

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Sector Bill 2014

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	3
Part 2	
Public sector standards	
5 Objects of Act	4
6 What is the <i>public sector</i> ?	4
7 What are <i>public sector values</i> ?	5
8 What are <i>public sector principles</i> ?	5

	Page
9 Public sector conduct	6
Part 3 Public Sector Standards Commissioner	
10 Appointment of commissioner	8
11 Functions of commissioner	8
12 Leave of absence for commissioner	9
13 Suspension and removal of commissioner	9
14 Ending commissioner's appointment without suspension	10
15 Arrangements for staff and facilities	11
16 Delegation by commissioner	11
17 Commissioner may make public sector standards	11
18 Establishment of joint council	12
Part 4 The public service	
Division 4.1 Service structure	
19 Establishment of the service	13
20 Structure of the service	13
Division 4.2 Head of service	
21 Appointment of head of service	14
22 Functions of head of service	15
23 Conditions of appointment of head of service	16
24 Delegation by head of service	17
Division 4.3 Directors-general and SES employees	
25 Functions of director-general	18
26 Delegation by director-general	19
27 Senior executive service	20
Part 5 Employment in the service	
Division 5.1 Management of employment matters	
28 Meaning of <i>employment matter</i> —pt 5	21
29 Meaning of <i>eligibility requirements</i> —pt 5	21
30 Head of service must manage employment matters	22

	Page
Division 5.2 Employment	
31 Head of service may employ a person	23
Division 5.3 Change in employment	
32 Head of service may change employee's job	24
33 Circumstances when head of service must change employee's job	25
34 Circumstances when head of service may change employee's job	26
35 Job changed by change in service structure	27
Division 5.4 Secondment	
36 Secondment to the service	27
37 Secondment of employee to another employer	28
Division 5.5 Suspension and end of employment	
38 Head of service may suspend employee	28
39 Head of service may end employee's employment	28
40 End of employment by resignation	29
41 End of employment by resignation—abandonment of employment	29
42 End of employment on agreed terms	30
43 Loss of eligibility requirement	30
44 Invalidity retirement	31
45 Payment at end of employment	31
Division 5.6 Re-employment	
46 Head of service may re-employ employee	32
Division 5.7 Public service employment	
47 Satisfactory performance	32
48 Disclosure of certain information	32
49 Repaying overpayment	33
50 Disciplinary action	33
51 Obligations of former employees	33
Part 6 Public sector members	
52 Meaning of <i>public sector member</i> etc	35
53 Public sector standards for public sector member	36
54 Certain statutory office-holders have pt 5 management powers	36
55 Alleged misconduct by statutory office-holder	37

Contents

	Page
56 Alleged mismanagement of public sector employer's staff	38
57 Prescribed public sector member	38
Part 7 Miscellaneous	
58 Approved forms	39
59 Regulation-making power	39
60 Authorisation to share protected information	40
Dictionary	42

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Sector Bill 2014

A Bill for

An Act about the values, principles, accountability and administration of the public sector

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Public Sector Act 2014*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see [Legislation](#)
11 [Act](#), s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 **3 Dictionary**

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

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

20 For example, the signpost definition '*eligibility requirements*, for a job,
21 for part 5 (Employment in the service)—see section 29.' means that the
22 term 'eligibility requirements' is defined in that section for part 5.

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

1 **4 Notes**

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

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

1 **Part 2 Public sector standards**

2 **5 Objects of Act**

3 The main objects of this Act are to—

- 4 (a) establish and maintain an apolitical public sector with clear
5 values, clear standards of conduct and a best practice focus;
6 and
- 7 (b) establish and maintain a public service that assists the
8 Executive to meet the needs of the community and serves the
9 community on behalf of the Executive; and
- 10 (c) promote and uphold the public sector values, standards of
11 conduct and best practice focus.

12 *Note 1* The [Fair Work Act 2009](#) (Cwlth) and industrial instruments apply to the
13 employment of an employee and, to the extent of any inconsistency
14 between this Act and that Commonwealth law, the Commonwealth law
15 prevails to the extent of any inconsistency.

16 *Note 2* A reference to an Act includes a reference to the statutory instruments
17 made or in force under the Act, including any regulation (see
18 [Legislation Act](#), s 104).

19 **6 What is the *public sector*?**

20 In this Act:

21 *public sector* means the following:

- 22 (a) the service;
- 23 (b) public sector members.

1 **7 What are *public sector values*?**

2 (1) The *public sector values* are—

- 3 (a) respect; and
4 (b) integrity; and
5 (c) collaboration; and
6 (d) innovation.

7 (2) The public sector values must be—

- 8 (a) demonstrated by an employee when acting in connection with
9 the employee's job; and
10 (b) applied in a way that is appropriate to the employee's job; and
11 (c) used to inform and evaluate the operation of the public sector.

12 **8 What are *public sector principles*?**

13 (1) The *public sector principles* are—

- 14 (a) the best practice principle; and
15 (b) the merit and equity principle.

16 (2) An employee must do the employee's job in accordance with the
17 best practice principle.

18 (3) The head of service must exercise a function under this Act in
19 accordance with the merit and equity principle.

20 (4) In this section:

21 *best practice principle*—an employee does the employee's job in
22 accordance with the *best practice principle* if the employee—

- 23 (a) works efficiently, effectively and constructively; and
24 (b) is responsive and accountable; and
25 (c) makes fair and reasonable decisions.

1 *merit and equity principle*—the head of service exercises a function
2 under this Act in accordance with the *merit and equity principle* if
3 the head of service—

4 (a) is an equitable employer; and

5 (b) employs a person in a job who is best able to do the job in all
6 the circumstances.

7 **9 Public sector conduct**

8 (1) An employee must—

9 (a) take all reasonable steps to avoid a conflict of interest; and

10 (b) declare or manage a conflict of interest that cannot reasonably
11 be avoided; and

12 (c) when acting in connection with the employee's job—

13 (i) comply with laws applying in the Territory; and

14 (ii) comply with any lawful and reasonable direction given by
15 a person with the authority to give the direction; and

16 (iii) if dealing with a member of the public—make all
17 reasonable efforts to help the person to understand the
18 person's entitlements, and any requirement the person is
19 obliged to meet, under a territory law; and

20 (iv) treat all people with courtesy and sensitivity to their rights
21 and aspirations; and

22 (d) do the employee's job with reasonable care and diligence,
23 impartiality and honesty.

