

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Chief Minister)

# Public Sector Management Amendment Bill 2016

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Sections 3A, 4 and 5	2
5 Part 2 heading	3
6 Division 2.1	3
7 ACT Public Service Section 12 (3) (a) to (e)	7
8 Administrative units Section 13 (2), note	7
9 Section 14	7
10 Machinery of government changes—officers Section 15 (5) to (8)	8

## Contents

---

	Page
11	Machinery of government changes—employees
	9
12	Section 16 (2)
	9
13	Parts 3 and 4
	27
14	Part 5 heading
	27
15	Section 63
	28
16	Application to autonomous instrumentalities
	28
17	Section 64
	29
18	Division 5.2
	29
19	Sections 66A and 67
	29
20	Section 68 heading
	29
21	Section 68 (1)
	30
22	Section 68 (2)
	30
23	Section 68 (2) (c)
	30
24	Section 69
	30
25	Appointment on probation
	30
26	Section 70 (4)
	31
27	Section 70 (6)
	31
28	Appointment on probation—prescribed training office
	31
29	Section 71 (4) (a) to (e)
	31
30	Section 71 (6)
	31
31	Appointment on probation—teachers
	31
32	Section 71A (4)
	32
33	Section 71A (6)
	32
34	Extension of period of probation
	32
35	Section 71B (5)
	32
36	Appointment without probation
	32
37	Section 71C (1) (b)
	32
38	Engagement of executives
	32
39	Division 5.4
	32
40	Definitions—div 5.5
	32
41	Section 82
	33
42	Section 83
	33
43	Promotion appeal
	33
44	Section 84 (1) (a)
	33
45	Promotion appeal by excess officer
	33
46	Section 85 (1)
	33
47	Section 85 (2) (a)
	33

## Contents

---

	Page
37	Section 85 (3) 34
38	Review of certain promotion decisions Section 86 (1) 34
39	Section 86 (5) 34
40	Promotion on advice of joint selection committee Section 87 (3) 34
41	Section 87 (4) (a) 34
42	Section 87 (5) (a) 35
43	Section 89 35
44	Cancellation of promotion Section 90 (3) 35
45	Definitions—div 5.6 Section 91 36
46	Section 92 36
47	Simultaneous transfer within administrative unit Section 93 (2) (b) 37
48	Section 93 (2), new note 37
49	Section 94, new note 37
50	Sections 95 to 96A 37
51	Sections 97 and 98 37
52	Sections 101 (1) and 102 (1) 37
53	Divisions 5.7 and 5.8 38
54	Parts 6 and 10 48
55	Definitions—pt 11 Section 223, definition of <i>officer</i> 74
56	Sections 241 and 242 74
57	Protection of people in relation to work reports on officers or employees Section 243 (2) 76
58	Sections 244 to 248 76
59	Sections 248A to 248C 77
60	Imprisonment Section 249 (4) and (5) 78
61	Section 249 (6), definition of <i>suspended from duty</i> 78
62	Attachment of salary of officers and employees Section 250 (2) 78

## Contents

---

	Page	
63	Sections 250A and 251	78
64	Parts 11 and 13 (as amended)	80
65	New part 18	81
66	Reviewable decisions Schedule 1, item 1, column 3	85
67	Appellable decisions Schedule 2, item 4	85
68	Schedule 2, new item 5A	85
69	Schedule 2, item 6, column 2	85
70	Dictionary, note 2	86
71	Dictionary, definitions of <i>Aboriginal or Torres Strait Islander person</i> , <i>access and equity principle</i> and <i>access and equity program</i>	86
72	Dictionary, new definitions	86
73	Dictionary, definition of <i>appellable level position</i>	87
74	Dictionary, definitions of <i>auditor-general's office</i> and <i>autonomous instrumentality</i>	87
75	Dictionary, new definition of <i>best practice principle</i>	87
76	Dictionary, definitions of <i>chief executive officer</i> and <i>classification</i>	87
77	Dictionary, definition of <i>commissioner</i>	88
78	Dictionary, definition of <i>Commonwealth officer</i>	88
79	Dictionary, new definition of <i>confirmed officer</i>	88
80	Dictionary, definition of <i>criminal offence</i>	88
81	Dictionary, new definition of <i>declaration</i>	88
82	Dictionary, definition of <i>designated group</i>	88
83	Dictionary, definition of <i>director-general</i>	88
84	Dictionary, definitions of <i>disability</i> and <i>discrimination</i>	89
85	Dictionary, new definitions	89
86	Dictionary, definition of <i>employee</i> , paragraphs (a) to (c)	89
87	Dictionary, definition of <i>employment matters</i>	90
88	Dictionary, new definition of <i>engager</i>	90
89	Dictionary, definition of <i>equal employment opportunity program</i>	90
90	Dictionary, new definition of <i>equitable employer</i>	90
91	Dictionary, definition of <i>essential qualification</i>	91
92	Dictionary, definition of <i>excess officer</i>	91
93	Dictionary, definition of <i>executive</i>	92

## Contents

---

	Page
94	Dictionary, definition of <i>executive office</i> 92
95	Dictionary, new definition of <i>exonerated</i> 92
96	Dictionary, definition of <i>government agency</i> 92
97	Dictionary, definition of <i>head of service</i> 92
98	Dictionary, new definition of <i>incapacitated</i> 92
99	Dictionary, definition of <i>industrial democracy program</i> 92
100	Dictionary, definition of <i>industrial instrument</i> , new paragraph (c) 93
101	Dictionary, new definitions 93
102	Dictionary, definition of <i>joint selection committee</i> 93
103	Dictionary, new definitions 93
104	Dictionary, definition of <i>misconduct</i> 93
105	Dictionary, new definition of <i>misconduct procedure</i> 94
106	Dictionary, definitions of <i>non-appellable promotion</i> and <i>not qualified to perform duties</i> 94
107	Dictionary, definition of <i>office</i> 94
108	Dictionary, definitions of <i>office of director-general</i> and <i>office of head of service</i> 94
109	Dictionary, definition of <i>officer</i> , paragraph (a) (ii) 94
110	Dictionary, definition of <i>officer</i> , paragraphs (b) to (d) 94
111	Dictionary, definition of <i>overseas</i> 94
112	Dictionary, definition of <i>part-time office</i> 95
113	Dictionary, definition of <i>promotion</i> 95
114	Dictionary, definition of <i>public employee</i> 95
115	Dictionary, definition of <i>public sector</i> 95
116	Dictionary, new definitions 95
117	Dictionary, definition of <i>public sector officer</i> 96
118	Dictionary, new definitions 96
119	Dictionary, definition of <i>statutory office-holder</i> 96
120	Dictionary, new definitions 96
121	Dictionary, definition of <i>territory instrumentality</i> 97
122	Dictionary, new definition of <i>transfer</i> 97
123	Dictionary, new definitions 98

		Page
<b>Schedule 1</b>	<b>Legislation amended</b>	99
<b>Part 1.1</b>	<b>Aboriginal and Torres Strait Islander Elected Body Act 2008</b>	99
<b>Part 1.2</b>	<b>ACT Civil and Administrative Tribunal Act 2008</b>	100
<b>Part 1.3</b>	<b>ACT Teacher Quality Institute Act 2010</b>	100
<b>Part 1.4</b>	<b>Administrative Decisions (Judicial Review) Act 1989</b>	101
<b>Part 1.5</b>	<b>Annual Reports (Government Agencies) Act 2004</b>	102
<b>Part 1.6</b>	<b>Architects Act 2004</b>	108
<b>Part 1.7</b>	<b>Auditor-General Act 1996</b>	108
<b>Part 1.8</b>	<b>Board of Senior Secondary Studies Act 1997</b>	110
<b>Part 1.9</b>	<b>Canberra Institute of Technology Act 1987</b>	112
<b>Part 1.10</b>	<b>Cemeteries and Crematoria Act 2003</b>	112
<b>Part 1.11</b>	<b>Children and Young People Act 2008</b>	113
<b>Part 1.12</b>	<b>Climate Change and Greenhouse Gas Reduction Act 2010</b>	114
<b>Part 1.13</b>	<b>Commissioner for Sustainability and the Environment Act 1993</b>	114
<b>Part 1.14</b>	<b>Construction Occupations (Licensing) Act 2004</b>	115
<b>Part 1.15</b>	<b>Crimes Act 1900</b>	115
<b>Part 1.16</b>	<b>Crimes (Child Sex Offenders) Act 2005</b>	116
<b>Part 1.17</b>	<b>Crimes (Restorative Justice) Act 2004</b>	117
<b>Part 1.18</b>	<b>Crimes (Sentence Administration) Act 2005</b>	117
<b>Part 1.19</b>	<b>Crimes (Sentencing) Act 2005</b>	117
<b>Part 1.20</b>	<b>Cultural Facilities Corporation Act 1997</b>	118
<b>Part 1.21</b>	<b>Dangerous Substances Act 2004</b>	118
<b>Part 1.22</b>	<b>Director of Public Prosecutions Act 1990</b>	118
<b>Part 1.23</b>	<b>Electoral Act 1992</b>	120
<b>Part 1.24</b>	<b>Environment Protection Act 1997</b>	124
<b>Part 1.25</b>	<b>Financial Management Act 1996</b>	124

## Contents

---

		Page
<b>Part 1.26</b>	<b>Firearms Regulation 2008</b>	124
<b>Part 1.27</b>	<b>First Home Owner Grant Act 2000</b>	125
<b>Part 1.28</b>	<b>Food Regulation 2002</b>	125
<b>Part 1.29</b>	<b>Freedom of Information Act 1989</b>	126
<b>Part 1.30</b>	<b>Gambling and Racing Control Act 1999</b>	126
<b>Part 1.31</b>	<b>Gene Technology Act 2003</b>	127
<b>Part 1.32</b>	<b>Government Procurement Act 2001</b>	127
<b>Part 1.33</b>	<b>Government Procurement Regulation 2007</b>	128
<b>Part 1.34</b>	<b>Health (National Health Funding Pool and Administration) Act 2013</b>	128
<b>Part 1.35</b>	<b>Heritage Act 2004</b>	129
<b>Part 1.36</b>	<b>Human Rights Act 2004</b>	129
<b>Part 1.37</b>	<b>Human Rights Commission Act 2005</b>	129
<b>Part 1.38</b>	<b>Independent Competition and Regulatory Commission Act 1997</b>	130
<b>Part 1.39</b>	<b>Inquiries Act 1991</b>	130
<b>Part 1.40</b>	<b>Judicial Commissions Act 1994</b>	131
<b>Part 1.41</b>	<b>Lakes Act 1976</b>	132
<b>Part 1.42</b>	<b>Law Officers Act 2011</b>	132
<b>Part 1.43</b>	<b>Legal Aid Act 1977</b>	133
<b>Part 1.44</b>	<b>Legal Profession Act 2006</b>	133
<b>Part 1.45</b>	<b>Legislation Act 2001</b>	133
<b>Part 1.46</b>	<b>Legislative Assembly (Members' Staff) Act 1989</b>	135
<b>Part 1.47</b>	<b>Legislative Assembly (Office of the Legislative Assembly) Act 2012</b>	136
<b>Part 1.48</b>	<b>Lifetime Care and Support (Catastrophic Injuries) Act 2014</b>	137
<b>Part 1.49</b>	<b>Long Service Leave (Portable Schemes) Act 2009</b>	138
<b>Part 1.50</b>	<b>Magistrates Court Act 1930</b>	138
<b>Part 1.51</b>	<b>National Environment Protection Council Act 1994</b>	138

## Contents

---

		Page
<b>Part 1.52</b>	<b>Ombudsman Act 1989</b>	139
<b>Part 1.53</b>	<b>Planning and Development Act 2007</b>	141
<b>Part 1.54</b>	<b>Public Interest Disclosure Act 2012</b>	142
<b>Part 1.55</b>	<b>Rates Act 2004</b>	143
<b>Part 1.56</b>	<b>Remuneration Tribunal Act 1995</b>	144
<b>Part 1.57</b>	<b>Royal Commissions Act 1991</b>	144
<b>Part 1.58</b>	<b>Supervised Injecting Place Trial Act 1999</b>	145
<b>Part 1.59</b>	<b>Supreme Court Act 1933</b>	145
<b>Part 1.60</b>	<b>Taxation Administration Act 1999</b>	145
<b>Part 1.61</b>	<b>Territory Records Act 2002</b>	146
<b>Part 1.62</b>	<b>Unclaimed Money Act 1950</b>	147
<b>Part 1.63</b>	<b>Victims of Crime Act 1994</b>	148
<b>Part 1.64</b>	<b>Workers Compensation Act 1951</b>	148
<b>Part 1.65</b>	<b>Work Health and Safety Act 2011</b>	148

2016

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Chief Minister)

# Public Sector Management Amendment Bill 2016

---

## A Bill for

An Act to amend the *Public Sector Management Act 1994*, and for other purposes

---

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

1 **1 Name of Act**

2 This Act is the *Public Sector Management Amendment Act 2016*.

3 **2 Commencement**

4 This Act commences on 1 September 2016.

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

7 **3 Legislation amended**

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

9 *Note* This Act also amends other legislation (see sch 1).

10 **4 Sections 3A, 4 and 5**

11 *substitute*

12 **4 Offences against Act—application of Criminal Code etc**

13 Other legislation applies in relation to offences against this Act.

14 *Note 1 Criminal Code*

15 The [Criminal Code](#), ch 2 applies to all offences against this Act (see  
16 Code, pt 2.1).

17 The chapter sets out the general principles of criminal responsibility  
18 (including burdens of proof and general defences), and defines terms  
19 used for offences to which the Code applies (eg *conduct*, *intention*,  
20 *recklessness* and *strict liability*).

21 *Note 2 Penalty units*

22 The [Legislation Act](#), s 133 deals with the meaning of offence penalties  
23 that are expressed in penalty units.

24 **5 Objects of Act**

25 The main objects of this Act are to—

- 26 (a) establish and maintain an apolitical public sector with clear  
27 values, clear standards of conduct and a best practice focus;  
28 and

(b) establish and maintain a public service that assists the Executive to meet the needs of the community and serves the community on behalf of the Executive; and

(c) promote and uphold the public sector values, standards of conduct and best practice focus.

## **5 Part 2 heading**

*substitute*

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

## **6 Division 2.1**

*substitute*

### **Division 2.1 Public sector standards**

*Note* This division sets out values, principles and conduct requirements that apply to a public servant. This division also applies to a public sector member (see s 150).

### **6 Meaning of public service *job*—div 2.1**

In this division:

*job*, of a public servant, means the functions the public servant is required to exercise because of the public servant's employment in the service.

### **7 Meaning of *public sector values***

(1) The *public sector values* are—

(a) respect; and

(b) integrity; and

(c) collaboration; and

- 1 (d) innovation.
- 2 (2) The public sector values must be—
- 3 (a) demonstrated by a public servant when acting in connection
- 4 with the public servant's job; and
- 5 (b) applied in a way that is appropriate to the public servant's job;
- 6 and
- 7 (c) used to inform and evaluate the operation of the service.

8 **8 Meaning of *public sector principles***

- 9 (1) The *public sector principles* are—
- 10 (a) the best practice principle; and
- 11 (b) the merit and equity principle.
- 12 (2) A public servant must do the public servant's job in accordance with
- 13 the best practice principle.
- 14 (3) The head of service must exercise a function under this Act in
- 15 accordance with the merit and equity principle.
- 16 (4) In this section:
- 17 *best practice principle*—a public servant does the public servant's
- 18 job in accordance with the *best practice principle* if the public
- 19 servant—
- 20 (a) works efficiently, effectively and constructively; and
- 21 (b) is responsive, collaborative and accountable; and
- 22 (c) makes fair and reasonable decisions.
- 23 *merit and equity principle*—the head of service exercises a function
- 24 under this Act in accordance with the *merit and equity principle* if
- 25 the head of service—
- 26 (a) is an equitable employer; and
- 27 (b) employs a person in a job who is best able to do the job in all
- 28 the circumstances.

