuse to review a decision in accordance with section 239 if—

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- (a) the commissioner, or a person nominated by the commissioner, conducted the original review, or part of it; or
- (b) the request is received more than 28 days after the employee was told of the decision; or
- 5 (c) the employee has applied to a court or tribunal in relation to the decision, whether or not the application has been fully decided; or
- (d) the commissioner is satisfied that the request would be better dealt with by an application to a court or tribunal; or
- (e) the commissioner is satisfied that the request—
 - 10 (i) is frivolous or vexatious; or
 - (ii) is misconceived or lacks substance; or
 - (iii) should not be heard for some other compelling reason.

“(2) The commissioner must give the public employee written reasons for refusing to review a decision.”.

15 **8 Further amendments**

The Act is further amended as set out in Schedule 1.

9 Consequential amendments to the Fire Brigade (Administration) Act

20 The *Fire Brigade (Administration) Act 1974* is amended as set out in Schedule 2.

SCHEDULE 1

(See s 8)

FURTHER AMENDMENTS

- [1.1] **Subsection 3 (1) (definition of *unattached officer*)—**
Omit “within the meaning of Division 4 of Part IX”.
- 5 [1.2] **Subsection 3 (1) (definitions of *Director, Merit Protection Act, Merit Protection Agency, non-appellable promotion and Promotion Appeal Committee*)—**
Omit the definitions.
- [1.3] **Subsections 63 (3) and (4)—**
10 Omit the subsections.
- [1.4] **Paragraph 88 (6) (a)—**
Omit “Merit Protection Agency”, substitute “commissioner”.
- [1.5] **Paragraph 88 (7) (a)—**
Omit “relevant Chief Executive”, substitute “commissioner”.
- 15 [1.6] **Paragraph 88 (9) (b)—**
Omit the paragraph, substitute the following paragraph:
“(b) is not subject to review under Part 11.”.
- [1.7] **Paragraph 89 (4) (a)—**
Omit “Merit Protection Agency”, substitute “commissioner”.
- 20 [1.8] **Subsection 89 (5)—**
Omit “appeal under section 84 or review under section 87”,
substitute “a request for review”.
- [1.9] **Subsection 89 (6)—**
Omit “appeal under section 84 or review under section 87, as the
25 case requires”, substitute “a request for review”.
- [1.10] **Subsection 89 (7)—**
Omit “appeal under section 84 or review under section 87”,
substitute “a request for review”.

SCHEDULE 1—continued

[1.11] Subsection 89 (9)—

Omit “Agency”, substitute “commissioner”.

[1.12] Subsections 91 (2) and (3)

Omit the subsections.

5 **[1.13] Subsection 93 (3)—**

Omit “appeal under section 84 against”, substitute “request for review of”.

[1.14] Subsections 98 (2), (3) and (11)—

Omit the subsections.

10 **[1.15] Section 99—**

Omit the section.

[1.16] Subsection 100 (1)—

Omit “office in that administrative unit”, substitute the following:

“employment in the administrative unit other than that of—

15 (a) an office of chief executive; or

(b) an executive office.”.

[1.17] Subsection 100 (3)—

Omit “that is required by subsection 101 (2) to be notified”, substitute “to which section 101 applies”.

20 **[1.18] Subsection 100 (8)—**

Omit “office”, substitute “employment”.

[1.19] Section 101—

Omit the section, substitute the following section:

25 **“101 Certain directions for higher duties that are likely to last for more than 3 months**

“(1) This section applies to a direction under subsection 100 (1) if—

(a) the employment is of a relevant classification; and

SCHEDULE 1—continued

- (b) the employment is of a higher classification than that of the officer's employment apart from the direction; and
- (c) the direction would result, when combined with any previous directions—

- 5 (i) if the direction is for a fixed period—in the officer performing the duties for a continuous period of longer than 3 months; or
- (ii) if the direction is until the happening of a specified event—in the officer being likely to perform the duties for a continuous period of longer than 3 months.

10 “(2) As soon as practicable after giving the direction, the chief executive must circulate or display a notice of the direction in a way that is likely to bring it to the attention of the officers who may make a request for review.