24 (2) An employee must not—

25 (a) damage the reputation of the public sector or the Executive; or

26 (b) take improper advantage of the employee's job or information
27 gained through the employee's job; or

1 (c) improperly use a Territory resource, including information,
2 accessed through the employee's job; or

3 (d) without lawful authority—

4 (i) disclose confidential information gained through the
5 employee's job; or

6 *Note* The *Crimes Act 1900*, s 153 (1) makes it an offence for an
7 employee to disclose information that it is the employee's
8 duty not to disclose.

9 (ii) make a comment that reasonably appears to be an official
10 comment; or

11 (e) when acting in connection with the employee's job—bully,
12 harass or intimidate anyone; or

13 (f) when doing the employee's job—apply improper influence,
14 favouritism or patronage.

15 (3) For a misconduct procedure, failing to act in a way that is consistent
16 with subsection (1) or (2) may be misconduct.

17 *Note* A **misconduct procedure** means a procedure set out in an industrial
18 instrument or prescribed by regulation (see dict, def **misconduct**
19 **procedure**).

20 (4) An employee (a **discloser**) must tell the following person about any
21 maladministration or misconduct by another employee of which the
22 discloser becomes aware:

23 (a) the head of service;

24 (b) if the alleged maladministration or misconduct is by the head
25 of service—the commissioner.

26 (5) This section does not—

27 (a) affect the operation of any other Act; or

28 (b) create or affect any other legal right.

Part 3 Public Sector Standards Commissioner

10 Appointment of commissioner

- (1) The Chief Minister must appoint a person as the Public Sector Standards Commissioner (the *commissioner*).

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).

- (2) If an employee is appointed as the commissioner, the employee must resign from the service before the appointment commences.

- (3) An appointment must be for a period of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (4) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to the appointment of a person as commissioner.

- (5) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

11 Functions of commissioner

The commissioner has the following functions:

- (a) to advise the Chief Minister on the management of the public sector as a whole;
- (b) to promote, uphold and provide advice about the public sector values, the public sector principles and the conduct required under this Act;

1 (c) to develop, oversee the implementation of and coordinate
2 strategies to ensure the Territory is an equitable employer;

3 (d) to conduct investigations about the management of an
4 employee in the way prescribed by regulation;

5 (e) to provide advice about the movement of a public sector
6 member within the public sector;

7 (f) to exercise any function given to the commissioner under this
8 Act or another law applying in the territory.

9 *Note 1* **Function** includes authority, duty and power (see [Legislation Act](#), dict,
10 pt 1).

11 *Note 2* A provision of a law that gives an entity (including a person) a function
12 also gives the entity powers necessary and convenient to exercise the
13 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

14 **12 Leave of absence for commissioner**

15 The Chief Minister may approve, in writing, leave of absence for the
16 commissioner on the terms the Chief Minister decides in writing.

17 **13 Suspension and removal of commissioner**

18 (1) The Chief Minister may suspend the commissioner—

19 (a) for alleged misconduct; or

20 (b) for physical or mental incapacity, if the incapacity affects the
21 commissioner's ability to exercise a function; or

22 (c) if the commissioner is convicted, or found guilty, in the ACT
23 of an offence punishable by imprisonment for at least 1 year;
24 or

25 (d) if the commissioner is convicted, or found guilty, outside the
26 ACT of an offence that, if it had been committed in the ACT,
27 would be punishable by imprisonment for at least 1 year.

28 *Note* **Found guilty**—see the [Legislation Act](#), dictionary, pt 1.

- 1 (2) The Chief Minister must present the Legislative Assembly with a
2 statement of the reasons for the suspension not later than the
3 first sitting day after the day the commissioner is suspended.
- 4 (3) If, not later than 6 sitting days after the day the statement is
5 presented, the Legislative Assembly resolves to require the Chief
6 Minister to end the commissioner's appointment, the Chief Minister
7 must end the commissioner's appointment.
- 8 (4) The commissioner's suspension ends—
- 9 (a) if the Chief Minister does not comply with subsection (2)—at
10 the end of the day the Chief Minister should have presented to
11 the Legislative Assembly the statement mentioned in that
12 subsection; or
- 13 (b) if the Assembly does not pass a resolution mentioned in
14 subsection (3) before the end of the 6 sitting days—at the end
15 of the 6th sitting day.
- 16 *Note* An appointment also ends if the appointee resigns (see [Legislation Act](#),
17 s 210).
- 18 (5) The commissioner is entitled to be paid salary and allowances while
19 suspended.

20 **14 Ending commissioner's appointment without suspension**

- 21 (1) The Chief Minister must end the commissioner's appointment if the
22 commissioner—
- 23 (a) becomes bankrupt or personally insolvent; or
- 24 (b) is absent, other than on approved leave, for 14 consecutive
25 days or for 28 days in any 12-month period.
- 26 (2) The Chief Minister may, with the consent of the commissioner, end
27 the commissioner's appointment on the ground of physical or
28 mental incapacity.

1 **15 Arrangements for staff and facilities**

2 The commissioner may make arrangements with the head of service
3 to use the services of employees or Territory facilities.

4 *Note* The head of service may delegate powers in relation to the management
5 of employees to the commissioner (see s 24).

6 **16 Delegation by commissioner**

7 (1) The commissioner may—

8 (a) delegate to an employee or another person a function under this
9 Act or any other law applying in the territory; or

10 (b) subdelegate to an employee or another person a function
11 delegated to the commissioner under a law other than this Act.

12 *Note* For the making of delegations and the exercise of a delegated function,
13 see the [Legislation Act](#), pt 19.4.

14 (2) However, the commissioner must not delegate or subdelegate a
15 function to a person who is not an employee unless the
16 commissioner considers that the tasks to be undertaken by the
17 person require the exercise of the function.