- 
- 1     **9           Public sector conduct**
- 2           (1) A public servant must—
- 3               (a) take all reasonable steps to avoid a conflict of interest; and
- 4               (b) declare or manage a conflict of interest that cannot reasonably
- 5                    be avoided; and
- 6               (c) when acting in connection with the public servant’s job—
- 7                    (i) comply with laws applying in the Territory; and
- 8                    (ii) comply with any lawful and reasonable direction given
- 9                        by a person with the authority to give the direction; and
- 10                (iii) if dealing with a member of the public—make all
- 11                        reasonable efforts to help the person to understand the
- 12                        person’s entitlements, and any requirement the person is
- 13                        obliged to meet, under a territory law; and
- 14                (iv) treat all people with courtesy and sensitivity to their
- 15                        rights and aspirations; and
- 16               (d) do the public servant’s job with reasonable care and diligence,
- 17                        impartiality and honesty.
- 18           (2) A public servant must not—
- 19               (a) engage in conduct that causes damage to the reputation of the
- 20                        service or the Executive; or
- 21               (b) take improper advantage of the public servant’s job or
- 22                        information gained through the public servant’s job; or
- 23               (c) improperly use a Territory resource, including information,
- 24                        accessed through the public servant’s job; or

- 1 (d) without lawful authority—
- 2 (i) disclose confidential information gained through the
- 3 public servant's job; or
- 4 *Note* The *Crimes Act 1900*, s 153 (1) makes it an offence for a
- 5 public servant to disclose information that it is the public
- 6 servant's duty not to disclose.
- 7 (ii) make a comment that reasonably appears to be an official
- 8 comment; or
- 9 (e) when acting in connection with the public servant's job—
- 10 bully, harass or intimidate anyone; or
- 11 (f) when doing the public servant's job—apply improper
- 12 influence, favouritism or patronage.
- 13 (3) For a misconduct procedure, failing to act in a way that is consistent
- 14 with subsection (1) or (2) may be misconduct.
- 15 *Note* A *misconduct procedure* means a procedure set out in an industrial
- 16 instrument or prescribed by regulation (see dict, def *misconduct*
- 17 *procedure*).
- 18 (4) A public servant (a *discloser*) must tell the following person about
- 19 any maladministration or misconduct by a public servant or a public
- 20 sector member of which the discloser becomes aware:
- 21 (a) the head of service;
- 22 (b) if the alleged maladministration or misconduct is by the head
- 23 of service—
- 24 (i) the director-general of the administrative unit in which
- 25 the public servant is employed; or
- 26 (ii) if the head of service is the director-general of the
- 27 administrative unit in which the public servant is
- 28 employed—another director-general.
- 29 (5) This section does not—
- 30 (a) affect the operation of any other Act; or

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

2 **7 ACT Public Service**  
3 **Section 12 (3) (a) to (e)**

4 *substitute*

5 (a) the following (the *senior executive service*):

6 (i) the head of service;

7 (ii) directors-general;

8 (iii) executives; and

9 (b) officers; and

10 (c) employees.

11 **8 Administrative units**  
12 **Section 13 (2), note**

13 *omit*

14 **9 Section 14**

15 *substitute*

16 **14 Ministerial responsibility and functions of administrative**  
17 **units**

18 (1) For the *Australian Capital Territory (Self-Government) Act 1988*  
19 (Cwlth), section 43 (1), the Chief Minister may make a  
20 determination allocating responsibility to a Minister in relation to  
21 the following matters:

22 (a) governing the Territory in relation to a stated matter;

23 (b) an Act;

24 (c) the Executive's powers under a Commonwealth law;

25 (d) prerogatives of the Crown for the matters mentioned in  
26 paragraphs (a) to (c).

- 1 (2) The Chief Minister must determine which administrative unit is  
2 responsible for a matter mentioned in subsection (1).
- 3 (3) For the *Australian Capital Territory (Self-Government) Act 1988*  
4 (Cwlth), section 43 (2), any Minister is authorised to act on the  
5 Chief Minister’s behalf or on behalf of another Minister.
- 6 (4) Subsection (3) is subject to the [Legislation Act](#), section 41 (Making  
7 of certain statutory instruments by Executive).
- 8 (5) A determination is a notifiable instrument.

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

10 **10 Machinery of government changes—officers**  
11 **Section 15 (5) to (8)**

12 *substitute*

- 13 (5) If an office is transferred to another administrative unit, an officer  
14 who is appointed to the office is taken to have been transferred to  
15 that administrative unit.
- 16 (6) If a vacant office is transferred, and a selection process for the office  
17 is incomplete, the head of service—
- 18 (a) if a person has been told, in writing, that the person is selected  
19 for the office—must complete the selection process; and
- 20 (b) in any other circumstance—may complete the selection  
21 process.

22 *Note* A reference to an Act includes a reference to the statutory instruments  
23 made or in force under the Act, including a management standard (see  
24 [Legislation Act](#), s 104).

1 **11 Machinery of government changes—employees**  
2 **Section 16 (2)**

3 *omit*

4 shall be

5 *substitute*

6 is

7 **12 Parts 3 and 4**

8 *substitute*

9 **Part 3 The public service**

10 **Division 3.1 Members of the service**

11 **17 Head of service functions**

12 (1) The head of service—

13 (a) is responsible for the leadership and management of the  
14 service; and

15 (b) is answerable to the Chief Minister.

16 *Note* The head of service is engaged by the Chief Minister under  
17 section 31 (1).

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

19 (a) to develop, oversee the implementation of, coordinate and  
20 provide advice and reports to the Chief Minister about  
21 whole-of-government strategies;

22 (b) to provide direction across the service in relation to critical or  
23 potentially critical issues;

24 (c) to promote cooperation and collegiality within and between  
25 administrative units;

1 (d) to promote and uphold in the service the public sector values,  
2 the public sector principles and the conduct required of a  
3 public servant, including by personal example;

4 (e) any other function given to the head of service by the  
5 Chief Minister.

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

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

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

12 (a) to engage, appoint and employ people on behalf of the  
13 Territory in accordance with the merit and equity principle;

14 (b) to organise public servants in the service;

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

17 (c) to provide advice and reports to the Chief Minister about  
18 employment in the service;

19 (d) any other function given to the head of service by the  
20 Chief Minister.

21 (4) For subsection (3) (b), the organisation of the service must—

22 (a) give effect to the administrative arrangements; and

23 (b) enable efficient and effective management of the service; and

24 (c) promote the administration of the service in a way that is  
25 consistent with the public sector values, the public sector  
26 principles and the conduct required of a public servant.

27 (5) The head of service may declare that a day will be a holiday for all  
28 or part of the service.

29 (6) A declaration is a notifiable instrument.

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

---

1     **18           Delegation by head of service**

- 2           (1) The head of service may—
- 3               (a) delegate to a public employee or another person a function
- 4                     given to the head of service under this Act or any other law
- 5                     applying in the ACT; or
- 6               (b) subdelegate to a public employee or another person a function
- 7                     delegated to the head of service under this Act or any other law
- 8                     applying in the ACT.

9           *Note 1*   For the making of delegations and the exercise of a delegated function,

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

11           *Note 2*   **Public employee** means a public servant, a person employed by a

12                   territory instrumentality or a statutory office-holder or a person

13                   employed by a statutory office-holder (see [Legislation Act](#), dict, pt 1).

- 14           (2) However, the head of service must not delegate or subdelegate a
- 15               function to a person who is not a public employee without first
- 16               being satisfied that the function needs to be exercised by a person
- 17               who is not a public employee.

18     **19           Directors-general functions**

- 19           (1) A director-general is—
- 20               (a) responsible for leadership of an administrative unit and
- 21                     leadership in the service; and
- 22               (b) answerable to the Minister responsible for the administrative
- 23                     unit and to the head of service.

24           *Note*    A director-general is engaged by the head of service under

25                   section 31 (2).

- 26           (2) A director-general has the following functions in relation to the
- 27               director-general's administrative unit:
- 28               (a) to provide advice and reports to the Minister responsible for
- 29                     the administrative unit and the head of service on matters
- 30                     relating to the administrative unit;
- 31               (b) to manage the business of the administrative unit;

- 1 (c) any other function given to the director-general—  
2 (i) by the Minister responsible for the administrative unit; or  
3 (ii) by the head of service; or  
4 (iii) under this Act or another territory law;
- 5 (d) to exercise a function mentioned in paragraphs (a) to (c) taking  
6 into account the responsibilities of the government as a whole,  
7 including by collaborating with other directors-general.
- 8 *Note 1* **Function** includes authority, duty and power (see [Legislation](#)  
9 [Act](#), dict, pt 1).
- 10 *Note 2* A provision of a law that gives an entity (including a person) a  
11 function also gives the entity powers necessary and convenient to  
12 exercise the function (see [Legislation Act](#), s 196 and dict, pt 1,  
13 def *entity*).
- 14 (3) A director-general has the following leadership functions:
- 15 (a) to provide advice to the head of service about the development  
16 and coordination of whole-of-government strategies;
- 17 (b) to lead the implementation of whole-of-government strategies;
- 18 (c) to implement, at the direction of the head of service—  
19 (i) strategies for the administration of the service; and  
20 (ii) responses to critical or potentially critical issues;
- 21 (d) to work efficiently, effectively and constructively with other  
22 directors-general to ensure a whole-of-government focus and  
23 promote cooperation and collegiality within and between  
24 administrative units;
- 25 (e) to promote and uphold in the service the public sector values,  
26 the public sector principles and the conduct required of a  
27 public servant, including by personal example;
- 28 (f) any other function given to the director-general by—  
29 (i) the Minister responsible for the administrative unit; or

1 (ii) the head of service.

2 **20 Delegation by director-general**

- 3 (1) A director-general may—
- 4 (a) delegate to a public employee or another person a function  
5 given to the director-general under this Act or any other law  
6 applying in the ACT; or
- 7 (b) subdelegate to a public employee or another person a function  
8 delegated to the director-general under this Act or any other  
9 law applying in the ACT.

10 *Note 1* For the making of delegations and the exercise of a delegated function,  
11 see the [Legislation Act](#), pt 19.4.

12 *Note 2* **Public employee** means a public servant, a person employed by a  
13 territory instrumentality or a statutory office-holder or a person  
14 employed by a statutory office-holder (see [Legislation Act](#), dict, pt 1).

- 15 (2) However, a director-general must not delegate or subdelegate a  
16 function to a person who is not a public employee without first  
17 being satisfied that the function needs to be exercised by a person  
18 who is not a public employee.

19 **21 Exercise of certain director-general functions by head of**  
20 **Access Canberra**

- 21 (1) The Chief Minister may declare that a function given to a  
22 director-general under a territory law dealing with a relevant matter  
23 may be exercised by the head of Access Canberra (a ***declared***  
24 ***function***).

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

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

- 30 (2) A declaration is a notifiable instrument.

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

- 1 (3) The head of Access Canberra may exercise a declared function.
- 2 (4) The head of Access Canberra may delegate a declared function to a  
3 public servant or another person.
- 4 *Note* For the making of delegations and the exercise of delegated functions,  
5 see the [Legislation Act](#), pt 19.4.
- 6 (5) However, the head of Access Canberra may only delegate a declared  
7 function to the extent permitted by other territory laws.
- 8 **Example—extent permitted**
- 9 A declaration is made in relation to a function given to the director-general under  
10 the XYZ Act. That Act states that the director-general may only delegate the  
11 function to an employee. The head of Access Canberra may also only delegate the  
12 function to an employee.
- 13 *Note* An example is part of the Act, is not exhaustive and may extend, but  
14 does not limit, the meaning of the provision in which it appears (see  
15 [Legislation Act](#), s 126 and s 132).
- 16 (6) Nothing in this section limits the exercise of a declared function by  
17 the director-general given the function.
- 18 (7) Anything done in the exercise of a declared function is not invalid  
19 only because of a defect or irregularity in, or in relation to, a  
20 declaration.
- 21 (8) In this section:
- 22 ***Access Canberra*** means the business unit in the administrative unit  
23 administered by the Chief Minister known as Access Canberra.
- 24 ***head***, of Access Canberra, means the person occupying the position  
25 (however described) of head of Access Canberra.
- 26 ***relevant matter*** means a matter mentioned in an administrative  
27 arrangement—
- 28 (a) responsibility for which is allocated to the Chief Minister; and  
29 (b) relating to Access Canberra.

---

## 22 Executive functions

(1) An executive—

(a) is responsible for leadership in the service; and

(b) is answerable to the head of service and the director-general for the administrative unit in which the executive is employed.

*Note* An executive is engaged by the head of service under section 31 (2).

(2) An executive has the following leadership functions:

(a) to advance whole-of-government strategies as part of the senior executive service;

(b) to promote and demonstrate cooperation and collegiality within and between administrative units;

(c) to promote and uphold in the service the public sector values, the public sector principles and the conduct required of a public servant, including by personal example;

(d) any other function given to the executive by—

(i) the head of service; or

(ii) the director-general for the administrative unit in which the executive is employed.

*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**).

## 23 Establishment of offices

(1) The head of service may, in writing, establish an office in an administrative unit.

*Note* The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

1 (2) The instrument establishing the office must state the classification of  
2 the office and whether the office is a full-time or part-time office.

3 (3) The comparative level of classifications is determined by the  
4 maximum salary payable to a classification.

5 **Example**

6 The top of the salary range for the classification Butcher 2 is \$70 000. The top of  
7 the salary range for the classification Baker 3 is \$78 000. The salary of the  
8 classification Candlestick Maker 4 (which has no salary range) is also \$78 000.  
9 Baker 3 and Candlestick Maker 4 are equal classifications. Butcher 2 is a lower  
10 classification than Baker 3 or Candlestick Maker 4.

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

14 **24 Officers**

15 (1) An officer is appointed to an office on a permanent basis.

16 *Note* See pt 5 for provisions about the employment of officers.

17 (2) An officer is taken to have the classification of the office that the  
18 officer occupies.

19 **25 Employees**

20 (1) An employee is employed to exercise the functions of an office on a  
21 temporary basis.

22 *Note* See div 5.8 for provisions about employees.

23 (2) The head of service may only employ a person as an employee if  
24 satisfied that—

25 (a) there is no officer with the classification of the office available  
26 in the service with the expertise, skills or qualifications  
27 required for the functions to be exercised; or

28 *Note* An officer is taken to have the classification of the office that the  
29 officer occupies (see s 24).

- 1 (b) assistance of a temporary nature is required and, because of  
2 urgency or the specialised nature of the functions, it is not  
3 practical in the circumstances to use an existing officer to do  
4 the work; or
- 5 (c) the employment is consistent with a management strategy to—  
6 (i) ensure the Territory is an equitable employer; or  
7 (ii) eliminate disadvantage in relation to public service  
8 employment.
- 9 *Note* The head of service must exercise a function in relation to the  
10 engagement of an employee in accordance with the merit and equity  
11 principle (see s 8 (3)).

## 12 **Division 3.2 Management of the service**

### 13 **26 Management strategies for the service**

- 14 (1) The head of service must develop, oversee the implementation of  
15 and coordinate each of the following management strategies:
- 16 (a) a strategy to ensure the Territory is an equitable employer;  
17 (b) a strategy to eliminate disadvantage in relation to public  
18 service employment;  
19 (c) a strategy to ensure appropriate participation by a public  
20 servant in decisions about the management of the public  
21 servant and the public servant's workplace;  
22 (d) a strategy to ensure the service gives members of the  
23 community fair and timely access to resources, managed by the  
24 Executive, to which they are entitled.
- 25 (2) For the development of each management strategy, the head of  
26 service—  
27 (a) must consult the joint council; and  
28 (b) may consult other entities that have an interest in the strategy;  
29 and

1 (c) must give a copy of the strategy to the Chief Minister.