15 “(3) If the notice does not set out the terms of the direction, it must state—

- (a) the employment to which the direction relates; and
- (b) the duties of the employment; and
- (c) the day when the person directed to perform the duties of the employment is to begin; and
- 20 (d) the day until when, or the event until the happening of which, the person is to continue to perform the duties; and
- (e) the name and classification of the officer to whom the direction has been given.

 “(4) A direction to which this section applies takes effect—

- 25 (a) if no request for review is made before the due day—on the due day or on a later day specified in the direction; or
- (b) if a request for review is made before the due day—in accordance with the management standards.

 “(5) In this section:

30 *due date*, for a direction, means the day 15 days after the day when it is circulated or displayed.

SCHEDULE 1—continued

request for review, for a direction, means a request for review of the decision to make the direction.”.

[1.20] Paragraph 106 (1) (b)—

Add at the end “or”.

5 **[1.21] Subsection 106 (1)—**

After paragraph (b), insert the following paragraph:

“(c) that the person was injured while in temporary employment in the service, and that the proposed employment is necessary to allow the person to complete an appropriate rehabilitation program.”.

10 **[1.22] Subsection 108 (1)—**

Omit the subsection, substitute the following subsection:

“(1) A person may be engaged in accordance with this section for a fixed term to perform the duties of a position with an existing classification for a period not longer than the longer of—

15 (a) if subsection 109 (1) applies to the person, and the prescribed scheme concerned is a part-time apprenticeship—the length of the apprenticeship; or

(b) 5 years.”.

[1.23] Paragraph 115 (7) (a)—

20 Omit “and the provisions of the Merit Protection Act”.

[1.24] Paragraph 115 (7) (b)—

Omit the paragraph.

[1.25] Paragraph 115 (7) (c)—

25 Insert “and the management standards” after “subject to paragraph (d)”.

[1.26] Subsection 139 (1) (definition of *Appeal Committee*)—

Omit the definition.

SCHEDULE 1—continued

[1.27] Subsections 139 (3), (4) and (5)—

Omit the subsections.

[1.28] Section 143, heading—

Omit the heading, substitute the following heading:

- 5 **“143 Reducing officer’s classification or retiring officer, other than for inefficiency or misconduct”.**

[1.29] Paragraph 143 (1) (b)—

Omit the paragraph.

[1.30] Paragraph 143 (7) (a)—

- 10 Add at the end “or”.

[1.31] Paragraphs 143 (7) (c) and (d)—

Omit the paragraphs.

[1.32] Subparagraph 144 (1) (a) (ii)—

Omit the subparagraph.

- 15 **[1.33] Paragraph 144 (6) (a)—**

Add at the end “or”.

[1.34] Paragraphs 144 (6) (c) and (d)—

Omit the paragraphs.

[1.35] Paragraph 222 (3) (b)—

- 20 Omit the paragraph, substitute the following paragraph:

“**(b) the applicant may make a request for review of the decision.**”

[1.36] Subsection 222 (4)—

Omit the subsection.

[1.37] Paragraph 251 (2) (m)—

- 25 Omit the paragraph, substitute the following paragraph:

“**(m) procedures for dealing with requests for review; and**”.

SCHEDULE 1—continued

[1.38] New Part 14—

After section 253 insert the following Part:

“PART 14—TRANSITIONAL

“254 Definitions

5 In this Part:

commencement means the time immediately before the commencement of the *Public Sector Management Amendment Act 2000* (1 January 2001).

10 *former Part 9* means Part 9 as it stood immediately before the commencement.

former Part 11 means Part 11 as it stood immediately before the commencement.

“255 Div 3.6 of the Interpretation Act modified

15 This Part applies despite Division 3.6 of the *Interpretation Act 1967* (Repeal, expiry, amendment and modification of Acts).

“256 Limits of the continued application of the former pt 9

20 “(1) The former Part 9 continues to apply in relation to conduct by an officer only if, at the commencement, an action or investigation had been started in relation to the conduct under the former Part 9, but not completed.

“(2) The former Part 9 ceases to apply in relation to the conduct mentioned in subsection (1) when there are no current actions or investigations under the former Part 9 in relation to the conduct.

“257 Application of new pt 9 to earlier conduct

25 Part 9 permits or requires a thing to be done in relation to actions or events before the commencement if and only if the former Part 9 would have permitted or required the thing to be done in relation to the actions or events.