18 **17 Commissioner may make public sector standards**

19 (1) The commissioner may make standards (the *public sector*
20 *standards*) about the following:

21 (a) the public sector values;

22 (b) the public sector principles;

23 (c) strategies to ensure the Territory is an equitable employer;

24 (d) the conduct required under this Act;

25 (e) strategies designed to eliminate disadvantage in relation to
26 public sector employment;

27 (f) a matter prescribed by regulation.

- 1 (2) The commissioner may make a standard declaring that a day will be
2 a holiday for all or part of the public sector.
- 3 (3) A standard may only be made—
4 (a) in consultation with the head of service; and
5 (b) with the written approval of the Chief Minister.
- 6 (4) A standard is a notifiable instrument.

7 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

8 **18 Establishment of joint council**

- 9 (1) The commissioner must establish a consultative forum for the
10 service and an employee organisation (the *joint council*).

11 *Note* **Establish** includes constitute and continue in existence (see [Legislation](#)
12 [Act](#), dict, pt 1).

- 13 (2) The joint council must operate in accordance with terms of
14 reference approved by the commissioner and agreed by the head of
15 service.

- 16 (3) The terms of reference are a notifiable instrument.

17 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

Part 4 The public service

Division 4.1 Service structure

19 Establishment of the service

- (1) The Australian Capital Territory Public Service (the *service*) is established.

Note *Established* includes constitute and continue in existence (see [Legislation Act](#), dict, pt 1, def *establish*).

- (2) The service is made up of—

- (a) the head of service; and
- (b) employees.

Note An employee includes a director-general and an SES employee.

- (3) The service acts on behalf of the Executive.

20 Structure of the service

- (1) For the [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cwlth), section 43 (1) the Chief Minister may make a determination allocating responsibility to a Minister in relation to the following matters:

- (a) governing the Territory in relation to a stated matter;
- (b) an Act;
- (c) the Executive's powers under a Commonwealth law;
- (d) prerogatives of the Crown for the matters mentioned in paragraphs (a) to (c).

- (2) The Chief Minister must determine which part of the service (a *directorate*) is responsible for a matter mentioned in subsection (1).

- 1 (3) For the [Australian Capital Territory \(Self-Government\) Act 1988](#)
2 (Cwlth), section 43 (2) any Minister is authorised to act on the
3 Chief Minister’s behalf or on behalf of another Minister.
- 4 (4) Subsection (3) is subject to the [Legislation Act](#), section 41 (Making
5 of certain statutory instruments by Executive).
- 6 (5) A determination is a notifiable instrument.
- 7 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

8 **Division 4.2 Head of service**

9 **21 Appointment of head of service**

- 10 (1) The Chief Minister must appoint a person as the Head of Service.
- 11 *Note 1* For the making of appointments (including acting appointments), see
12 the [Legislation Act](#), pt 19.3.
- 13 *Note 2* In particular, an appointment may be made by naming a person or
14 nominating the occupant of a position (see [Legislation Act](#), s 207) and
15 the power to appoint a person includes the power to end the
16 appointment (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).
- 17 (2) An appointment must be for a period of not longer than 5 years.
- 18 *Note* A person may be reappointed to a position if the person is eligible to be
19 appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1,
20 def *appoint*).
- 21 (3) The Chief Minister must present a copy of the instrument appointing
22 the head of service to the Legislative Assembly within 6 sitting days
23 of it being made.
- 24 (4) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly
25 consultation) does not apply to the appointment of a person as head
26 of service.
- 27 (5) An appointment is a notifiable instrument.
- 28 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

22 Functions of head of service

(1) The head of service—

- (a) is responsible for the leadership and management of the service; and
- (b) is answerable to the Chief Minister.

(2) The head of service has the following leadership functions:

- (a) to develop, oversee the implementation of, coordinate and provide advice and reports to the Chief Minister about whole-of-government strategies;
- (b) to provide direction across the service in relation to critical or potentially critical issues;
- (c) to promote cooperation and collegiality within and between directorates;
- (d) to promote and uphold in the service the public sector values, the public sector principles and the conduct required of an employee, including by personal example;
- (e) any other function given to the head of service by the Chief Minister.

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

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

(3) The head of service has the following management functions:

- (a) to employ people on behalf of the Territory in accordance with the merit and equity principle;
- (b) to organise employees in the service;

Note Subsection (4) sets out requirements for the organisation of the service.

- 1 (c) to manage how an employee does the employee's job;
- 2 (d) to provide advice and reports to the Chief Minister about
- 3 employment in the service;
- 4 (e) any other function given to the head of service by the
- 5 Chief Minister.
- 6 (4) For subsection (3) (b), the organisation of the service must—
- 7 (a) give effect to the service structure determined under
- 8 section 20; and
- 9 (b) enable efficient and effective management of the service; and
- 10 (c) promote the administration of the service in a way that is
- 11 consistent with the public sector values, the public sector
- 12 principles and the conduct required of an employee.

13 **23 Conditions of appointment of head of service**

- 14 (1) The conditions of appointment of the head of service are—
- 15 (a) any term set out in the head of service's instrument of
- 16 appointment; and
- 17 (b) the relevant part 5 conditions.
- 18 (2) In this section:
- 19 *relevant part 5 conditions* means the relevant provisions read—
- 20 (a) as if a reference to—
- 21 (i) the head of service is a reference to the Chief Minister;
- 22 and
- 23 (ii) the employment of a person is a reference to the
- 24 appointment of the head of service; and
- 25 (iii) an employee is a reference to the head of service; and
- 26 (b) with any other necessary change.

1 *relevant provisions* means—

- 2 (a) section 31 (Head of service may employ a person); and
3 (b) division 5.3 (Change in employment); and
4 (c) division 5.5 (Suspension and end of employment); and
5 (d) division 5.7 (Public service employment).

6 **24 Delegation by head of service**

7 (1) The head of service may—

- 8 (a) delegate to an employee or another person a function under this
9 Act (other than a function under section 42 (End of
10 employment on agreed terms)) or any other law applying in the
11 territory; or
12 (b) subdelegate to an employee or another person a function
13 delegated to the head of service under this Act or any other law
14 applying in the territory.