2 **27 Application of the merit and equity principle**

3 (1) This section applies in relation to selecting—

4 (a) a person to be engaged in an SES position for a period of more  
5 than 9 months; or

6 (b) a person to be appointed as an officer to a vacant office; or

7 (c) an officer to be transferred to a higher level vacant office for a  
8 period of more than 3 months; or

9 (d) an officer to be promoted to a vacant office; or

10 (e) a person to be employed as a fixed term employee for a period  
11 of more than 12 months.

12 (2) The head of service must ensure—

13 (a) all eligible people have, as far as practicable, a reasonable  
14 opportunity to apply for selection; and

15 (b) selection of a person is made on the basis of a comparative  
16 assessment of the applicants, having regard to—

17 (i) the nature of the functions to be exercised by the selected  
18 person; and

19 (ii) the relevant abilities, qualifications, experience, personal  
20 qualities and potential for development of the applicants;  
21 and

22 (c) the person selected is an eligible person.

23 (3) For subsection (2) (a), the people who may apply for selection may  
24 be limited—

25 (a) for an office—if the office is an identified position; or

26 (b) in accordance with a management strategy to—

27 (i) ensure the Territory is an equitable employer; or

- 1 (ii) eliminate disadvantage in relation to public service  
2 employment; or
- 3 (c) in accordance with a territory law.
- 4 (4) In this section:
- 5 ***Aboriginal or Torres Strait Islander person*** means a person who—
- 6 (a) is a descendant of an Aboriginal person or a Torres Strait  
7 Islander person; and
- 8 (b) identifies as an Aboriginal person or a Torres Strait Islander  
9 person; and
- 10 (c) is accepted as an Aboriginal person or a Torres Strait Islander  
11 person by an Aboriginal community or Torres Strait Islander  
12 community.
- 13 ***identified position*** means an office that the head of service has  
14 decided, in accordance with a prescribed process, must be occupied  
15 by—
- 16 (a) an Aboriginal or Torres Strait Islander person; or
- 17 (b) a person with disability.

## 18 **28 Establishment of joint council**

- 19 (1) The head of service must establish a consultative forum for relevant  
20 unions and the service (the ***joint council***).
- 21 *Note* ***Establish*** includes constitute and continue in existence (see [Legislation](#)  
22 [Act](#), dict, pt 1).
- 23 (2) The joint council must operate in accordance with terms of  
24 reference approved by the head of service.
- 25 (3) The terms of reference are a notifiable instrument.
- 26 *Note* A notifiable instrument must be notified under the [Legislation Act](#).



- 1            *statutory employment terms* (or *SETs*), for an SES member,  
2            means—
- 3            (a) each function assigned to the SES member; and  
4            (b) the administrative unit in which the SES member is engaged;  
5            and  
6            (c) the SES member's classification; and  
7            (d) the SES member's salary; and  
8            (e) the hours the SES member is engaged to work; and  
9            (f) the period the SES member is engaged to work; and  
10           (g) any prescribed SETs.

11        **31            Engagement of SES member**

- 12           (1) The Chief Minister may engage an eligible person, under a contract,  
13           on behalf of the Territory as the head of service.
- 14           (2) The head of service may engage an eligible person, under a contract,  
15           on behalf of the Territory as a director-general or an executive.
- 16           (3) An SES member's contract with the Territory must—  
17           (a) be in writing; and  
18           (b) be signed by the engager and the person; and  
19           (c) state the SETs for the SES member; and  
20           (d) be for a period of not more than 5 years.
- 21           (4) Subject to this Act, the engagement of an SES member is governed  
22           by the terms of the contract.

23        **32            Record about SES member**

- 24           For each SES member, the head of service must keep a record of—  
25           (a) the SES member's date of birth; and  
26           (b) the SES position in which the SES member is engaged; and

- 1 (c) the day on which the SES member's engagement started; and  
2 (d) the day on which the SES member's engagement will end; and  
3 (e) any past employment as a public servant, including the days on  
4 which the employment started and ended.

5 **33 Change to SES member's SETs**

- 6 (1) The engager of an SES member may make a permanent or  
7 temporary change to 1 or more of the SES member's SETs in  
8 accordance with any prescribed requirement or notice period  
9 under—  
10 (a) section 34 (Circumstances when SETs must be changed); or  
11 (b) section 35 (Circumstances when SETs may be changed); or  
12 (c) section 36 (SETs changed by change in administrative  
13 arrangements).  
14 (2) The engager—  
15 (a) must be satisfied that making the change is consistent with the  
16 public sector principles; and  
17 (b) may only—  
18 (i) change an SES member's SETs if the SES member is an  
19 eligible person for the new SETs; and  
20 (ii) for a director-general—change the director-general's  
21 SETs if the Chief Minister and the Minister responsible  
22 for the director-general's administrative unit have been  
23 consulted about the change.  
24 (3) Any change to an SES member's SETs must be in writing.

---

**34**      **Circumstances when SETs must be changed**

The engager of an SES member must change the SES member's SETs if—

- (a) the SES member can no longer be engaged with the SETs and the engager is able to give the SES member another suitable SES position; or
- (b) prescribed circumstances when an SES member's SETs must be changed are met.

**Example—par (a)**

An executive's contract requires the executive to do a particular task, but the executive acquires a disability and can no longer do the task.

*Note 1*    An SES position may be changed by changing 1 or more SETs (see s 33 (1)).

*Note 2*    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).

**35**      **Circumstances when SETs may be changed**

The engager of an SES member may change the SES member's SETs if—

- (a) the SES member, in writing, asks for the change and the engager is satisfied the request is reasonable; or
- (b) the engager is satisfied the change is required for the efficient and effective management of the service; or
- (c) the SES member is selected for another SES position in accordance with a selection process.

**Example—par (a)**

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

**Example—par (b)**

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

1                   **Example—par (c)**

2                   Barlow, a part-time, temporary executive, is selected for a full-time, permanent  
3                   SES position in a different administrative unit, at a different classification. All of  
4                   Barlow’s SETs are changed.

5                   *Note 1*   An SES position may be changed by changing 1 or more SETs (see  
6                   s 33 (1)).

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

10           **36           SETs changed by change in administrative arrangements**

11           (1) This section applies to directors-general and executives if the Chief  
12           Minister makes a change to the administrative arrangements.

13           (2) The head of service may make 1 or both of the following changes to  
14           the SES member’s SETs:

15                   (a) change a function assigned to the SES member;

16                   (b) change the administrative unit in which an SES member is  
17                   engaged.

18           **37           Suspension of SES member**

19           The engager of an SES member may suspend the SES member’s  
20           engagement with pay or without pay in accordance with any  
21           prescribed requirement.

22           **38           End of SES member’s engagement**

23           The engager of an SES member may end the SES member’s  
24           engagement, on behalf of the Territory, in accordance with any  
25           prescribed requirement or prescribed notice period—

26                   (a) under section 41 (Loss of eligibility); or

27                   (b) under section 42 (Invalidity retirement); or

28                   (c) if a misconduct procedure finds the disciplinary action to be  
29                   taken is to end the SES member’s engagement; or

- 1 (d) if the engager loses confidence in the SES member's ability to  
2 exercise the functions which the SES member has been  
3 engaged to exercise; or
- 4 (e) if the SES member's SES position is no longer required for the  
5 efficient and effective operation of the service—if the engager  
6 is unable to give the SES member another suitable SES  
7 position; or
- 8 (f) if the engager considers it is in the interest of the service for  
9 the SES member's engagement to be ended.

10 **39 SES member may resign**

- 11 (1) An SES member's engagement ends if, in accordance with any  
12 prescribed notice period, the SES member tells the engager, in  
13 writing, that the SES member resigns.
- 14 (2) The SES member may only withdraw the SES member's resignation  
15 with the approval of the engager.

16 **40 End of engagement by resignation—abandonment of**  
17 **engagement by SES member**

- 18 (1) This section applies if the engager is reasonably satisfied an SES  
19 member has abandoned the SES member's engagement because—
- 20 (a) the SES member has been absent for—
- 21 (i) 14 consecutive days; or
- 22 (ii) 28 days in a 12-month period; and
- 23 (b) the SES member—
- 24 (i) fails to seek approval for the absence; and
- 25 (ii) fails to give a reasonable explanation for the absence; and
- 26 (iii) does not indicate an intention to return to work within a  
27 reasonable time.

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

- 1           (2) For subsection (1) (b), another person may seek approval, give an  
2 explanation or indicate an intention on behalf of an SES member if  
3 the SES member is not able to do it.
- 4           (3) The SES member's engagement ends if—
- 5               (a) the engager follows the prescribed process; and
- 6               (b) after following the prescribed process, the engager remains  
7 satisfied that the SES member has abandoned the SES  
8 member's engagement.

9           **41           Loss of eligibility**

- 10           The engager of an SES member must end the SES member's  
11 engagement if—
- 12               (a) the SES member stops being an eligible person for the SES  
13 member's SES position; and
- 14               (b) the engager is unable to give the SES member another suitable  
15 SES position.

16           **42           Invalidity retirement**

- 17           (1) The engager of an SES member may end the SES member's  
18 engagement if the SES member is unable to exercise the functions  
19 assigned to the SES member because of physical or mental  
20 incapacity.
- 21           (2) However, the engager may only end the SES member's engagement  
22 because of physical or mental incapacity if—
- 23               (a) for an eligible employee under the *Superannuation Act 1976*  
24 (Cwlth)—the requirements for invalidity retirement under that  
25 Act are met; or
- 26               (b) for a member of the superannuation scheme established under  
27 the *Superannuation Act 1990* (Cwlth)—the requirements for  
28 invalidity retirement under that Act are met; or

- 1 (c) for an ordinary employer sponsored member of the PSSAP  
 2 within the meaning of the *Superannuation Act 2005* (Cwlth)—  
 3 the requirements for invalidity retirement under that Act are  
 4 met; or
- 5 (d) for a member of a superannuation scheme declared by the head  
 6 of service—the requirements for invalidity retirement under  
 7 the scheme are met.

8 **13 Part 5 heading**

9 *substitute*

10 **Part 5 Employment of officers and**  
 11 **employees**

12 **14 Section 63**

13 *substitute*

14 **63 Definitions—pt 5**

15 In this part:

16 *appellable classification* means a classification—

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

20 *joint selection committee* means a committee constituted as  
 21 prescribed and includes—

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

24 *unsuitability criteria*—see section 70 (4).

1 **15 Application to autonomous instrumentalities**  
2 **Section 64**

3 *omit*

4 **16 Division 5.2**

5 *substitute*

6 **Division 5.2 Change to office**

7 **65 Reclassification of office**

- 8 (1) The head of service may, in writing, change the classification of an  
9 office in accordance with any prescribed requirement.
- 10 (2) If the head of service changes the classification of an office to a  
11 higher classification—
- 12 (a) the office becomes vacant; and
- 13 (b) the officer who occupied the office immediately before the  
14 change becomes an unattached officer.
- 15 (3) However, if the head of service changes the classification of a class  
16 of offices, the head of service may, in writing, disapply  
17 subsection (2).

18 **66 Part-time office**

- 19 (1) The head of service may, in writing, declare a vacant office to be a  
20 part-time office.
- 21 (2) The head of service may, in writing, declare an occupied office to be  
22 a part-time office if the officer appointed to the office consents to  
23 the declaration.
- 24 (3) The head of service may change the part-time hours of a part-time  
25 office—
- 26 (a) at any time; and

1 (b) for an occupied office—only if the officer appointed to the  
2 office consents to the change.

3 (4) The declaration must set out hours of attendance for the office that  
4 are less than full-time hours of attendance.

5 *Note* An industrial instrument may include requirements for hours of  
6 attendance.

7 **17 Sections 66A and 67**

8 *omit*

9 **18 Section 68 heading**

10 *substitute*

11 **68 Appointment to vacant office**

12 **19 Section 68 (1)**

13 *substitute*

14 (1) The head of service may appoint a person to a vacant office.

15 *Note* The head of service must exercise a function in relation to an  
16 appointment in accordance with the merit and equity principle (see  
17 s 8 (3)).

18 **20 Section 68 (2)**

19 *omit everything before paragraph (b), substitute*

20 (2) The head of service may only appoint a person to an office if—

21 (a) the person is selected in accordance with the merit and equity  
22 principle; and

1 **21 Section 68 (2) (c)**

2 *omit*

3 has certified in writing that after due inquiry he or she is satisfied  
4 that the person is a fit and proper person to be so appointed

5 *substitute*

6 is satisfied on reasonable grounds, and states, in writing, that the  
7 person is suitable for appointment

8 **22 Section 69**

9 *substitute*

10 **69 Record about officers**

11 For each officer, the head of service must keep a record of—

- 12 (a) the officer's date of birth; and  
13 (b) the office to which the officer is appointed; and  
14 (c) the day on which the officer's appointment started; and  
15 (d) any past employment as a public servant, including the days on  
16 which the employment started and ended.

17 **23 Appointment on probation**  
18 **Section 70 (4)**

19 *substitute*

- 20 (4) The appointment may be ended at any time before the appointment  
21 is confirmed, or taken to be confirmed, if the head of service is  
22 satisfied on reasonable grounds that 1 or more of the following  
23 criteria for being unsuitable for confirmation (the *unsuitability*  
24 *criteria*) applies to the officer:

- 25 (a) the officer failed to have a medical examination to assess the  
26 officer's standard of health and fitness;

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

1 (b) the officer has had a medical examination to assess the  
 2 officer's standard of health and fitness and an authorised  
 3 doctor states, in writing, that the officer's standard of health  
 4 and fitness is not at a standard required for the office;

5 (c) an appropriate officer, for example the officer's supervisor  
 6 states, in writing, that the officer has not exercised the officer's  
 7 functions at a standard required for the office;

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

11 (d) the officer is not an eligible person to remain an officer;

12 (e) the officer is an excess officer.

13 **24 Section 70 (6)**

14 *omit*

15 **25 Appointment on probation—prescribed training office**  
 16 **Section 71 (4) (a) to (e)**

17 *substitute*

18 (a) 1 or more of the unsuitability criteria applies to the officer; or

19 **26 Section 71 (6)**

20 *omit*

21 **27 Appointment on probation—teachers**  
 22 **Section 71A (4)**

23 *substitute*

24 (4) The appointment may be ended at any time before the appointment  
 25 is confirmed, or taken to be confirmed, if the head of service is  
 26 satisfied on reasonable grounds that 1 or more of the unsuitability  
 27 criteria applies to the officer.

- 1 **28 Section 71A (6)**
- 2 *omit*
- 3 **29 Extension of period of probation**
- 4 **Section 71B (5)**
- 5 *substitute*
- 6 (5) An appointment that has been extended under this section may be
- 7 ended at any time before the appointment is confirmed, or taken to
- 8 be confirmed, if the head of service is satisfied on reasonable
- 9 grounds that 1 or more of the unsuitability criteria applies to the
- 10 officer.
- 11 **30 Appointment without probation**
- 12 **Section 71C (1) (b)**
- 13 *omit*
- 14 performed the duties of the office, or an office with similar duties
- 15 *substitute*
- 16 exercised the functions of the office, or an office with similar
- 17 functions
- 18 **31 Engagement of executives**
- 19 **Division 5.4**
- 20 *omit*
- 21 **32 Definitions—div 5.5**
- 22 **Section 82**
- 23 *omit*

- 1 **33 Section 83**
- 2 *substitute*
- 3 **83 Promotion to vacant office**
- 4 (1) The head of service may promote an officer to a vacant office.
- 5 *Note* The head of service must exercise a function in relation to a promotion  
6 in accordance with the merit and equity principle (see s 8 (3)).
- 7 (2) The head of service must tell an officer, in writing, about the  
8 promotion a reasonable time before it takes effect.
- 9 **34 Promotion appeal**
- 10 **Section 84 (1) (a)**
- 11 *omit*
- 12 level position
- 13 *substitute*
- 14 classification
- 15 **35 Promotion appeal by excess officer**
- 16 **Section 85 (1)**
- 17 *substitute*
- 18 (1) This section applies if an officer has been told, in writing, by the  
19 head of service that the officer is an excess officer.
- 20 **36 Section 85 (2) (a)**
- 21 *omit*
- 22 level position
- 23 *substitute*
- 24 classification

- 1 **37 Section 85 (3)**
- 2 *omit*
- 3 (Retirement and redeployment of officers)
- 4 *substitute*
- 5 (Redeployment, underperformance and end of employment of
- 6 officers)
- 7 **38 Review of certain promotion decisions**
- 8 **Section 86 (1)**
- 9 *substitute*
- 10 (1) An officer may apply for review of a promotion of another officer to
- 11 a vacant office if—
- 12 (a) the promotion is to a classification other than an appellable
- 13 classification; and
- 14 (b) the officer applied for promotion to the office.
- 15 **39 Section 86 (5)**
- 16 *omit*
- 17 **40 Promotion on advice of joint selection committee**
- 18 **Section 87 (3)**
- 19 *omit*
- 20 **41 Section 87 (4) (a)**
- 21 *omit*
- 22 union agreed joint selection committee
- 23 *substitute*
- 24 a joint selection committee agreed to by the principal union (a *union*
- 25 *agreed joint selection committee*)

**42 Section 87 (5) (a)***omit*

level position

*substitute*

classification

**43 Section 89***substitute***89 Death of officer before appeal or review decided**

(1) This section applies if a promoted officer dies before 1 of the following processes are finalised:

(a) an appeal under section 84 (Promotion appeal);

(b) a review under section 86 (Review of certain promotion decisions).