SCHEDULE 1—continued

“258 Limits of the continued application of the former pt 11

5 “(1) The former Part 11 continues to apply in relation to an action or decision affecting an employee only if, at the commencement, the employee had lodged a request under the former Part 11 for a review of the decision or an investigation into the action, and further action in response to the request, including an appeal of any kind, was still possible.

“(2) The former Part 11 ceases to apply in relation to a decision or action mentioned in subsection (1) when the response and any appeals have been completed and no further appeal is possible as of right.

10 **“259 Application of new pt 11 to earlier decisions**

“(1) Subject to section 258, Part 11 applies in relation to decisions relating to the employment of an employee that were made before the commencement.

15 “(2) In applying Part 11 under subsection (1), in relation to a decision made under the former Part 9—

(a) if the decision could have been made under Part 9—the decision is taken to have been made under that Part; and

20 (b) if the decision could not have been made under Part 9—the relevant chief executive must either revoke the decision or vary it so that it complies with the Act.

“260 Expiry of Part

This Part ceases to operate on 31 December 2001.”.

[1.39] Schedules 1 and 2

Omit the Schedules.

25 **Renumbering—**

In the next republication of the Act, its divisions must be renumbered as permitted under section 13 of the *Legislation (Republication) Act 1996*.

SCHEDULE 2

(Sec 5 9)

**AMENDMENTS OF THE FIRE BRIGADE
(ADMINISTRATION) ACT 1974**

- 5 [2.1] **Section 3 (definitions of board, Merit Protection Act and
promotion appeal committee)—**
Omit the definitions.
- [2.2] **Paragraph 29 (3) (c)—**
Omit “appeal under section 33”, substitute “review under section
34”.
- 10 [2.3] **Paragraph 29B (7) (b)—**
Omit “appeal”, substitute “review under section 34”.
- [2.4] **Part 3, Division 5—**
Omit the Division, substitute the following Division:
- “Division 5—Obligations, discipline and review***
- 15 **“33 Obligations of a member of the brigade**
**“(1) Section 9 of the *Public Sector Management Act 1994* (General
obligations of public employees) applies as if—**
- (a) a reference to a public employee were a reference to a member of
the brigade; and
- 20 (b) paragraph 9 (h) were a requirement to comply with—
- (i) this Act; and
- (ii) all other laws of the Territory.
- 25 **“(2) A member of the brigade must act in accordance with the values and
principles set out in sections 6 to 8 of the *Public Sector Management Act*
1994.**
- “(3) Sections 242 to 250 of the *Public Sector Management Act 1994*
apply as if a reference to an officer or to a public employee were a
reference to a member of the brigade.**
- 30 **“(4) The management standards under the *Public Sector Management*
Act 1994 relating to Parts 2, 9, 11 and 13 of the Act apply as if a reference**

SCHEDULE 2—continued

to an officer or to a public employee were a reference to a member of the brigade.

“34 Inefficiency and misconduct

Part 9 of the *Public Sector Management Act 1994* (Inefficiency and
5 misconduct) applies as if—

- (a) a reference to an officer were a reference to a member of the brigade; and
- (b) a reference to the relevant chief executive were a reference to the chief executive of the department; and
- 10 (c) the reference in section 179 (definition of *misconduct*) to section 9 were a reference to section 33 of this Act.

“35 Review of employment decisions

Part 11 of the *Public Sector Management Act 1994* (Review of
employment decisions) applies as if—

- 15 (a) a reference to a public employee were a reference to a member of the brigade; and
- (b) a reference to an officer were a reference to a member of the brigade; and
- (c) a reference to a chief executive or to the relevant chief executive
20 were a reference to the chief executive of the department; and
- (d) a reference to a promotion decision were a reference to a decision by the fire commissioner to promote a member of the brigade to other employment in the brigade; and
- 25 (e) the reference in paragraph 237 (5) (a) to relative efficiency in accordance with paragraph 65 (1) (e) of the *Public Sector Management Act 1994* were a reference to relative suitability in accordance with paragraph 19A (2) (b) of this Act.”.

[2.5] Parts 4, 5 and 6—

Omit the Parts.

SCHEDULE 2—continued

[2.6] Sections 77 to 80—

Omit the sections.

Endnote

Act amended

- 1 Republished as in force on 30 June 1997. See also Acts 1997 No 74, 1998 No 54, 1999 Nos 55, 70 and 82.