15 *Note* For the making of delegations and the exercise of a delegated function,
16 see the [Legislation Act](#), pt 19.4.

17 (2) However, the head of service must not delegate or subdelegate a
18 function to a person who is not an employee without first being
19 satisfied that the tasks to be undertaken by the person require the
20 exercise of the function.

Division 4.3 Directors-general and SES employees

25 Functions of director-general

(1) A director-general is—

- (a) responsible for leadership of a directorate and leadership in the service; and
- (b) answerable to the Minister responsible for the directorate and to the head of service.

Note A directorate may be responsible for matters allocated to more than 1 Minister (see dict, def **Minister**).

(2) A director-general has the following directorate functions:

- (a) to provide advice and reports to the Minister responsible for the directorate and the head of service on matters relating to the directorate;
- (b) to manage the business of the directorate;
- (c) any other function given to the director-general—
 - (i) by the Minister responsible for the directorate; or
 - (ii) by the head of service; or
 - (iii) under this Act or another territory law;
- (d) to exercise a function mentioned in paragraphs (a) to (c) taking into account the responsibilities of the government as a whole, including by collaborating with other directors-general.

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

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def **entity**).

- 1 (3) A director-general has the following leadership functions:
- 2 (a) to provide advice to the head of service about the development
- 3 and coordination of whole-of-government strategies;
- 4 (b) to lead the implementation of whole-of-government strategies;
- 5 (c) to implement, at the direction of the head of service—
- 6 (i) strategies for the administration of the service; and
- 7 (ii) responses to critical or potentially critical issues;
- 8 (d) to work efficiently, effectively and constructively with other
- 9 directors-general to ensure a whole-of-government focus and
- 10 promote cooperation and collegiality within and between
- 11 directorates;
- 12 (e) to promote and uphold in the service the public sector values,
- 13 the public sector principles and the conduct required of an
- 14 employee, including by personal example;
- 15 (f) any other function given to the director-general by—
- 16 (i) the Minister responsible for the directorate; or
- 17 (ii) the head of service.

18 **26 Delegation by director-general**

- 19 (1) A director-general may—
- 20 (a) delegate to an employee or another person a function under this
- 21 Act or any other law applying in the territory; or
- 22 (b) subdelegate to an employee or another person a function
- 23 delegated to the director-general under this Act or any other
- 24 law applying in the territory.

25 *Note* For the making of delegations and the exercise of a delegated function,

26 see the [Legislation Act](#), pt 19.4.

- 1 (2) However, a director-general must not delegate or subdelegate a
2 function to a person who is not an employee without first being
3 satisfied that the tasks to be undertaken by the person require the
4 exercise of the function.

5 **27 Senior executive service**

- 6 (1) The senior executive service is made up of SES employees.
- 7 (2) An SES employee—
- 8 (a) is responsible for leadership in the service; and
- 9 (b) is answerable to the head of service and the director-general for
10 the directorate in which the SES employee is employed.
- 11 (3) An SES employee has the following leadership functions:
- 12 (a) to advance whole-of-government strategies as part of the senior
13 executive service;
- 14 (b) to promote and demonstrate cooperation and collegiality within
15 and between directorates;
- 16 (c) to promote and uphold in the service the public sector values,
17 the public sector principles and the conduct required of an
18 employee, including by personal example;
- 19 (d) any other function given to the SES employee by—
- 20 (i) the head of service; or
- 21 (ii) the director-general for the directorate in which the SES
22 employee is employed.

23 *Note 1 **Function** includes authority, duty and power (see [Legislation Act](#), dict,
24 pt 1).*

25 *Note 2 A provision of a law that gives an entity (including a person) a function
26 also gives the entity powers necessary and convenient to exercise the
27 function (see [Legislation Act](#), s 196 and dict, pt 1, def **entity**).*

- (a) the employment of a person in a job; or
- (b) a change to an employee's job; or
- (c) the end of an employee's employment.

(b) is capable of—

(i) upholding the public sector values; and

(ii) exercising each function assigned to the job in accordance with the best practice principle; and

(iii) acting consistently with section 9 (Public sector conduct); and

(c) holds all qualifications required to lawfully exercise every function assigned to the job; and

(d) meets any requirement prescribed by regulation.

Note The power to make a regulation includes the power to make different provisions that apply differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

(2) In this section:

qualification includes the following:

(a) an academic qualification;

(b) an apprenticeship;

(c) a licence;

(d) membership of a professional body;

(e) a registration;

(f) a security clearance.

30 Head of service must manage employment matters

(1) The head of service must manage an employment matter in accordance with—

(a) the public sector principles; and

(b) any requirement prescribed by regulation; and

(c) any relevant industrial instrument.

- 1 (2) For the management of employment matters, the head of service
2 must make and keep a record for the service of—
3 (a) employees; and
4 (b) decisions made in relation to an employment matter; and
5 (c) information prescribed by regulation about the management of
6 employment matters.
7 (3) A regulation may prescribe a requirement in relation to the
8 publication of a record, or part of a record, made under
9 subsection (2).

10 **Division 5.2 Employment**

11 **31 Head of service may employ a person**

- 12 (1) The head of service may employ a person on behalf of the Territory
13 in a job.
14 (2) The head of service may only employ a person in a job—
15 (a) if the person meets the eligibility requirements for the job; and
16 (b) in accordance with the following:
17 (i) a selection process;
18 (ii) any requirement prescribed by regulation; and
19 (c) for a director-general—if the head of service has consulted
20 with the Chief Minister and the Minister responsible for the
21 directorate.

22 *Note* The head of service must employ a person in accordance with the merit
23 and equity principle (see s 8 (3)).

- 1 (3) The head of service may employ a person subject to a probation
2 period applying from the start of the person's employment.

3 *Note* An industrial instrument may set out circumstances when the head of
4 service may, must or must not employ a person subject to a probation
5 period.