(2) The process ends on the day of the promoted officer's death.

(3) If the promoted officer's promotion is confirmed, the promotion only takes effect if the promoted officer's death occurred on or after the prescribed day in relation to the promotion.

(4) In this section:

*promoted officer* means the officer against whose promotion the process is being undertaken.

**44 Cancellation of promotion  
Section 90 (3)***after*

section 84

*insert*

or review under section 86

1 **45** **Definitions—div 5.6**  
2 **Section 91**

3 *omit*

4 **46** **Section 92**

5 *substitute*

6 **92** **Transfer to vacant office**

7 (1) The head of service may transfer an officer to a vacant office.

8 *Note* The head of service must exercise a function in relation to a transfer in  
9 accordance with the merit and equity principle (see s 8 (3)).

10 (2) The head of service may only transfer an officer under this section  
11 if—

12 (a) the vacant office is in the same administrative unit as the  
13 officer's office before the transfer; and

14 (b) either—

15 (i) the officer applied for the vacant office; or

16 (ii) the head of service—

17 (A) consults the director-general of the administrative  
18 unit about the transfer; and

19 (B) gives the officer an opportunity to state the officer's  
20 views in relation to the transfer; and

21 (C) considers the views of the officer.

22 (3) The head of service must tell an officer, in writing, about the  
23 transfer a reasonable time before it takes effect.

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

- 
- 1 **47 Simultaneous transfer within administrative unit**  
2 **Section 93 (2) (b)**
- 3 *omit*
- 4 **48 Section 93 (2), new note**
- 5 *insert*
- 6 *Note* The head of service must exercise a function in relation to a transfer in  
7 accordance with the merit and equity principle (see s 8 (3)).
- 8 **49 Section 94, new note**
- 9 *insert*
- 10 *Note* The head of service must exercise a function in relation to a transfer in  
11 accordance with the merit and equity principle (see s 8 (3)).
- 12 **50 Sections 95 to 96A**
- 13 *omit*
- 14 **51 Sections 97 and 98**
- 15 *omit*
- 16 **52 Sections 101 (1) and 102 (1)**
- 17 *omit*
- 18 level position
- 19 *substitute*
- 20 classification

1 **53 Divisions 5.7 and 5.8**

2 *substitute*

3 **Division 5.7 Other movement within the service**

4 **105 Promotion or transfer after passing examination**

- 5 (1) This section applies if the head of service prescribes—
- 6 (a) a class of office for this section; and
- 7 (b) that a test or another assessable task (an *examination*) must be
- 8 passed by an officer before the officer can be transferred or
- 9 promoted to an office in a stated prescribed class.
- 10 (2) If an office in the stated prescribed class is vacant and an
- 11 examination has been undertaken, the head of service may—
- 12 (a) if 1 officer passed the examination and is otherwise eligible for
- 13 transfer or promotion to that office—transfer or promote the
- 14 officer to the office; or
- 15 (b) if 2 or more officers passed the examination and are otherwise
- 16 eligible for transfer or promotion to the office—transfer or
- 17 promote the officers in accordance with the order of merit in
- 18 which they passed the examination.
- 19 (3) A transfer or promotion under this section takes effect on the day
- 20 stated in the instrument of transfer or promotion.

21 **106 Training offices**

- 22 (1) The head of service may prescribe—
- 23 (a) required training for a class of office (a *training office*); and
- 24 (b) a class of office with a higher classification to which an officer
- 25 occupying a training office may be promoted on satisfactory
- 26 completion of the required training (a *related qualified office*).

- 
- 1 (2) If the head of service is satisfied an officer has satisfactorily  
2 completed the required training for a training office—
- 3 (a) if there is a vacant related qualified office—the head of service  
4 must promote the officer to the office; or
- 5 (b) if there is no vacant related qualified office—the officer—
- 6 (i) becomes an unattached officer until a related qualified  
7 office becomes vacant; and
- 8 (ii) is taken to have the classification of the related qualified  
9 office.
- 10 (3) If a related qualified office becomes vacant, the head of service—
- 11 (a) must transfer to the office the unattached officer who has been  
12 waiting for a related qualified office to become vacant for the  
13 longest period; or
- 14 (b) may, if no officers have completed the required training—
- 15 (i) for a full-time qualified office—promote to the office the  
16 first full-time officer to complete the training; or
- 17 (ii) for a part-time qualified office—promote to the office the  
18 first part-time officer to complete the training; or
- 19 (iii) if subparagraphs (i) and (ii) do not apply—appoint,  
20 transfer or promote another person to the office.
- 21 (4) If 2 or more officers satisfactorily completed the required training  
22 for a training office on the same day, the officers are taken to have  
23 completed the training in order of merit, with the officer achieving  
24 the highest mark taken to have completed first.
- 25 (5) A promotion under this section takes effect on the day the  
26 promotion is made.

- 1     **107       Promotion or transfer to training office**
- 2             (1) If an officer is promoted under section 83 to a training office,  
3             another officer or an unattached officer with a classification lower  
4             than the classification of the related qualified office may appeal the  
5             promotion.
- 6             (2) If an officer is transferred under section 92 to a training office—
- 7                 (a) another officer or an unattached officer with a classification  
8                 lower than the classification of the related qualified office may  
9                 appeal the transfer; and
- 10                (b) the office to which the officer was appointed immediately  
11                before the transfer remains vacant until—
- 12                    (i) if the transfer is appealed—every appeal has been  
13                    decided or otherwise ended; or
- 14                    (ii) if the transfer is not appealed—the period during which  
15                    an appeal can be made has ended.
- 16             (3) In this section:
- 17                 *related qualified office*—see section 106 (1) (b).  
18                 *training office*—see section 106 (1) (a).
- 19     **108       Movement within administrative unit**
- 20             (1) This section applies if the head of service is satisfied on reasonable  
21             grounds that the efficient administration of an administrative unit  
22             requires an officer (including an unattached officer) or employee to  
23             move within the administrative unit.
- 24             (2) The head of service may—
- 25                 (a) for an officer—transfer the officer to a vacant office in the  
26                 administrative unit; or
- 27                 (b) for an employee—
- 28                    (i) end the employee’s employment; and

- 1 (ii) immediately after the employee's employment ends,  
2 employ the employee again to exercise the required  
3 functions.
- 4 (3) Before exercising a function under subsection (2), the head of  
5 service must—
- 6 (a) consult the director-general of the unit; and  
7 (b) give the officer or employee an opportunity to state the  
8 officer's or employee's views in relation to the change; and  
9 (c) consider the views of the officer or employee.
- 10 *Note* An industrial instrument may set out further consultation requirements.
- 11 (4) A decision to transfer under this section is not an appellable or  
12 reviewable decision.

13 **109 Movement between administrative units**

- 14 (1) This section applies if the head of service is satisfied on reasonable  
15 grounds that the efficient administration of the service requires the  
16 movement of an officer (including an unattached officer), or an  
17 employee, from 1 administrative unit to another.
- 18 (2) The head of service may—
- 19 (a) for an officer—transfer the officer to a vacant office in the  
20 other administrative unit; or  
21 (b) for an employee—  
22 (i) end the employee's employment; and  
23 (ii) immediately after the employee's employment ends,  
24 employ the employee again to exercise the required  
25 functions.
- 26 (3) Before exercising a function under subsection (2), the head of  
27 service must—
- 28 (a) consult—  
29 (i) the officer or employee; and

- 1 (ii) the director-general of the administrative unit that would  
2 gain the officer or employee; and
- 3 (iii) the director-general of the administrative unit that would  
4 release the officer or end the employment of the  
5 employee; and
- 6 (b) consider whether the change is in the interests of the efficient  
7 administration of the service; and
- 8 (c) be satisfied that the efficient administration of the service  
9 requires the change.
- 10 *Note* An industrial instrument may set out further consultation requirements.
- 11 (4) A decision under subsection (2) must state—
- 12 (a) the date of effect of the action; and
- 13 (b) for an officer being transferred—
- 14 (i) whether the transfer is temporary or permanent; and
- 15 (ii) if the transfer is temporary—the period of the transfer.
- 16 (5) A decision to transfer under this section is not an appellable or  
17 reviewable decision.

## 18 **Division 5.8 Temporary employment**

### 19 **110 Fixed term temporary employment**

- 20 (1) The head of service may employ the person for a fixed term of—
- 21 (a) less than 12 months; or
- 22 (b) if the head of service consults the principal union about the  
23 need for the temporary employment—less than 5 years.
- 24 (2) The head of service may re-employ the person without a break  
25 between the periods of employment if the cumulative period of  
26 engagement is less than—
- 27 (a) for an employee employed in accordance with  
28 subsection (1) (a)—12 months; or

- 1 (b) for an employee employed in accordance with  
2 subsection (1) (b)—5 years.
- 3 (3) A fixed term employee's employment ends—
- 4 (a) on the day after the earliest of—
- 5 (i) the end of the term for which the employee is employed;  
6 or
- 7 (ii) a reasonable notice period given to the employee, in  
8 writing, by the head of service; or
- 9 (iii) a 2-week notice period given to the head of service, in  
10 writing, by the employee; or
- 11 (iv) a notice period agreed, in writing, between the employee  
12 and the head of service; or
- 13 (b) for an employee who begins a period of maternity leave before  
14 the end of the term for which the employee is employed—on  
15 the day after the latest of—
- 16 (i) the end of the term for which the employee is employed;  
17 or
- 18 (ii) the day the paid period of the employee's maternity leave  
19 ends.
- 20 (4) In this section:
- 21 *maternity leave* means maternity leave under an industrial  
22 instrument.

## 23 111 Casual temporary employment

- 24 (1) The head of service may employ a person for temporary  
25 employment in an administrative unit to exercise the functions of an  
26 office on a casual basis.
- 27 (2) Employment on a casual basis must not be on a fixed term.
- 28 (3) A casual employee's employment may be ended at any time by the  
29 head of service.

1     **112       Work performed after end of temporary employment**

- 2             (1) This section applies if—
- 3                     (a) the temporary employment of a person has ended in  
4                             accordance with section 110 (3) or section 111 (3); and
- 5                     (b) that person continues to exercise functions or deliver services  
6                             after the day the person’s employment ended.
- 7             (2) Any function exercised or service delivered by the person after the  
8                     day the person’s employment ended does not renew or extend the  
9                             person’s employment.
- 10            (3) However, the head of service may pay the person for a function  
11                     exercised or service delivered in good faith after the day the  
12                             person’s employment ended.

13     **113       Record about employees**

- 14             For each employee, the head of service must keep a record of—
- 15                     (a) the employee’s date of birth; and
- 16                     (b) the office to which, or functions for which, the employee is  
17                             employed; and
- 18                     (c) the day on which the employee’s employment started; and
- 19                     (d) for an employee employed under section 110—the day on  
20                             which the employee’s employment will end; and
- 21                     (e) any past employment as a public servant, including the days on  
22                             which the employment started and ended.

---

## 1 **Division 5.9 Unattached officers**

### 2 **114 Becoming unattached officer**

- 3 (1) The head of service may, with the written consent of an officer,  
4 state, in writing, that the officer will become an unattached officer  
5 on a particular day.

6 *Note 1* An officer may also become an unattached officer under s 65 (2) (b)  
7 (Reclassification of office) or s 106 (2) (b) (Training offices).

8 *Note 2* An officer may be declared to be an unattached officer under s 123  
9 (Reduction in classification or retirement).

- 10 (2) The office occupied by the officer becomes vacant on the day the  
11 officer becomes an unattached officer.

- 12 (3) Unless otherwise agreed between the head of service and the  
13 unattached officer, the unattached officer—

14 (a) is included in the administrative unit in which the unattached  
15 officer occupied an office immediately before becoming  
16 unattached; and

17 (b) has the classification of the office that the unattached officer  
18 occupied immediately before becoming unattached; and

19 (c) has the hours of attendance of the office that the unattached  
20 officer occupied immediately before becoming unattached.

### 21 **115 Becoming unattached officer on medical grounds**

- 22 (1) This section applies if an authorised doctor has recommended that  
23 an officer should, because of physical or mental incapacity, be  
24 redeployed under section 122 or retired from the service under  
25 section 123.

- 26 (2) The head of service may state, in writing, that the officer will  
27 become an unattached officer on a particular day.

- 28 (3) The office occupied by the officer becomes vacant on the day the  
29 officer becomes an unattached officer.

- 1           (4) The officer must be given written notice of becoming unattached as  
2           soon as practicable.

3           **116           Appointment as unattached officer**

4           A person may be appointed as an unattached officer under  
5           section 68 (1) (Appointment to vacant office) if the head of service  
6           states, in writing—

- 7           (a) the administrative unit in which the person will be included;  
8           and  
9           (b) a classification for the person, having regard to—  
10           (i) the functions to be exercised by the person; and  
11           (ii) the person's qualifications; and  
12           (c) the hours of attendance for the person.

13           **117           Reappointment as unattached officer**

- 14           (1) This section applies to a former officer who is reappointed as an  
15           unattached officer.

16           *Note*     A former officer may be reappointed as an unattached officer under  
17           s 136 (Reappointment of officer if unsuccessful election candidate) and  
18           s 137 (Reappointment of officer after quashing etc of conviction).

- 19           (2) Unless otherwise stated by the head of service, the unattached  
20           officer—  
21           (a) is included in the administrative unit in which the unattached  
22           officer occupied an office immediately before becoming  
23           unattached; and  
24           (b) has the classification of the office that the unattached officer  
25           occupied immediately before becoming unattached; and  
26           (c) has the hours of attendance of the office that the unattached  
27           officer occupied immediately before becoming unattached.

---

**Division 5.10                      Secondment****118                      Secondment to the service**

- (1) The head of service may approve a request from an eligible person for the secondment of the eligible person to the service.
- (2) The eligible person must agree to the details of the secondment before the secondment begins.
- (3) The person on secondment must exercise a function assigned to the person while on secondment in accordance with this Act and any other law applying in the territory.
- (4) A person on secondment is taken to be a public servant for section 7 (Meaning of *public sector values*), section 8 (Meaning of *public sector principles*) and section 9 (Public sector conduct).
- (5) In this section:

*secondment*, of a person to the service, means a written arrangement between the Territory and the employer of the person, under which the person works in the service as if the person was employed by the Territory.

**119                      Secondment of public servant to another employer**

- (1) The head of service may approve a request from a public servant for the secondment of the public servant to another employer.
- (2) The public servant must agree to the details of the secondment before the secondment begins.
- (3) Any function lawfully exercised by a public servant on secondment will not contravene this Act or another territory law if the function is exercised in the way the public servant is lawfully directed to exercise it.

1 (4) In this section:

2 *secondment*, of a public servant to another employer, means a  
3 written arrangement between the Territory and the other employer,  
4 under which the public servant exercises a function for the other  
5 employer as if the public servant was employed by the other  
6 employer.

7 **54 Parts 6 and 10**

8 *substitute*

9 **Part 6 Redeployment,**  
10 **underperformance and end of**  
11 **employment of officers**

12 **120 Definitions—pt 6**

13 In this part:

14 *confirmed officer* means an officer who is not on probation.

15 *incapacitated*—an officer is *incapacitated* if the officer is unable to  
16 exercise functions appropriate to the officer's classification because  
17 of physical or mental incapacity.

18 *ineligible*—an officer is *ineligible* for an office if the officer ceases  
19 to be an eligible person for the office.

20 **121 Retirement**

21 If an officer is at least 55 years old, the officer may retire from the  
22 service at any time.

23 **122 Redeployment**

24 (1) This section applies to a confirmed officer if the director-general of  
25 the officer's administrative unit is satisfied on reasonable grounds  
26 that the officer is—

27 (a) incapacitated; or

- 1 (b) ineligible for the officer's office; or  
2 (c) an excess officer.
- 3 (2) The director-general must—
- 4 (a) take reasonable steps to find a vacant office that the officer is  
5 eligible for; and  
6 (b) if the director-general finds a suitable vacant office—  
7 (i) in writing, offer the office to the officer; and  
8 (ii) if the officer consents to be transferred—transfer the  
9 officer to the office; and  
10 (iii) if the officer does not consent to be transferred—refer the  
11 proposed redeployment to the head of service; and  
12 (c) if the director-general does not find a suitable vacant office—  
13 refer the proposed redeployment to the head of service.
- 14 (3) If the redeployment is referred to the head of service, the head of  
15 service must—
- 16 (a) take reasonable steps to find a vacant office in the service that  
17 the officer is eligible for; and  
18 (b) if the head of service finds a suitable vacant office—  
19 (a) in writing, offer the office to the officer; and  
20 (b) if the officer consents to be transferred—transfer the  
21 officer to the office.
- 22 (4) If the head of service cannot find a suitable vacant office to which  
23 the officer consents to be transferred the head of service must, in  
24 writing, refer the unsuccessful redeployment to the director-general.

25 **123 Reduction in classification or retirement**

- 26 (1) This section applies to an officer whose unsuccessful redeployment  
27 is referred to the director-general under section 122 (4).

- 1           (2) The director-general may, with written notice to the officer—
- 2           (a) reduce the officer's classification by—
- 3               (i) transferring the officer to an office with a lower
- 4               classification; or
- 5               (ii) declaring, in consultation with the head of service, the
- 6               officer to be an unattached officer of a lower
- 7               classification; or
- 8           (b) retire the officer from the service.
- 9           (3) A decision under subsection (2) is an appellable decision.
- 10          (4) If the officer agrees to a reduction in classification or retirement, the
- 11          date of effect of the action is—
- 12           (a) for an incapacitated officer—a day agreed, in writing, between
- 13           the officer and the director-general; or
- 14           (b) for an ineligible or an excess officer—any day after the day the
- 15           notice was given that is agreed, in writing, between the officer
- 16           and the director-general.
- 17          (5) If the officer does not agree to a reduction in classification or
- 18          retirement, the date of effect of the action is—
- 19           (a) if an industrial instrument applies to the officer and states a
- 20           retention period for the circumstances—the day after the end of
- 21           the retention period; or
- 22           (b) if paragraph (a) does not apply—the latest of the following:
- 23               (i) the day stated in the notice;
- 24               (ii) the day 1 month after the day the notice was given to the
- 25               officer;
- 26               (iii) if the officer appeals, but then withdraws the appeal—the
- 27               day the appeal is withdrawn;
- 28               (iv) if the officer appeals and the appeal upholds the giving of
- 29               the notice—the day the appeal is decided.

- 1     **124     Limitation on retirement on ground of invalidity**
- 2           (1) This section applies despite section 122 or section 123.
- 3           (2) An officer may not be retired from office on the ground of invalidity
- 4           unless—
- 5           (a) if the officer is an eligible employee for the purposes of the
- 6                 *Superannuation Act 1976* (Cwlth)—
- 7                 (i) the officer has not reached the officer’s maximum
- 8                 retiring age within the meaning of that Act; and
- 9                 (ii) a certificate has been given by the Commonwealth
- 10                 Superannuation Board of Trustees No 2 under that Act,
- 11                 section 54C for the officer; or
- 12           (b) if the officer is a member of the superannuation scheme
- 13           established under the *Superannuation Act 1990* (Cwlth)—
- 14                 (i) the officer is under 60 years old; and
- 15                 (ii) a certificate has been given by the Commonwealth
- 16                 Superannuation Board of Trustees No 1 under that Act,
- 17                 section 13 for the officer; or
- 18           (c) if the officer is an ordinary employer-sponsored member of
- 19           PSSAP within the meaning of the *Superannuation Act 2005*
- 20           (Cwlth)—
- 21                 (i) the officer is under 60 years old; and
- 22                 (ii) a certificate has been given by the Commonwealth
- 23                 Superannuation Board of Trustees No 1 under that Act,
- 24                 section 43 for the officer.
- 25           (3) In this section:
- 26           *invalidity* means—
- 27           (a) for an eligible employee under the *Superannuation Act 1976*
- 28           (Cwlth)—invalidity under that Act; or

- 1 (b) for a member of the superannuation scheme established under  
2 the *Superannuation Act 1990* (Cwlth)—invalidity under that  
3 Act; or
- 4 (c) for an ordinary employer sponsored member of the PSSAP  
5 within the meaning of the *Superannuation Act 2005* (Cwlth)—  
6 invalidity under that Act; or
- 7 (d) for a member of a superannuation scheme declared by the head  
8 of service—invalidity under the scheme.

9 **125 Underperformance**

- 10 (1) The procedures that apply to underperformance by an officer are—
- 11 (a) if an industrial instrument applies to the officer and includes  
12 procedures for underperformance—the underperformance  
13 procedures in the industrial instrument; or
- 14 (b) in any other case—the prescribed underperformance  
15 procedures.
- 16 (2) In this section:
- 17 *underperformance*, by an officer, includes failure by the officer to  
18 exercise the functions of an office to the standard reasonably  
19 required.

20 **126 End of employment for misconduct**

- 21 (1) This section applies if under the misconduct procedures that apply  
22 to a public servant, the public servant has engaged in misconduct.
- 23 (2) The head of service may end the employment of the public servant.
- 24 (3) A decision to end employment for misconduct is not an appellable  
25 decision or a reviewable decision.

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

- 1 **127 Forfeiture of office**
- 2 (1) This section applies if an officer is absent from work without  
3 permission for a continuous period of 4 weeks or more.
- 4 (2) The head of service may give the officer a written notice telling the  
5 officer that the officer will be taken to have retired from the service  
6 2 weeks from the day the notice was sent unless, within the 2-week  
7 period, the officer—
- 8 (a) returns to work; or
- 9 (b) explains the absence and asks the head of service for any  
10 further period of absence that may be necessary having regard  
11 to that explanation.
- 12 *Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.
- 13 (3) The officer is taken to have retired from the service on the day after  
14 the end of the 2-week period unless the officer—
- 15 (a) returns to work; or
- 16 (b) explains the absence.
- 17 (4) If the officer explains the absence and asks the head of service for a  
18 further period of absence, the head of service must—
- 19 (a) as soon as practicable, consider the matter; and
- 20 (b) tell the officer, in writing, that the officer—
- 21 (i) is given leave for the period, including any conditions on  
22 the leave; or
- 23 (ii) must return to work within a stated period (of at least  
24 2 weeks) or the officer will be taken to have retired from  
25 the service at the end of the stated period.
- 26 (5) If an officer is required to return to work within a period stated  
27 under subsection (4) (b) (ii) and the officer does not return to work  
28 in the period, the officer is taken to have retired from the service on  
29 the day after the end of the period.

1 **Part 7** **Re-entry to the service**

2 **Division 7.1** **Preliminary**

3 **128** **Definitions—pt 7**

4 In this part:

5 *declaration*, of the result of an election, means—

6 (a) if the election result is challenged, the earlier of—

7 (i) the determination of the challenge by a court of disputed  
8 returns (however described); or

9 (ii) the lapsing of the challenge; or

10 (b) in any other case—the date the election is declared.

11 *election candidate* means a candidate for election as—

12 (a) a member of the Legislative Assembly; or

13 (b) a member of a House of the Parliament of the Commonwealth  
14 or a State; or

15 (c) a member of the Legislative Assembly for the Northern  
16 Territory; or

17 (d) a member of a legislative or advisory body.

18 *exonerated*, in relation to a former public servant, means—

19 (a) the former public servant is convicted of an offence; and

20 (b) because of the conviction or a related misconduct procedure,  
21 disciplinary action taken for the public servant included ending  
22 the public servant's employment; and

23 (c) after the disciplinary action is taken the former public  
24 servant—

25 (i) has the conviction quashed, nullified or set aside; or

(ii) is pardoned or released from prison as a result of an inquiry into the conviction.

***unsuccessful election candidate*** means a person who—

- (a) was a public servant; and
- (b) ended employment with the service to become an election candidate within 6 months before the day nominations to be an election candidate closed; and
- (c) was an election candidate; and
- (d) failed to be elected.

## **Division 7.2 Former SES member**

### **129 Limitation on re-engagement of SES member**

- (1) This section applies to a former SES member if—
  - (a) the SES member's engagement was ended under section 38 (End of SES member's engagement); or
  - (b) the SES member resigned under section 39 (SES member may resign).
- (2) The former SES member must not be—
  - (a) re-engaged in a vacant SES position until any exclusion period has ended; and
  - (b) for a former SES member whose engagement was ended under section 38—engaged in a vacant SES position on a permanent basis—
    - (i) less than 12 months after the last day of the SES member's former engagement; or
    - (ii) if the SES member is paid an amount in addition to an amount under section 241 (Payment on leaving the service) (an ***additional amount***)—less than 24 months after the last day of the SES member's former engagement.

- 1 (3) The *exclusion period*, in days, is worked out as follows:

$$\frac{\text{additional amount}}{\text{average daily salary over the last year of engagement}}$$

2 **130 Re-engagement of SES member after abandonment of**  
3 **employment**

- 4 (1) This section applies to a former SES member whose engagement  
5 was ended under section 40 (End of engagement by resignation—  
6 abandonment of engagement by SES member).
- 7 (2) Within a reasonable time, the former SES member may ask to be  
8 re-engaged.
- 9 (3) The former SES member must be engaged in a suitable SES position  
10 if the engager for the SES position considers the request is  
11 reasonable.

12 **131 Re-engagement of SES member if unsuccessful election**  
13 **candidate**

- 14 (1) This section applies to a former SES member if the former SES  
15 member is an unsuccessful election candidate.
- 16 (2) Within 2 months after the declaration of the result of the election,  
17 the former SES member may ask, in writing, to be re-engaged.
- 18 (3) The former SES member must be engaged in an SES position if the  
19 engager for the SES position considers the request is reasonable.
- 20 (4) The engagement must be—
- 21 (a) to—
- 22 (i) the SES position in which the person had been engaged  
23 immediately before the SES member's contract was  
24 terminated; or
- 25 (ii) an SES position as similar as possible to that SES  
26 position; and

- 1 (b) for the period ending on the same day as the terminated  
2 contract was due to end.
- 3 **132 Re-engagement of SES member after quashing etc of**  
4 **conviction**
- 5 (1) This section applies to a former SES member if the former SES  
6 member—
- 7 (a) is exonerated; and
- 8 (b) asks within a reasonable time, in writing, for the disciplinary  
9 action taken against the former SES member to be overturned.
- 10 (2) The former SES member may be engaged in an SES position if the  
11 engager for the SES position considers the request is reasonable.
- 12 (3) The engager for the SES position may also take other action  
13 reasonably necessary to overturn the disciplinary action.
- 14 (4) The engagement must be—
- 15 (a) to—
- 16 (i) the SES position in which the person had been engaged  
17 immediately before the SES member's contract was  
18 terminated; or
- 19 (ii) an SES position as similar as possible to that SES  
20 position; and
- 21 (b) for the period ending on the same day as the terminated  
22 contract was due to end.
- 23 (5) A former SES member who is re-engaged, under this section must  
24 be paid, for the intervening period, the salary the SES member was  
25 paid immediately before the former engagement ended.

1 **Division 7.3** **Former officers**

2 **133** **Reappointment of former excess officer**

3 The head of service may reappoint a former excess officer if the  
4 former officer—

- 5 (a) was retired from the service under section 123 (Reduction in  
6 classification or retirement)—
- 7 (i) involuntarily within the previous year; or  
8 (ii) voluntarily within the previous 2 years; and
- 9 (b) received a payment from the Territory or a territory  
10 instrumentality for being retired.

11 **134** **No engagement or employment of certain former excess  
12 officers in certain circumstances**

13 (1) This section applies to a former excess officer if the former  
14 officer—

- 15 (a) was retired from the service under section 123 (Reduction in  
16 classification or retirement)—
- 17 (i) involuntarily within the previous year; or  
18 (ii) voluntarily within the previous 2 years; or
- 19 (b) received a payment from the Territory or a territory  
20 instrumentality for being retired.

21 (2) The head of service must not—

- 22 (a) engage the former excess officer as an executive or  
23 director-general; or  
24 (b) employ the former excess officer as an employee.

- 1     **135       Reappointment of officer after forfeiture of office**
- 2           (1) A former officer who is taken to have retired under section 127  
3           (Forfeiture of office) may apply to the head of service, in writing,  
4           for reappointment to the service.
- 5           (2) If the head of service is satisfied that the former officer had, in all  
6           the circumstances, reasonable grounds for being absent, the head of  
7           service must reappoint the former officer to—
- 8               (a) the office occupied by the former officer immediately before  
9               the former officer is taken to have retired; or
- 10              (b) if that office is not available—an equivalent office, or an office  
11              as similar as possible, to that office; or
- 12              (c) with the written consent of the former officer—another office.
- 13           (3) If the head of service is not satisfied that the former officer had, in  
14           all the circumstances, reasonable grounds for being absent, the head  
15           of service must refuse the former officer.
- 16           (4) If the head of service refuses a former officer, the head of service  
17           must give the former officer written notice of the refusal and the  
18           reasons for the refusal.
- 19           (5) A former officer who is reappointed under this section is taken to  
20           have—
- 21              (a) continuity of service as prescribed; and
- 22              (b) recognition of prior service as prescribed.
- 23     **136       Reappointment of officer if unsuccessful election**  
24     **candidate**
- 25           (1) This section applies to a former officer if the former officer is an  
26           unsuccessful election candidate.
- 27           (2) Within 2 months after the declaration of the result of the election,  
28           the former officer may ask the head of service, in writing, to be  
29           reappointed.

- 1           (3) After receiving a request under subsection (2), the head of service  
2           must reappoint the person—
- 3           (a) to the office occupied by the person immediately before the  
4           person’s appointment was ended (the *last office*); or
- 5           (b) if the last office is not vacant—to an equivalent office in the  
6           same administrative unit as the last office; or
- 7           (c) if an equivalent office is not available—as an unattached  
8           officer with the same classification as the last office.

9           **137        Reappointment of officer after quashing etc of conviction**

- 10          (1) This section applies to a former officer if the former officer—
- 11          (a) is exonerated; and
- 12          (b) asks the head of service within a reasonable time, in writing,  
13          for the disciplinary action taken against the former officer to be  
14          overturned.
- 15          (2) The head of service must consider the former officer’s request  
16          and—
- 17          (a) do 1 or both of the following:
- 18               (i) reappoint the former officer;
- 19               (ii) take other action reasonably necessary to overturn the  
20               disciplinary action; or
- 21          (b) refuse the request.
- 22          (3) For subsection (2) (a) (i) the head of service must reappoint the  
23          person—
- 24          (a) to the office occupied by the person immediately before the  
25          person’s employment was ended (the *last office*); or
- 26          (b) if the last office is not vacant—to an equivalent office in the  
27          same administrative unit as the last office; or
- 28          (c) if an equivalent office is not available—as an unattached  
29          officer with the same classification as the last office.