6 **Division 5.3 Change in employment**

7 **32 Head of service may change employee's job**

- 8 (1) The head of service may make a permanent or temporary change to
9 an employee's job—

10 (a) in accordance with any requirement or notice period—

11 (i) prescribed by regulation; or

12 (ii) set out in an industrial instrument; and

13 (b) in 1 or more of the following ways:

14 (i) assigning a new function to the employee;

15 (ii) ending the assignment of a function to the employee;

16 (iii) changing 1 or more of the following:

17 (A) the directorate in which the employee is employed;

18 (B) the employee's classification;

19 (C) the employee's salary;

20 (D) the hours the employee is employed to work;

21 (E) the period for which the employee is employed;

22 (F) any SETs prescribed by regulation.

23 *Note* An industrial instrument may set out circumstances when the head of
24 service may, must or must not change an employee's job.

- 1 (2) The head of service—
- 2 (a) must be satisfied that making the change is consistent with the
- 3 public sector principles; and
- 4 (b) may only—
- 5 (i) change an employee's job if the employee meets the
- 6 eligibility requirements for the new job; and
- 7 (ii) change a director-general's job if the head of service has
- 8 consulted with the Chief Minister and the Minister
- 9 responsible for the directorate.
- 10 (3) To change an employee's job, the head of service must state the new
- 11 SETs in writing.

12 **33 Circumstances when head of service must change**

13 **employee's job**

14 The head of service must change an employee's job if—

- 15 (a) the employee can no longer be employed in the employee's job
- 16 and the head of service is able to give the employee another
- 17 suitable job; or
- 18 (b) if a regulation prescribes, or an industrial instrument sets out,
- 19 that an employee's job must be changed in certain
- 20 circumstances—the prescribed circumstances are met.

21 **Example—par (a)**

22 Eunice's job requires her to drive. Eunice acquires a disability that prevents her

23 from holding a driver licence. The head of service changes her job so that she

24 could do work that did not require her to drive. None of Eunice's other SETs are

25 changed.

26 *Note 1* An employee's job may be changed by changing 1 or more SETs (see

27 s 32 (1) (b)).

28 *Note 2* An example is part of the Act, is not exhaustive and may extend, but

29 does not limit, the meaning of the provision in which it appears (see

30 [Legislation Act](#), s 126 and s 132).

1 **34 Circumstances when head of service may change**
2 **employee's job**

3 The head of service may change an employee's job if—

- 4 (a) the employee, in writing, asks for the change and the head of
5 service is satisfied the request is reasonable; or
- 6 (b) the head of service is satisfied the change is required for the
7 efficient and effective management of the service; or
- 8 (c) the employee is selected for another job in accordance with a
9 selection process.

10 **Example—par (a)**

11 Gillian asks to change from full-time to part-time employment.

12 **Example—par (b)**

13 John has expertise that is relevant to an emerging critical issue. John's directorate
14 and functions are changed when he is moved to a whole-of-government taskforce
15 to address the issue. None of John's other SETs are changed.

16 **Example—par (c)**

17 Barlow, a part-time, temporary employee, is selected for a full-time, permanent
18 job in a different directorate, at a different classification. All of Barlow's SETs
19 are changed.

20 *Note 1* An employee's job may be changed by changing 1 or more SETs (see
21 s 32 (1) (b)).

22 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 [Legislation Act](#), s 126 and s 132).

1 **35 Job changed by change in service structure**

- 2 (1) This section applies if the Chief Minister makes a change to the
3 service structure under section 20 (2).
- 4 (2) The head of service may make 1 or more of the following changes
5 to the employee's job:
- 6 (a) assign a new function to an employee;
- 7 (b) end the assignment of a function to an employee;
- 8 (c) change the directorate in which an employee is employed.

9 **Division 5.4 Secondment**

10 **36 Secondment to the service**

- 11 (1) The head of service may approve the secondment of a person to the
12 service.
- 13 (2) The person on secondment must exercise a function assigned to the
14 person while on secondment in accordance with this Act and any
15 other law applying in the territory.
- 16 (3) A person on secondment is taken to be an employee for section 7
17 (What are *public sector values*?), section 8 (What are *public sector*
18 *principles*?) and section 9 (Public sector conduct).
- 19 (4) In this section:
- 20 *secondment*, of a person to the service, means a written arrangement
21 between the Territory and the employer of the person, under which
22 the person works in the public sector as if the person was employed
23 by the Territory.

- 1 **37 Secondment of employee to another employer**
- 2 (1) The head of service may approve the secondment of an employee to
- 3 another employer.
- 4 (2) Any function lawfully exercised by an employee on secondment
- 5 will not contravene this Act or another territory law if the function is
- 6 exercised in the way the employee is lawfully directed to exercise it.
- 7 (3) In this section:
- 8 *secondment*, of an employee to another employer, means a written
- 9 arrangement between the Territory and the other employer, under
- 10 which the employee exercises a function for the other employer as if
- 11 the employee was employed by the other employer.

12 **Division 5.5 Suspension and end of employment**

- 13 **38 Head of service may suspend employee**
- 14 The head of service may suspend an employee's employment with
- 15 pay or without pay in accordance with any requirement—
- 16 (a) prescribed by regulation; or
- 17 (b) set out in an industrial instrument.
- 18 **39 Head of service may end employee's employment**
- 19 The head of service may on behalf of the Territory end an
- 20 employee's employment in accordance with any requirement or
- 21 notice period prescribed by regulation or set out in an industrial
- 22 instrument—
- 23 (a) under section 43 (Loss of eligibility requirement); or
- 24 (b) under section 44 (Invalidity retirement); or
- 25 (c) if a misconduct procedure finds the disciplinary action to be
- 26 taken is to end the employee's employment; or

- 1 (d) if the employee fails to meet a performance expectation
2 applying to the employee; or

3 *Note* **Performance expectation**—see s 47.

- 4 (e) if the employee's job is no longer required for the efficient and
5 effective operation of the service—if the head of service is
6 unable to give the employee another suitable job; or

7 *Note* An industrial instrument may set out a redundancy process or
8 requirement.