- 1 (4) A former officer who is reappointed under this section must be paid,  
2 for the intervening period, the salary the officer was paid  
3 immediately before the head of service ended the officer's  
4 appointment.

5 **138 No reappointment of former officer in certain**  
6 **circumstances**

- 7 (1) The head of service must not reappoint a former officer if, at any  
8 time, the former officer's—

9 (a) employment in the service ended for underperformance in  
10 accordance with section 125 (Underperformance) or  
11 misconduct under section 126 (End of employment for  
12 misconduct); or

13 (b) prescribed employment ended on grounds similar to the  
14 grounds for misconduct or underperformance under this Act.

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

- 18 (2) For subsection (1), if the former officer was dismissed because a  
19 court found the former officer committed a criminal offence, the  
20 former officer may be reappointed if—

21 (a) the finding of the court is nullified or set aside; or

22 (b) if a person was convicted on the basis of the finding—the  
23 conviction is quashed, nullified or the person is pardoned or  
24 released from prison.

- 25 (3) The head of service must not reappoint a former officer for the  
26 12-month period starting on the day the former officer's  
27 employment ended under—

28 (a) section 70 (4) (Appointment on probation); or

29 (b) section 71 (4) (Appointment on probation—prescribed training  
30 office); or

31 (c) section 71A (4) (Appointment on probation—teachers); or

- 1 (d) section 71B (5) (Extension of period of probation).
- 2 (4) In this section:
- 3 *criminal offence* means an offence against a law of—
- 4 (a) the Territory; or
- 5 (b) the Commonwealth; or
- 6 (c) a State that, if committed in the ACT would constitute an
- 7 offence against a law of the Territory; or
- 8 (d) a foreign country that, if committed in the ACT would
- 9 constitute an offence against a law of the Territory or the
- 10 Commonwealth.

## 11 **Division 7.4 Former employee**

### 12 **139 Re-employment of employee if unsuccessful election**

#### 13 **candidate**

- 14 (1) This section applies to a former employee if the former employee is
- 15 an unsuccessful election candidate.
- 16 (2) Within 2 months after the declaration of the result of the election,
- 17 the former employee may ask the head of service, in writing, to be
- 18 re-employed.
- 19 (3) After receiving a request under subsection (2), the head of service
- 20 must employ the person in the same or a similar capacity with the
- 21 same rate of pay as that payable to the person immediately before
- 22 the person's employment ended.

### 23 **140 Re-employment of employee after quashing etc of**

#### 24 **conviction**

- 25 (1) This section applies to a former fixed-term employee if the former
- 26 employee—
- 27 (a) is exonerated; and

- 1 (b) asks the head of service within a reasonable time, in writing,  
2 for the disciplinary action taken against the former employee to  
3 be overturned.
- 4 (2) The head of service must consider the former employee's request  
5 and—
- 6 (a) do 1 or both of the following:
- 7 (i) re-employ the former employee;
- 8 (ii) take other action reasonably necessary to overturn the  
9 disciplinary action; or
- 10 (b) refuse the request.
- 11 (3) For subsection (2) (a) (i), the head of service must employ the  
12 person in the same or a similar capacity with the same rate of pay as  
13 that payable to the person immediately before the person's  
14 employment ended.
- 15 (4) A former employee who is re-employed under this section must be  
16 paid, for the intervening period, the salary the employee was paid  
17 immediately before the head of service ended the employee's  
18 employment.

19 **141 Re-employment after maternity leave**

- 20 (1) This section applies to a former fixed-term employee if the former  
21 employee applies for fixed-term employment within 24 months of  
22 beginning a period of maternity leave if the former employee's  
23 employment ended during a period of unpaid maternity leave.
- 24 (2) The head of service must consider the former employee's  
25 application before any other applicant, and if the former employee is  
26 an eligible person for the employment the former employee must be  
27 employed.

1 (3) If 2 or more former employees to whom this section applies apply  
2 for the same employment, the head of service must undertake a  
3 comparative assessment of the former employees and employ the  
4 most suitable.

5 *Note* The head of service must exercise a function in relation to employment  
6 in accordance with the merit and equity principle (see s 8 (3)).

7 (4) In this section:

8 *maternity leave* means maternity leave under an industrial  
9 instrument.

## 10 **Part 8** **The public sector**

### 11 **Division 8.1** **Public Sector Standards** 12 **Commissioner**

#### 13 **142** **Appointment of commissioner**

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

16 *Note 1* For the making of appointments (including acting appointments), see  
17 the [Legislation Act](#), pt 19.3.

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

20 (2) If a public servant is appointed as the commissioner, the public  
21 servant must end employment in the service before the appointment  
22 commences.

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

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

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

1 (5) An appointment is a notifiable instrument.

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

### 3 **143 Functions of commissioner**

4 (1) The commissioner has the following functions:

5 (a) to conduct investigations—

6 (i) about a matter declared by the Chief Minister in the way  
7 prescribed; and

8 (ii) under an industrial instrument in accordance with  
9 subsection (2);

10 (b) to provide advice to the Chief Minister about matters arising  
11 from an investigation conducted by the commissioner;

12 (c) in connection with an investigation conducted by the  
13 commissioner—to promote and provide advice about the  
14 public sector values, the public sector principles and the  
15 conduct required under this Act;

16 (d) to exercise any function given to the commissioner under this  
17 Act or another law applying in the Territory.

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

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

23 (2) A function given to the head of service under an industrial  
24 instrument in relation to an investigation, appeal or review (an  
25 **investigation function**) may be exercised by the commissioner.

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

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

1 (3) The commissioner may delegate an investigation function to a  
2 public servant or another person.

3 *Note* For the making of delegations and the exercise of delegated functions,  
4 see the [Legislation Act](#), pt 19.4.

5 (4) Nothing in this section limits the exercise of an investigation  
6 function by the head of service.

7 (5) A declaration of a matter by the Chief Minister is a notifiable  
8 instrument.

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

10 **144 Leave of absence for commissioner**

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

13 **145 Suspension and removal of commissioner**

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

15 (a) for alleged misconduct; or

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

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

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

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

25 (2) The Chief Minister must present the Legislative Assembly with a  
26 statement of the reasons for the suspension not later than the  
27 first sitting day after the day the commissioner is suspended.

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

17 **146 Ending commissioner's appointment without suspension**

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

26 **147 Arrangements for staff and facilities**

27 The commissioner may make arrangements with the head of service  
 28 to use the services of public servants or Territory facilities.

29 *Note* The head of service may delegate powers in relation to the management  
 30 of employees to the commissioner (see s 18).

1     **148       Delegation by commissioner**

- 2           (1) The commissioner may—
- 3               (a) delegate to a public employee or another person a function
- 4               given to the commissioner under this Act or any other law
- 5               applying in the ACT; or
- 6               (b) subdelegate to a public employee or another person a function
- 7               delegated to the commissioner under a law other than this Act.
- 8           *Note 1* For the making of delegations and the exercise of a delegated function,
- 9               see the [Legislation Act](#), pt 19.4.
- 10          *Note 2* **Public employee** means a public servant, a person employed by a
- 11          territory instrumentality or a statutory office-holder or a person
- 12          employed by a statutory office-holder (see [Legislation Act](#), dict, pt 1).
- 13          *Note 3* A reference to an Act includes a reference to the statutory instruments
- 14          made or in force under the Act, including any regulation (see
- 15          [Legislation Act](#), s 104).
- 16          (2) However, the commissioner must not delegate or subdelegate a
- 17          function to a person who is not a public employee without first
- 18          being satisfied that the function needs to be undertaken by a person
- 19          who is not a public employee.

20     **Division 8.2           Public sector members**

21     **149       Meaning of *public sector member* etc**

- 22           (1) In this Act:
- 23               *public sector member*—
- 24               (a) means the following:
- 25                   (i) a statutory office-holder;
- 26                       *Note 1* **Statutory office-holder**—see the [Legislation Act](#),
- 27                       dictionary, pt 1.
- 28                       *Note 2* A statutory office-holder may also be a public servant.
- 29                   (ii) a person employed by a statutory office-holder;

- 1 (iii) if a statutory office-holder enters into an arrangement  
2 with the head of service under a territory law for the use  
3 of the services of a public servant—the public servant;  
4 but
- 5 (b) does not include the following:
- 6 (i) the Chief Justice, a judge or the associate judge;
- 7 (ii) the Chief Magistrate, a magistrate or any office that must  
8 be occupied by a magistrate;
- 9 (iii) a person mentioned in paragraph (a) to the extent that the  
10 person exercises a judicial function;
- 11 (iv) an ACAT tribunal member to the extent that the member  
12 exercises a function in relation to a hearing of a  
13 proceeding before the ACAT;
- 14 (v) a prescribed person.

15 *Note 1* **Chief Justice, judge, associate judge, Chief Magistrate,**  
16 **magistrate** and **ACAT**—see the [Legislation Act](#), dictionary, pt 1.

17 *Note 2* A management standard may prescribe that a person is a public  
18 sector member (see s 155).

- 19 (2) In this division:  
20 ***employ***, includes appoint or engage.

21 **150 Public sector standards for public sector member etc**

- 22 (1) Division 2.1 (Public sector standards) applies to the following to the  
23 extent that the application of division 2.1 is consistent with the  
24 exercise of the member's functions:
- 25 (a) a public sector member;

1 (b) a person employed by a territory instrumentality.

2 **Example**

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

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

13 (2) For section 9 (4), a disclosure must tell—

14 (a) for a public sector member employed under this Act—

15 (i) the public sector employer who employed the discloser;  
16 or

17 (ii) if the alleged maladministration or misconduct is by the  
18 public sector employer—the head of service; and

19 (b) for a public sector member not employed under this Act—the  
20 head of service.

21 **151 Certain office-holders have management powers**

22 (1) This section applies if a territory law states that—

23 (a) a statutory office-holder or chief executive officer (a *public*  
24 *sector employer*) may employ staff; and

25 (b) the staff must be employed under this Act.

26 (2) A management provision under this Act applies to the public sector  
27 employer as if—

28 (a) a reference to the head of service is taken to be a reference to  
29 the public sector employer, to the extent that the application of  
30 the management provision is consistent with the exercise of the  
31 public sector employer's functions; and

- 1 (b) a reference to an officer is taken to be a reference to a public  
2 sector employer's staff member who is employed on a  
3 permanent basis; and
- 4 (c) a reference to an employee is taken to be a reference to a  
5 public sector employer's staff member who is employed on a  
6 temporary basis; and
- 7 (d) a reference to an office is a reference to the staff member's  
8 terms of employment; and
- 9 (e) for division 3.2 (Management of the service)—a reference to a  
10 function the head of service must exercise is a reference to a  
11 function that a public sector employer may exercise; and
- 12 (f) any other necessary change is made.
- 13 (3) The public sector employer—
- 14 (a) must give the head of service any information about a staff  
15 member that is requested by the head of service because the  
16 information is relevant to the exercise of the head of service's  
17 functions; and
- 18 (b) may exercise a function under an industrial instrument in  
19 relation to a staff member, as if the public sector employer  
20 were the head of service; and
- 21 (c) unless otherwise stated in a territory law—may delegate a  
22 function under this part to the following:
- 23 (i) a staff member;
- 24 (ii) an officer or employee;
- 25 (iii) the head of service.
- 26 (4) In this section:
- 27 ***management provision*** means the following:
- 28 (a) part 5 (Employment of officers and employees);

- 1 (b) part 6 (Redeployment, underperformance and end of  
2 employment of officers);  
3 (c) part 7 (Re-entry to the service);  
4 (d) part 11 (Review and appeal);  
5 (e) part 13 (Miscellaneous).

6 **152 Application of whole-of-government strategies**

7 A whole-of-government strategy applies to a public sector employer  
8 and the staff of the public sector employer employed under this Act,  
9 if the strategy—

- 10 (a) relates to the employment or management of staff; or  
11 (b) is prescribed for this section.

12 **153 Alleged misconduct by statutory office-holder etc**

- 13 (1) This section applies to an allegation of misconduct by a statutory  
14 office-holder or chief executive officer of a territory instrumentality.  
15 (2) The commissioner must investigate the allegation if requested to do  
16 so by the person with responsibility for appointing the statutory  
17 office-holder or chief executive officer (the *appointer*).

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

- 20 (3) The commissioner, unless otherwise stated, in writing, by the  
21 appointer—  
22 (a) must investigate the alleged misconduct in the same way  
23 alleged misconduct would be investigated by the commissioner  
24 under this Act; and  
25 (b) has the same powers to investigate the alleged misconduct as  
26 the commissioner has to investigate alleged misconduct by a  
27 public servant.

28 *Note* A reference to an Act includes a reference to the statutory instruments  
29 made or in force under the Act, including a management standard (see  
30 [Legislation Act](#), s 104).

1 **154** **Alleged mismanagement of public sector employer's staff**  
2 **etc**

- 3 (1) If the commissioner receives a complaint about a management  
4 matter, the commissioner—
- 5 (a) must investigate the management matter in the same way a  
6 management matter in the service would be investigated by the  
7 commissioner under this Act; and
- 8 (b) has the powers given to the commissioner under this Act to  
9 investigate a management matter in relation to a staff member  
10 as if the member were a public servant.

11 *Note* A reference to an Act includes a reference to the statutory instruments  
12 made or in force under the Act, including a management standard (see  
13 [Legislation Act](#), s 104).

- 14 (2) In this section:

15 ***management matter*** means anything done by—

- 16 (a) a public sector employer in relation to the management of the  
17 public sector employer's staff; or
- 18 (b) the chief executive officer of a territory instrumentality in  
19 relation to the management of the staff of a territory  
20 instrumentality.

21 **155** **Prescribed public sector member**

- 22 (1) The head of service may make a management standard to  
23 prescribe—
- 24 (a) that a person is a public sector member (a ***prescribed public***  
25 ***sector member***); and
- 26 (b) that some or all of the management provisions apply to a stated  
27 person employing a prescribed public sector member; and
- 28 (c) procedures in relation to alleged misconduct by a prescribed  
29 public sector member; and

1 (d) procedures in relation to alleged mismanagement of a  
2 prescribed public sector member.

3 (2) In this section:

4 *management provision*—see section 151 (4).

5 **55 Definitions—pt 11**  
6 **Section 223, definition of *officer***

7 *omit*

8 **56 Sections 241 and 242**

9 *substitute*

10 **241 Payment on leaving the service**

11 (1) This section applies to a public servant if the public servant's  
12 engagement, appointment or employment in the service ends.

13 (2) The head of service must pay, or withhold from, the public servant  
14 any prescribed amount.

15 **242 Authorisation to share protected information**

16 (1) This section applies despite any other territory law.

17 (2) An information holder is authorised to disclose protected  
18 information to the following people, if the protected information is  
19 required by the person for the exercise of a function under this Act  
20 or an industrial instrument:

21 (a) another information holder;

22 (b) a person authorised by an information holder to receive the  
23 information.

24 (3) In this section:

25 *disclose* includes communicate or publish.

26 *information* means information, whether true or not, in any form  
27 and includes an opinion and advice.

1           **information holder** means—

2           (a) a person who is or has been—

3                 (i) the head of service; or

4                 (ii) a director-general; or

5                 (iii) the commissioner; or

6                 (iv) a public sector employer; or

7                 (v) an employer prescribed under section 155 (1) (b); and

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

10           **protected information** means information about a person that is  
11                 disclosed to, or obtained by, an information holder because of the  
12                 exercise of a function under the public sector employment  
13                 legislation by the information holder or someone else.

14           **Examples**

15           1 a record kept by the head of service for managing an employment matter

16           2 information about whether the person is eligible for an SES position

17           3 information about a public servant disclosed in relation to a strategy designed  
18                 to ensure the Territory is an equitable employer

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

22           **public sector employment legislation** means—

23           (a) this Act; and

24           (b) the *Fair Work Act 2009* (Cwlth); and

25           (c) an industrial instrument; and

26           (d) any other law prescribed by regulation.

27           *Note* A reference to an Act includes a reference to the statutory instruments  
28                 made or in force under the Act, including a management standard (see  
29                 [Legislation Act](#), s 104).

1 **57** **Protection of people in relation to work reports on**  
2 **officers or employees**  
3 **Section 243 (2)**

4 *omit*  
5 shall be deemed  
6 *substitute*  
7 is taken

8 **58** **Sections 244 to 248**

9 *substitute*

10 **244** **Work outside the service**

11 (1) A public servant must have the approval of the head of service for  
12 any of the following activities, other than in the exercise of the  
13 public servant's functions:

- 14 (a) employment;  
15 (b) business activities;  
16 (c) membership of a board or committee.

17 (2) However, a public servant does not need approval to be a member or  
18 shareholder of, or hold an unpaid position in, an incorporated  
19 company, a political party or a body registered under a law of the  
20 Territory, a State or the Commonwealth.

21 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

22 **245** **Additional payment**

23 (1) The head of service may, in writing, approve payment, however  
24 expressed, in addition to a public servant's salary and allowances  
25 (an *additional payment*) for the public servant in relation to the  
26 exercise of the public servant's functions.

27 (2) The approval may include a condition in relation to the use of the  
28 additional payment by the public servant.

- 1 (3) Any additional payment must be made from money appropriated by  
2 the Legislative Assembly.

3 **246 Repaying overpayment**

- 4 (1) A public servant must repay any amount paid by the Territory to the  
5 public servant to which the public servant is not legally entitled.  
6 (2) A repayment may be made in instalments.  
7 (3) The arrangements for repayment must be—  
8 (a) agreed between the head of service and the public servant; and  
9 (b) reasonable having regard to all the circumstances.

10 **247 Impersonation etc at examinations**

11 A person must not—

- 12 (a) impersonate another person at an examination, including a test,  
13 held under this Act; or  
14 (b) permit another person to impersonate the person at an  
15 examination, including a test, held under this Act; or  
16 (c) before the time when an examination is to be held under this  
17 Act, improperly obtain or give a person—  
18 (i) an examination paper that has been set for an  
19 examination held under this Act; or  
20 (ii) papers relating to an examination paper that has been set  
21 for an examination held under this Act.

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

24 **59 Sections 248A to 248C**

25 *omit*

1 **60 Imprisonment**  
2 **Section 249 (4) and (5)**

3 *omit*  
4 from duty

5 **61 Section 249 (6), definition of *suspended from duty***

6 *substitute*  
7 *suspended* means suspended under an industrial instrument.

8 **62 Attachment of salary of officers and employees**  
9 **Section 250 (2)**

10 *omit*  
11 shall  
12 *substitute*  
13 must

14 **63 Sections 250A and 251**

15 *substitute*

16 **250A Deduction of monetary penalty**

- 17 (1) This section applies if—
- 18 (a) a monetary penalty has been imposed on a public servant under
  - 19 a misconduct procedure; or
  - 20 (b) an order for the payment of an amount of money by a public
  - 21 servant has been made under a misconduct procedure; or
  - 22 (c) a direction for the deduction of an amount of money by a
  - 23 public servant has been made under a misconduct procedure.
- 24 (2) The public servant may pay the amount or have the amount
- 25 deducted from the public servant's salary.

- 
- 1           (3) A deduction under this section—  
2               (a) may be made in instalments; and  
3               (b) must be made in instalments if the deduction is more than 1/4  
4               of the salary payable to the public servant for a pay period.

5   **251       Management standards**

- 6           (1) The head of service may, with the Chief Minister's written approval,  
7           make a management standard for this Act about the following:
- 8               (a) the public sector values;
  - 9               (b) the public sector principles;
  - 10              (c) the conduct required under this Act;
  - 11              (d) a management strategy;
  - 12              (e) a whole-of-government strategy;
  - 13              (f) management and administration in the public sector;
  - 14              (g) the organisation of the service;
  - 15              (h) management strategies;
  - 16              (i) eligibility requirements for the service;
  - 17              (j) the senior executive service;
  - 18              (k) offices;
  - 19              (l) officers;
  - 20              (m) employees;
  - 21              (n) public sector members;
  - 22              (o) the terms of employment for public servants and public sector  
23              member;
  - 24              (p) work health and safety in the public sector;
  - 25              (q) secondment to or from the public sector;

- 1 (r) a matter requested, in writing, by the Chief Minister.
- 2 *Note 1* Power to make a statutory instrument (including to make or approve a  
3 management standard) includes power to make different provision in  
4 relation to different matters or different classes of matters, and to make  
5 an instrument that applies differently by reference to stated exceptions  
6 or factors (see [Legislation Act](#), s 48).
- 7 *Note 2* The power to make an instrument includes the power to amend or repeal  
8 the instrument. The power to amend or repeal the instrument is  
9 exercisable in the same way, and subject to the same conditions, as the  
10 power to make the instrument (see [Legislation Act](#), s 46).
- 11 (2) For subsection (1) (c), a management standard is subject to any  
12 direction in force under the *Director of Public Prosecutions*  
13 *Act 1990*, section 12.
- 14 (3) The Chief Minister's approval to make a management standard may  
15 be given subject to a condition.
- 16 (4) A management standard is a disallowable instrument.
- 17 *Note* A disallowable instrument must be notified, and presented to the  
18 Legislative Assembly, under the [Legislation Act](#).

19 **252 Regulation-making power**

20 The Executive may make regulations for this Act.

21 *Note* A regulation must be notified, and presented to the Legislative  
22 Assembly, under the [Legislation Act](#).

23 **64 Parts 11 and 13 (as amended)**

24 *renumber as parts 9 and 10*

---

**65 New part 18***insert***Part 18 Transitional**

*Note* The repeal or amendment of a law does not affect the previous operation of the law or anything done, begun or suffered under the law and does not affect an existing right, privilege or liability acquired, accrued or incurred under the law. An investigation, proceeding or remedy in relation to an existing right, privilege or liability under a repealed law may be started, exercised, continued or completed, and the right, privilege or liability may be enforced and any penalty imposed, as if the repeal had not happened (see [Legislation Act](#), s 84).

**290 Definitions—pt 18**

In this part:

*commencement day* means the day the *Public Sector Management Amendment Act 2016*, section 3 commences.

*pre-amendment Act* means the *Public Sector Management Act 1994*, as in force immediately before the commencement day.

*pre-amendment misconduct procedure*—see section 294 (1) (b).

**291 Existing engagement of head of service**

- (1) This section applies to a person who was engaged under the [pre-amendment Act](#), section 23C (Head of service—engagement) or section 23J (Head of service—temporary contract) immediately before the commencement day.
- (2) The contract continues in force and any other employment condition or arrangement that applied to the person immediately before the commencement day continues to apply to the person until the contract ends.

1     **292       Existing engagements of directors-general**

2             (1) This section applies to a person who was engaged under the  
3             pre-amendment Act, section 28 (Directors-general—engagement) or  
4             section 30 (Directors-general—temporary contracts) immediately  
5             before the commencement day.

6             (2) The contract continues in force and any other employment condition  
7             or arrangement that applied to the person immediately before the  
8             commencement day continues to apply to the person until the  
9             contract ends.

10    **293       Existing engagements of executives**

11            (1) This section applies to a person engaged under a contract under the  
12            pre-amendment Act, section 72 (Executives—engagement) or  
13            section 76 (Executives—temporary contracts) immediately before  
14            the commencement day.

15            (2) The contract continues in force and any other employment condition  
16            or arrangement that applied to the person immediately before the  
17            commencement day continues to apply to the person until the  
18            contract ends.

19    **294       Misconduct before commencement day—procedure  
20            started**

21            (1) This section applies if, before the commencement day—  
22            (a) a person engaged in alleged misconduct; and  
23            (b) a procedure in relation to the alleged misconduct (a  
24            *pre-amendment misconduct procedure*) has been started but  
25            not completed.

26            (2) The pre-amendment misconduct procedure must be completed under  
27            the pre-amendment Act as if the pre-amendment Act were still in  
28            force.

- 1 **295 Misconduct before commencement day—procedure not**  
2 **started**
- 3 (1) This section applies if, before the commencement day—  
4 (a) a person engaged in alleged misconduct; and  
5 (b) a misconduct procedure under the pre-amendment Act in  
6 relation to the conduct had not been started.
- 7 (2) A misconduct procedure may be undertaken under the  
8 pre-amendment Act as if the pre-amendment Act were still in force.
- 9 **296 Misconduct on or after commencement day**
- 10 (1) This section applies if a person engages in alleged misconduct on or  
11 after the commencement day (the *later conduct*) that forms part of a  
12 course of alleged misconduct that started before the commencement  
13 day (the *earlier conduct*), whether or not a misconduct procedure  
14 under the pre-amendment Act has been started in relation to the  
15 earlier conduct.
- 16 (2) Any procedure in relation to the later conduct must be undertaken  
17 under the Act, as in force when the procedure for the later conduct is  
18 started.
- 19 **297 Commissioner for public administration investigation**
- 20 (1) This section applies if any of the following matters are not finalised  
21 by the commissioner for public administration immediately before  
22 the commencement day:
- 23 (a) a review under the [pre-amendment Act](#), section 21 (Review of  
24 government agencies or functions);
- 25 (b) an inspection, inquiry or investigation under the  
26 [pre-amendment Act](#), section 22 (Investigative powers of  
27 commissioner) or section 22AA (Investigative powers of  
28 commissioner and Legislative Assembly entities);

- 1 (c) any other review, inquiry, investigation or related action  
2 undertaken by the commissioner for public administration  
3 under—  
4 (i) an industrial agreement; or  
5 (ii) a delegation or written agreement; or  
6 (iii) the *Public Interest Disclosure Act 2012*; or  
7 (iv) any other a territory law.
- 8 (2) The public sector standards commissioner may continue and finalise  
9 the matter.
- 10 (3) If the public sector standards commissioner continues the matter—  
11 (a) the public sector standards commissioner has all the powers the  
12 commissioner of public administration had in relation to the  
13 matter; and  
14 (b) the matter must be dealt with in accordance with the relevant  
15 law or other authority as in force, and as it applied to the  
16 matter, immediately before the commencement day.

17 **298 Transitional regulations**

- 18 (1) A regulation may prescribe transitional matters necessary or  
19 convenient to be prescribed because of the enactment of this Act.
- 20 (2) A regulation may modify this part (including in relation to another  
21 territory law) to make provision in relation to anything that, in the  
22 Executive's opinion, is not, or is not adequately or appropriately,  
23 dealt with in this part.
- 24 (3) A regulation under subsection (2) has effect despite anything  
25 elsewhere in this Act or another territory law.

1 **299 Expiry—pt 18**

2 This part expires 5 years after the commencement day.

3 *Note* Transitional provisions are kept in the Act for a limited time.  
4 A transitional provision is repealed on its expiry but continues to have  
5 effect after its repeal (see [Legislation Act](#), s 88).6 **66 Reviewable decisions**  
7 **Schedule 1, item 1, column 3**8 *omit*

9 reviewable level office

10 *substitute*

11 vacant office

12 **67 Appellable decisions**  
13 **Schedule 2, item 4**14 *omit*15 **68 Schedule 2, new item 5A**16 *insert*

5A	107	promotion or transfer of officer to training office	<ul style="list-style-type: none"> <li>officer who applied for promotion</li> <li>unattached officer who applied for promotion</li> </ul>
----	-----	---	---

17 **69 Schedule 2, item 6, column 2**18 *omit*

19 143 (9)

20 *substitute*

21 123 (2)

1 **70 Dictionary, note 2**

2 *substitute*

3 *Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- 4 • ACT
- 5 • Australian citizen
- 6 • Chief Minister
- 7 • Commonwealth
- 8 • exercise
- 9 • fail
- 10 • function
- 11 • gazette
- 12 • Legislative Assembly
- 13 • Northern Territory
- 14 • occupy
- 15 • Office of the Legislative Assembly
- 16 • position
- 17 • power
- 18 • public employee
- 19 • public servant
- 20 • state
- 21 • statutory office-holder
- 22 • the Territory.

23 **71 Dictionary, definitions of *Aboriginal or Torres Strait***  
24 ***Islander person, access and equity principle and access***  
25 ***and equity program***

26 *omit*

27 **72 Dictionary, new definitions**

28 *insert*

29 *administrative arrangements* means a determination made under  
30 see section 14 (1).

1            *appellable classification*, for part 5 (Employment of officers and  
2 employees)—see section 63.

3    **73        Dictionary, definition of *appellable level position***

4            *omit*

5    **74        Dictionary, definitions of *auditor-general's office* and  
6 *autonomous instrumentality***

7            *omit*

8    **75        Dictionary, new definition of *best practice principle***

9            *insert*

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

11    **76        Dictionary, definitions of *chief executive officer* and  
12 *classification***

13          *substitute*

14          *chief executive officer*, of a territory instrumentality, means the  
15 person who has responsibility for managing the affairs of the  
16 instrumentality.

17          *classification*—

18          (a) for an SES position, means a prescribed classification; and

19          (b) for an office, means—

20                (i) if a classification in an industrial instrument applies to the  
21 office—the classification; or

22                (ii) in any other case—a prescribed classification.

1 **77 Dictionary, definition of *commissioner***

2 *omit*

3 section 18 (1)

4 *substitute*

5 section 142 (1)

6 **78 Dictionary, definition of *Commonwealth officer***

7 *omit*

8 **79 Dictionary, new definition of *confirmed officer***

9 *insert*

10 *confirmed officer*, for part 6 (Redeployment, underperformance and  
11 end of employment of officers)—see section 120.

12 **80 Dictionary, definition of *criminal offence***

13 *omit*

14 **81 Dictionary, new definition of *declaration***

15 *insert*

16 *declaration*, of the result of an election, for part 7 (Re-entry to the  
17 service)—see section 128.

18 **82 Dictionary, definition of *designated group***

19 *omit*

20 **83 Dictionary, definition of *director-general***

21 *substitute*

22 *director-general* means a person engaged as a director-general  
23 under section 31 (2).

---

**84 Dictionary, definitions of *disability* and *discrimination***

*omit*

**85 Dictionary, new definitions**

*insert*

*election candidate*, for part 7 (Re-entry to the service)—see section 128.

*eligible person*, for appointment, engagement or employment as a public servant, means a person who—

(a) satisfies any of the following:

(i) is an Australian citizen;

(ii) is a permanent resident of Australia;

(iii) holds a visa that permits the person to work in the service; and

(b) is capable of—

(i) upholding the public sector values; and

(ii) exercising each function that the person is, or will be, employed to exercise, 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 that the person is, or will be, appointed, engaged or employed to exercise.

*employ*, for division 8.2 (Public sector members)—see section 149 (2).

**86 Dictionary, definition of *employee*, paragraphs (a) to (c)**

*omit*

1 **87 Dictionary, definition of *employment matters***

2 *omit*

3 **88 Dictionary, new definition of *engager***

4 *insert*

5 ***engager*** means—

6 (a) for the engagement of the head of service—the Chief Minister;  
7 and

8 (b) for the engagement of a director-general or an executive—the  
9 head of service.

10 **89 Dictionary, definition of *equal employment opportunity***  
11 ***program***

12 *omit*

13 **90 Dictionary, new definition of *equitable employer***

14 *insert*

15 ***equitable employer*** means an employer that—

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

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

20 (ii) of different gender; and

21 (iii) of different sexual orientation; and

22 (iv) with disability; and

23 (v) of different working age; and

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

3 **Example—par (b)**

4 including a reasonable adjustment guide in procedures for staff  
5 management

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

9 **91 Dictionary, definition of *essential qualification***

10 *omit*

11 **92 Dictionary, definition of *excess officer***

12 *substitute*

13 *excess officer* includes—

14 (a) an officer employed in an administrative unit in which there is  
15 a greater number of officers than is necessary for the efficient  
16 and economical working of the unit; or

17 (b) an officer whose services cannot be effectively used because  
18 of—

19 (i) technological or other changes in the work methods of  
20 the administrative unit; or

21 (ii) changes in the nature, extent or organisation of the  
22 functions of the administrative unit; or

23 (c) if the functions usually exercised by an officer are required by  
24 the head of service to be exercised in a new location—an  
25 officer who is not willing to exercise the functions at the new  
26 location.