- 9 (f) if the employee is employed on probation and fails to comply
10 with a requirement of the probation; or

- 11 (g) if the employee is employed on a temporary basis (other than
12 in a circumstance prescribed by regulation)—at any time.

13 *Note* An industrial instrument may set out circumstances when the head of
14 service may, must or must not end an employee's employment.

15 **40 End of employment by resignation**

- 16 (1) An employee's employment ends if, in accordance with any notice
17 period prescribed by regulation or set out in an industrial instrument,
18 the employee tells the head of service, in writing, that the employee
19 resigns.

- 20 (2) The employee may only withdraw the employee's resignation with
21 the approval of the head of service.

22 **41 End of employment by resignation—abandonment of**
23 **employment**

- 24 (1) This section applies if the head of service is reasonably satisfied an
25 employee has abandoned the employee's employment because—

- 26 (a) the employee has been absent for—

27 (i) 14 consecutive days; or

28 (ii) 28 days in a 12-month period; and

- 1 (b) the employee—
2 (i) fails to seek approval for the absence; and
3 (ii) fails to give a reasonable explanation for the absence; and
4 (iii) does not indicate an intention to return to work within a
5 reasonable time.
- 6 *Note* **Fail** includes refuse (see [Legislation Act](#), dict, pt 1).
- 7 (2) For subsection (1) (b), another person may seek approval, give an
8 explanation or indicate an intention on behalf of an employee if the
9 employee is not able to do it.
- 10 (3) An employee's employment ends if—
11 (a) the head of service follows the process prescribed by
12 regulation; and
13 (b) after following the prescribed process, the head of service
14 remains satisfied that the employee has abandoned the
15 employee's employment.

16 **42 End of employment on agreed terms**

17 An employee's employment may be ended on terms agreed at any
18 time between the head of service and the employee.

19 **43 Loss of eligibility requirement**

20 The head of service must end an employee's employment if—

- 21 (a) the employee no longer meets the eligibility requirements for
22 the employee's job; and
23 (b) the head of service is unable to give the employee another
24 suitable job.

1 **44 Invalidity retirement**

- 2 (1) The head of service may end an employee's employment if the
3 employee is unable to do the employee's job because of physical or
4 mental incapacity.
- 5 (2) However, the head of service may only end an employee's
6 employment because of physical or mental incapacity if—
- 7 (a) for an eligible employee under the *Superannuation Act 1976*
8 (Cwlth)—the requirements for invalidity retirement under that
9 Act are met; or
- 10 (b) for a member of the superannuation scheme established under
11 the *Superannuation Act 1990* (Cwlth)—the requirements for
12 invalidity retirement under that Act are met; or
- 13 (c) for an ordinary employer sponsored member of the PSSAP
14 within the meaning of the *Superannuation Act 2005* (Cwlth)—
15 the requirements for invalidity retirement under that Act are
16 met; or
- 17 (d) for a member of a superannuation scheme declared by the head
18 of service—the requirements for invalidity retirement under
19 the scheme are met.
- 20 (3) A declaration is a notifiable instrument.

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

22 **45 Payment at end of employment**

23 If an employee's employment ends, the head of service must pay, or
24 withhold from, the employee any amount prescribed by regulation
25 or set out in an industrial instrument.

1 **Division 5.6 Re-employment**

2 **46 Head of service may re-employ employee**

- 3 (1) The head of service may re-employ a person on behalf of the
4 Territory in a job.
- 5 (2) The head of service may only re-employ a person in a job—
- 6 (a) if the person meets the eligibility requirements for the job; and
- 7 (b) in the circumstances prescribed by regulation; and
- 8 (c) in accordance with any requirement prescribed by regulation.

9 **Division 5.7 Public service employment**

10 **47 Satisfactory performance**

- 11 The head of service may—
- 12 (a) decide expectations for how an employee does an employee's
13 job (a *performance expectation*); and
- 14 (b) manage an employee's performance in accordance with any
15 process prescribed by regulation or set out in an industrial
16 instrument.

17 **48 Disclosure of certain information**

- 18 (1) An employee must give the head of service information about—
- 19 (a) a change in the employee's circumstances that affects the
20 employee's ability to meet the eligibility requirements for the
21 employee's job; and
- 22 *Note* If an employee no longer meets an eligibility requirement for the
23 employee's job, the employee's job may be changed under s 33 or
24 the employee's employment may be ended under s 39.
- 25 (b) employment outside the service as prescribed by regulation;
26 and

(c) any matter prescribed by regulation.

- (2) For a misconduct procedure, failing to disclose information in accordance with this section may be misconduct.

Note *Fail* includes refuse (see [Legislation Act](#), dict, pt 1).

49 Repaying overpayment

An employee must repay any amount paid by the Territory to the employee to which the employee is not legally entitled.

50 Disciplinary action

- (1) For a misconduct procedure, a regulation may prescribe a disciplinary action that must be taken by the head of service.

Note An industrial instrument may set out a disciplinary action for a misconduct procedure.

- (2) If the head of service must take a disciplinary action, the head of service must take the action in accordance with—

- (a) the industrial instrument; and
- (b) anything else prescribed by regulation.

51 Obligations of former employees

- (1) This section applies to an employee after an employee's employment ends.

- (2) The former employee must not—

- (a) without lawful authority, disclose confidential information gained as a result of the employee's employment; or

Note The [Crimes Act 1900](#), s 153 (2) makes it an offence for a former employee to disclose information that it is the member's duty not to disclose.

- (b) take improper advantage of information gained as a result of the employee's employment.

Part 5 Employment in the service
Division 5.7 Public service employment

Section 51

- 1 (3) The former employee must repay any amount paid by the Territory
2 to the former employee to which the former employee is not legally
3 entitled.

Part 6 Public sector members

52 Meaning of *public sector member* etc

(1) In this Act:

public sector member—

(a) means the following:

(i) a statutory office-holder;

Note 1 *Statutory office-holder*—see the [Legislation Act](#), dictionary, pt 1.

Note 2 A statutory office-holder may also be an employee.

(ii) a person employed by a statutory office-holder;

(iii) if a statutory office-holder enters into an arrangement with the head of service under a territory law for the use of the services of an employee—the employee; but

(b) does not include the following:

(i) the Chief Justice, a judge or the master;

(ii) the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate;

(iii) a person mentioned in paragraph (a) to the extent that the person exercises a judicial function;

(iv) an ACAT tribunal member to the extent that the member exercises a function in relation to a hearing of a proceeding before the ACAT;

(v) a person prescribed by regulation.

Note A regulation may prescribe that a person is a public sector member (see s 57).

- 1 (2) In this part:
2 *employ*, includes appoint or engage.

3 **53 Public sector standards for public sector member**

4 Part 2 (Public sector standards) applies to a public sector member to
5 the extent that the application of part 2 is consistent with the
6 exercise of the member's functions.

7 **Example**

8 A public sector member has a function under an Act that requires the member to
9 report to the Legislative Assembly on the Territory's compliance with certain
10 territory laws and to advocate for compliance with the laws. The member tables a
11 report in the Assembly that identifies non-compliance by the Territory. The
12 member does not fail to comply with s 9 (2) (a) which is about damage to the
13 reputation of the public sector or the Executive by tabling the report or publicly
14 commenting on the report.

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

18 **54 Certain statutory office-holders have pt 5 management**
19 **powers**

- 20 (1) This section applies if a territory law states that—
21 (a) a statutory office-holder (a *public sector employer*) may
22 employ staff; and
23 (b) the staff must be employed under this Act.
24 (2) Part 5 applies to the public sector employer as if—
25 (a) a reference to the head of service is taken to be a reference to
26 the public sector employer, to the extent that the application of
27 part 5 is consistent with the exercise of the statutory
28 office-holder's functions; and
29 (b) a reference to an employee is taken to be a reference to a
30 public sector employer's staff member; and

- 1 (c) a reference to an employee's job is a reference to the staff
2 member's terms of employment; and
- 3 (d) any other necessary change is made.
- 4 (3) The public sector employer—
- 5 (a) must give the head of service any information about a staff
6 member that is requested by the head of service and relevant to
7 a record mentioned in section 30 (2); and
- 8 (b) may exercise a function under an industrial instrument in
9 relation to a staff member, as if the public sector employer
10 were the head of service; and
- 11 (c) unless otherwise stated in a territory law—may delegate a
12 function under this part to the following:
- 13 (i) a staff member;
- 14 (ii) an employee;
- 15 (iii) the head of service.

16 **55 Alleged misconduct by statutory office-holder**

- 17 (1) For alleged misconduct by a statutory office-holder, the
18 commissioner must investigate the allegation if requested to do so
19 by the person with responsibility for appointing the statutory
20 office-holder (the *appointer*).

21 *Note* If an industrial instrument covers a statutory office-holder's staff the
22 industrial instrument may include procedures for misconduct.

- 23 (2) The commissioner, unless otherwise stated, in writing, by the
24 appointer—

- 25 (a) must investigate the alleged misconduct in the same way
26 alleged misconduct would be investigated by the commissioner
27 under this Act; and

- 1 (b) has the same powers to investigate the alleged misconduct as
2 the commissioner has to investigate alleged misconduct by an
3 employee.

4 *Note* A reference to an Act includes a reference to the statutory instruments
5 made or in force under the Act, including any regulation (see
6 [Legislation Act](#), s 104).

7 **56 Alleged mismanagement of public sector employer's staff**

8 If the commissioner receives a complaint about the management of
9 a public sector employer's staff (a *management matter*), the
10 commissioner—

- 11 (a) must investigate the management matter in the same way a
12 management matter in the service would be investigated by the
13 commissioner under this Act; and
14 (b) has the powers given to the commissioner under this Act to
15 investigate a management matter in relation to a staff member
16 as if the member was an employee.

17 *Note* A reference to an Act includes a reference to the statutory instruments
18 made or in force under the Act, including any regulation (see
19 [Legislation Act](#), s 104).

20 **57 Prescribed public sector member**

21 A regulation may prescribe—

- 22 (a) that a person is a public sector member (a *prescribed public*
23 *sector member*); and
24 (b) that all or part of part 5 applies to a person employing a
25 prescribed public sector member; and
26 (c) procedures in relation to alleged misconduct by a prescribed
27 public sector member; and
28 (d) procedures in relation to alleged mismanagement of a
29 prescribed public sector member.

Part 7 Miscellaneous

58 Approved forms

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

Note For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

59 Regulation-making power

- (1) The Executive may make regulations for this Act about the following:
 - (a) the public sector values;
 - (b) the public sector principles;
 - (c) public sector conduct;
 - (d) the appointment or a function of the commissioner;
 - (e) the structure and organisation of the service;
 - (f) employment in the service including employment matters, jobs, SETs, eligibility requirements, employee wellbeing and employee performance;
 - (g) a whole-of-government strategy;
 - (h) management and administration in the public sector;
 - (i) terms of employment, appointment or engagement for a public sector member;

- 1 (j) secondment to or from the public sector.
- 2 *Note* A regulation must be notified, and presented to the Legislative
3 Assembly, under the [Legislation Act](#).
- 4 (2) A regulation may apply, adopt or incorporate a law of another
5 jurisdiction or an instrument, or a provision of a law of another
6 jurisdiction or instrument, as in force from time to time.
- 7 *Note 1* The text of an applied, adopted or incorporated law or instrument,
8 whether applied as in force from time to time or at a particular time, is
9 taken to be a notifiable instrument if the operation of the [Legislation](#)
10 [Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).
- 11 *Note 2* A notifiable instrument must be notified under the [Legislation Act](#).
- 12 **60 Authorisation to share protected information**
- 13 (1) This section applies despite any other territory law.
- 14 (2) An information holder is authorised to disclose protected
15 information to the following people, if the protected information is
16 required by the person for the exercise of a function under this Act
17 or an industrial instrument:
- 18 (a) another information holder;
- 19 (b) a person authorised by an information holder to receive the
20 information.
- 21 (3) In this section:
- 22 *disclose* includes communicate or publish.
- 23 *information* means information, whether true or not, in any form
24 and includes an opinion and advice.
- 25 *information holder* means—
- 26 (a) a person who is or has been—
- 27 (i) the commissioner; or
- 28 (ii) the head of service; or

1 (iii) a director-general; or

2 (iv) a public sector employer; or

3 (v) an employer prescribed under section 57 (b); and

4 (b) a person who exercises or has exercised a function on behalf of
5 the Territory under the public sector employment legislation.

6 ***protected information*** means information about a person that is
7 disclosed to, or obtained by, an information holder because of the
8 exercise of a function under the public sector employment
9 legislation by the information holder or someone else.

10 **Examples**

11 1 a record kept by the head of service for managing an employment matter

12 2 information about whether the person meets an eligibility requirement for a
13 job

14 3 information about an employee disclosed in relation to a strategy designed to
15 ensure the Territory is an equitable employer

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

19 ***public sector employment legislation*** means—

20 (a) this Act; and

21 (b) the [Public Sector Management Act 1994](#) (repealed); and

22 (c) the [Fair Work Act 2009](#) (Cwlth); and

23 (d) an industrial instrument; and

24 (e) any other law prescribed by regulation.

Dictionary

(see s 3)

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:

- ACAT
- ACT
- appoint
- Australian citizen
- bankrupt or personally insolvent
- body
- Chief Justice
- Chief Magistrate
- Chief Minister
- commencement
- Commonwealth
- director-general (see s 163)
- disallowable instrument (see s 9)
- document
- establish
- Executive
- exercise
- fail
- found guilty
- function
- judge
- law
- Legislation Act
- Legislative Assembly
- magistrate
- master
- Minister (see s 162)

- 1 • notifiable instrument (see s 10)
- 2 • notification day
- 3 • person (see s 160)
- 4 • position
- 5 • power
- 6 • prescribed
- 7 • provision
- 8 • registrar
- 9 • regulation
- 10 • sitting day
- 11 • statutory office-holder
- 12 • territory law
- 13 • the Territory
- 14 • writing.

15 ***best practice principle***—see section 8 (4).

16 ***classification***, for a job, means—

17 (a) if a classification in an industrial instrument applies to a job—
18 the classification; or

19 (b) in any other case—a classification prescribed by regulation.

20 ***commissioner*** means the Public Sector Standards Commissioner
21 appointed under section 10 (1).

22 ***directorate***—see section 20 (2).

23 ***eligibility requirements***, for a job, for part 5 (Employment in the
24 service)—see section 29.

25 ***employ***, for part 6 (Public sector members)—see section 52 (2).

26 ***employee*** means a person employed under section 31 (Head of
27 service may employ a person).

employee's job means a job defined by SETs stated, in writing, by the head of service for the employee.

Note 1 An industrial instrument may set out other conditions of employment.

Note 2 An employee includes a director-general and an SES employee.

employment matter, for part 5 (Employment in the service)—see section 28.

equitable employer means an employer that—

(a) employs, and provides fair and equitable opportunities for career development to, individuals—

(i) from diverse cultural, language and religious backgrounds; and

(ii) of different gender; and

(iii) of different sexual orientation; and

(iv) with disability; and

(v) of different working age; and

(b) complies with and models commitment to anti-discrimination legislation.

Example—par (b)

including a reasonable adjustment guide in procedures for staff management

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).

head of service means the Head of Service appointed under section 21 (1).

industrial instrument means an instrument—

- (a) made under, or recognised by, a workplace law within the meaning of the *Fair Work Act 2009* (Cwlth); and
- (b) about the relationship between employers and employees; and
- (c) that covers 1 or more employees.

job means employment in the service defined by SETs stated, in writing, by the head of service.

joint council means the forum established under section 18.

merit and equity principle—see section 8 (4).

Minister, responsible for a directorate—

- (a) means the Minister with responsibility for a matter the directorate is responsible for under section 20; and
- (b) includes all Ministers with responsibility for a matter the directorate is responsible for under section 20.

misconduct procedure, in relation to an employee, means—

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

performance expectation, for an employee—see section 47 (a).

permanent resident means—

- (a) a person who holds a permanent visa under the *Migration Act 1958* (Cwlth), section 30; or
- (b) a New Zealand citizen who holds a special category visa under the *Migration Act 1958* (Cwlth), section 32.

public sector—see section 6.

public sector employer—see section 54.

- 1 ***public sector member***—see section 52.
- 2 ***public sector principles***—see section 8 (1).
- 3 ***public sector standards***—see section 17.
- 4 ***public sector values***—see section 7.
- 5 ***selection process*** means a process, prescribed by regulation, for
6 determining the suitability of a person for employment in a job.
- 7 ***service*** means the Australian Capital Territory Public Service
8 established under section 19.
- 9 ***service structure*** means the structure determined by the
10 Chief Minister under section 20.
- 11 ***SES employee*** means an employee employed as a senior executive
12 in the service.
- 13 ***SETs***—see ***statutory employment terms***.
- 14 ***statutory employment terms*** (or ***SETs***), for an employee's job,
15 means—
- 16 (a) each function assigned to the employee; and
- 17 (b) the directorate in which the employee is employed; and
- 18 (c) the employee's classification; and
- 19 (d) the employee's salary; and
- 20 (e) the hours the employee is employed to work; and
- 21 (f) the employee's period of employment; and
- 22 *Note* An employee may be employed on a permanent or temporary
23 basis.
- 24 (g) any SETs prescribed by regulation.
- 25 *Note* The power to make a regulation includes the power to make
26 different provisions that apply differently by reference to stated
27 exceptions or factors (see [Legislation Act](#), s 48).

1 **visa** means a visa granted under the *Migration Act 1958* (Cwlth),
2 section 29.

3 **whole-of-government strategy**, for the service, means a formal or
4 informal strategy, target, policy, program or service that—

5 (a) relates to matters for which more than 1 directorate is
6 responsible; and

7 (b) requires employees in more than 1 directorate to exercise a
8 function.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 November 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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