- 1 **93 Dictionary, definition of *executive***
- 2 *substitute*
- 3 *executive* means a person engaged as an executive under
- 4 section 31 (2).
- 5 **94 Dictionary, definition of *executive office***
- 6 *omit*
- 7 **95 Dictionary, new definition of *exonerated***
- 8 *insert*
- 9 *exonerated*, in relation to a former public servant, for part 7
- 10 (Re-entry to the service)—see section 128.
- 11 **96 Dictionary, definition of *government agency***
- 12 *omit*
- 13 **97 Dictionary, definition of *head of service***
- 14 *substitute*
- 15 *head of service* means the person engaged as the head of service
- 16 under section 31 (1).
- 17 **98 Dictionary, new definition of *incapacitated***
- 18 *insert*
- 19 *incapacitated*, for part 6 (Redeployment, underperformance and end
- 20 of employment of officers)—see section 120.
- 21 **99 Dictionary, definition of *industrial democracy program***
- 22 *omit*

- 1 **100 Dictionary, definition of *industrial instrument*, new**  
2 **paragraph (c)**
- 3 *insert*
- 4 (c) that covers 1 or more officer or employee.
- 5 **101 Dictionary, new definitions**
- 6 *insert*
- 7 *ineligible*, for part 6 (Redeployment, underperformance and end of  
8 employment of officers)—see section 120.
- 9 *job*, of a public servant, for division 2.1 (Public sector standards)—  
10 see section 6.
- 11 *joint council* means the forum established under section 28.
- 12 **102 Dictionary, definition of *joint selection committee***
- 13 *substitute*
- 14 *joint selection committee*, for part 5 (Employment of officers and  
15 employees)—see section 63.
- 16 **103 Dictionary, new definitions**
- 17 *insert*
- 18 *management strategy* means a strategy made under section 26.
- 19 *merit and equity principle*—see section 8 (4).
- 20 **104 Dictionary, definition of *misconduct***
- 21 *substitute*
- 22 *misconduct*, by a public servant, means failure to comply with  
23 section 9 (Public sector conduct).
- 24 *Note* *Fail* includes refuse (see [Legislation Act](#), dict, pt 1).

1 **105 Dictionary, new definition of *misconduct procedure***

2 *insert*

3 *misconduct procedure*, in relation to a public servant, means—

4 (a) if an industrial instrument covers the public servant and  
5 includes procedures for misconduct—the misconduct  
6 procedures in the industrial instrument; or

7 (b) in any other case—a prescribed procedure.

8 **106 Dictionary, definitions of *non-appellable promotion* and  
9 *not qualified to perform duties***

10 *omit*

11 **107 Dictionary, definition of *office***

12 *substitute*

13 *office* means an office established under section 23.

14 **108 Dictionary, definitions of *office of director-general* and  
15 *office of head of service***

16 *omit*

17 **109 Dictionary, definition of *officer*, paragraph (a) (ii)**

18 *omit*

19 division 5.8 (Miscellaneous)

20 *substitute*

21 part 7 (Re-entry to the service)

22 **110 Dictionary, definition of *officer*, paragraphs (b) to (d)**

23 *omit*

24 **111 Dictionary, definition of *overseas***

25 *omit*

---

**112 Dictionary, definition of *part-time office***

*omit*

section 60

*substitute*

section 66

**113 Dictionary, definition of *promotion***

*substitute*

***promotion***, in relation to an officer, means a permanent movement of an officer within the service to an office with a higher classification than the office that the officer was appointed to immediately before the promotion.

*Note* The comparative level of classifications is determined by the maximum salary payable to a classification (see s 23 (3)).

**114 Dictionary, definition of *public employee***

*omit*

**115 Dictionary, definition of *public sector***

*substitute*

***public sector*** means the following:

- (a) the service;
- (b) entities in which public sector members are employed that are owned or operated by the Territory or a Territory instrumentality.

**116 Dictionary, new definitions**

*insert*

***public sector employer***—see section 151 (1).

***public sector member***—see section 149.

1 **117 Dictionary, definition of *public sector officer***

2 *omit*

3 **118 Dictionary, new definitions**

4 *insert*

5 *public sector principles*—see section 8 (1).

6 *public sector values*—see section 7.

7 *qualification* includes the following:

8 (a) an academic qualification;

9 (b) an apprenticeship;

10 (c) a licence;

11 (d) membership of a professional body;

12 (e) a registration;

13 (f) a security clearance.

14 *senior executive service*—see section 12 (3) (a).

15 *SES member* means a member of the service in the senior executive  
16 service.

17 *SES position*, for an SES member, means the position in which the  
18 member is engaged, as set out in the member's contract.

19 **119 Dictionary, definition of *statutory office-holder***

20 *omit*

21 **120 Dictionary, new definitions**

22 *insert*

23 *SETs*, for part 4 (Engagement of senior executive service)—see  
24 *statutory employment terms*.

1 *statutory employment terms* or (*SETs*), for an SES position, for  
2 part 4 (Engagement of senior executive service)—see section 30.

3 **121 Dictionary, definition of *territory instrumentality***

4 *substitute*

5 *territory instrumentality*—

- 6 (a) means a corporation established under an Act or statutory  
7 instrument, or under the [Corporations Act](#), that is—
- 8 (i) comprised of people, or has a governing body comprised  
9 of people, a majority of whom are appointed by—
- 10 (A) a Minister; or  
11 (B) the head of service; or  
12 (C) a director-general; or  
13 (D) a statutory office-holder; or
- 14 (ii) subject to control or direction by a Minister; but
- 15 (b) does not include—
- 16 (i) an administrative unit or a part of an administrative unit;  
17 or  
18 (ii) a body that is prescribed.

19 **122 Dictionary, new definition of *transfer***

20 *insert*

21 *transfer*, in relation to an officer, means a permanent or temporary  
22 movement of an officer within the service between 2 offices, other  
23 than by promotion.

1 **123 Dictionary, new definitions**

2 *insert*

3 *unsuccessful election candidate*, for part 7 (Re-entry to the  
4 service)—see section 128.

5 *unsuitability criteria*, for part 5 (Employment of officers and  
6 employees)—see section 70 (4).

7 *vacant office*—

8 (a) means an office that is not occupied; and

9 (b) includes an office that is expected to become vacant.

10 *whole-of-government strategy*, for the service, means a formal or  
11 informal strategy, target, policy, program or service, approved in  
12 writing by the head of service, that—

13 (a) relates to matters for which more than 1 administrative unit is  
14 responsible; and

15 (b) requires public servants in more than 1 administrative unit to  
16 exercise a function.

1 **Schedule 1**            **Legislation amended**

2 (see s 3)

3 **Part 1.1**                    **Aboriginal and Torres Strait**  
4 **Islander Elected Body Act 2008**

5 **[1.1] Section 10 (4), definition of *executive officer***

6 *substitute*

7 *executive officer*, of a government agency, means—

- 8 (a) the head of service; or  
9 (b) for a public sector body—the person responsible for the  
10 management of the public sector body; or  
11 (c) for a territory instrumentality—the head (however described)  
12 of the instrumentality.

13 **[1.2] Dictionary, note 2**

14 *insert*

- 15 • head of service  
16 • public sector body

17 **[1.3] Dictionary, definition of *government agency***

18 *substitute*

19 *government agency* means—

- 20 (a) the public service; or  
21 (b) a public sector body; or  
22 (c) a territory instrumentality.

1 **Part 1.2** **ACT Civil and Administrative**  
2 **Tribunal Act 2008**

3 **[1.4] Division 9.3 heading**

4 *substitute*

5 **Division 9.3 Registrar**

6 **[1.5] Section 115**

7 *omit*

8 **[1.6] Dictionary, note 2**

9 *insert*

- 10
  - territory instrumentality

11 **Part 1.3** **ACT Teacher Quality Institute**  
12 **Act 2010**

13 **[1.7] Section 23**

14 *substitute*

15 **23 Institute's staff**

16 (1) The chief executive officer may employ staff for the institute on  
17 behalf of the Territory.

18 (2) The institute's staff must be employed under the *Public Sector*  
19 *Management Act 1994*.

20 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the chief  
21 executive officer in relation to the employment of staff (see *Public*  
22 *Sector Management Act 1994*, s 152).

1 **[1.8] Section 60 (1) (c) and (2)**

2 *after*

3 the office of an administrative unit administered by the  
4 director-general

5 *insert*

6 and an office operated by the institute

7 **[1.9] Dictionary, note 2**

8 *insert*

- 9
  - public servant

10 **Part 1.4 Administrative Decisions**  
11 **(Judicial Review) Act 1989**

12 **[1.10] Schedule 2, section 2.5 (b)**

13 *omit*

14 commissioner for public administration

15 *substitute*

16 public sector standards commissioner or the head of service

17 **[1.11] Dictionary, note 2**

18 *insert*

- 19
  - head of service
  - public sector standards commissioner
  - public servant
- 20
- 21

1 **Part 1.5** **Annual Reports (Government**  
2 **Agencies) Act 2004**

3 **[1.12] Section 3, note 1**

4 *omit*

5 section 5

6 *substitute*

7 section 6

8 **[1.13] Sections 5 to 7**

9 *substitute*

10 **5 State of the service report**

- 11 (1) The head of service must, for a reporting year, prepare a report  
12 about the operation of the public service during the reporting year (a  
13 *state of the service report*).
- 14 (2) The report must include—
- 15 (a) an account of the management of the public sector during the  
16 reporting year; and
- 17 (b) information about—
- 18 (i) any investigation conducted by the commissioner under  
19 the *Public Sector Management Act 1994*; and
- 20 (ii) the exercise of a function given to the commissioner  
21 under an Act; and
- 22 (c) anything else required under an annual report direction for a  
23 state of the service report.
- 24 (3) The report may include any other information the head of service  
25 considers appropriate.

1   **6           Director-general annual report**

2           (1) The director-general for an administrative unit must, for a reporting  
3           year, prepare a report about the operation of the administrative unit  
4           during the reporting year (a *director-general annual report*).

5           (2) The report must include a statement describing the measures taken  
6           by the administrative unit during the reporting year to respect,  
7           protect and promote human rights.

8   **7           Public sector body annual report**

9           (1) This section applies to a public sector body other than—

10           (a) an officer of the Assembly; or

11           (b) the Office of the Legislative Assembly.

12           (2) A public sector body must, for a reporting year, prepare a report  
13           about the operation of the body during the reporting year (a *public*  
14           *sector body annual report*) if—

15           (a) the Minister makes a declaration that the public sector body  
16           must prepare a public sector body annual report; or

17           (b) an Act states that the public sector body must prepare an  
18           annual report.

19           *Note*    The following public sector bodies must prepare an annual report:

- 20                   • the architects board (see [Architects Act 2004](#), s 67)
- 21                   • the construction occupations registrar (see [Construction Occupations](#)  
22                    [\(Licensing\) Act 2004](#), s 112)
- 23                   • the victims services scheme (see [Victims of Crime Act 1994](#), s 21).

24           (3) A declaration is a notifiable instrument.

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

1    **7A            Officer of the Assembly annual report**

2            (1) An officer of the Assembly must, for a reporting year, prepare a  
3            report about the operation of the officer during the reporting year  
4            (an *officer of the Assembly annual report*).

5            *Note*        The auditor-general is not required to comply with this Act in certain  
6            circumstances (see *Auditor-General Act 1996*, s 7A).

7            (2) The report must include an account of the management of the  
8            officer's office during the reporting year.

9    **7B            Office of the Legislative Assembly annual report**

10           (1) The Office of the Legislative Assembly must, for a reporting year,  
11           prepare a report about the operation of the Office of the Legislative  
12           Assembly during the reporting year (an *Office of the Legislative*  
13           *Assembly annual report*).

14           (2) The report must include an account of the management of the office  
15           during the reporting year.

16   **7C            Territory-owned corporation annual report**

17           A territory-owned corporation must, for a reporting year, prepare a  
18           report about the operation of the corporation during the reporting  
19           year (a *territory-owned corporation annual report*).

20   **[1.14]       Section 8 (3) (e)**

21           *omit*

22           public authority does not comply with section 6 (Annual report of  
23           public authority)

24           *substitute*

25           public sector body does not comply with section 7 (Public sector  
26           body annual report)

1 **[1.15] Section 8 (3) (f) and (g)**

2 *omit*

3 public authority

4 *substitute*

5 public sector body

6 **[1.16] Sections 11 and 12**

7 *substitute*

8 **11 Responsible Minister for public sector body annual report**

9 (1) The responsible Minister for a public sector body annual report is—

10 (a) for a public sector body established under an Act—the  
11 Minister responsible for the Act in the relevant respect; or

12 (b) for any other public sector body—the Minister that the Chief  
13 Minister declares to be the responsible Minister for the public  
14 sector body.

15 (2) A declaration is a notifiable instrument.

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

17 **12 Responsible Minister for territory-owned corporation**  
18 **annual report**

19 (1) The Chief Minister must declare that a Minister is the responsible  
20 Minister for a territory-owned corporation annual report.

21 (2) A declaration is a notifiable instrument.

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

23 **[1.17] Section 16**

24 *omit*

1 **[1.18] Section 18 (2)**

2 *substitute*

3 (2) If a public sector body is required under any other territory law to  
4 prepare a report on the operation of the public sector body, the  
5 public sector body may prepare a report that complies with both this  
6 Act and the other law.

7 **[1.19] Dictionary, note 2**

8 *omit*

- 9 • body  
10 • commissioner for public administration

11 **[1.20] Dictionary, note 2**

12 *insert*

- 13 • public sector body  
14 • public sector standards commissioner

15 **[1.21] Dictionary, note 2**

16 *omit*

- 17 • statutory office-holder  
18 • territory instrumentality

19 **[1.22] Dictionary, definitions of *annual report* and  
20 *director-general annual report***

21 *substitute*

22 ***annual report*** means—

- 23 (a) a director-general annual report; or  
24 (b) an Office of the Legislative Assembly annual report; or  
25 (c) an officer of the Assembly annual report; or  
26 (d) a public sector body annual report; or

- 1 (e) a state of the service report; or  
2 (f) a territory-owned corporation annual report.  
3 *director-general annual report*—see section 6.

4 **[1.23] Dictionary, new definitions**

5 *insert*

6 *Office of the Legislative Assembly annual report*—see section 7B.

7 *officer of the Assembly annual report*—see section 7A.

8 **[1.24] Dictionary, definitions of *public administration annual***  
9 ***report, public authority and public authority annual report***

10 *omit*

11 **[1.25] Dictionary, new definition of *public sector body annual***  
12 ***report***

13 *insert*

14 *public sector body annual report*—see section 7.

15 **[1.26] Dictionary, definition of *responsible Minister***

16 *substitute*

17 *responsible Minister*—

- 18 (a) for a director-general annual report—see section 10; or  
19 (b) for a public sector body annual report—see section 11; or  
20 (c) for a state of the service report—see section 5; or  
21 (d) for a territory-owned corporation annual report—see  
22 section 12.

1    **[1.27]    Dictionary, new definitions**

2            *insert*

3            *state of the service report*—see section 5.

4            *territory-owned corporation annual report*—see section 7C.

5    **Part 1.6                            Architects Act 2004**

6    **[1.28]    Section 67 (1)**

7            *omit*

8            is a public authority for

9            *substitute*

10          must prepare an annual report under

11   **[1.29]    Dictionary, note 2**

12          *insert*

- 13                            • public servant

14   **Part 1.7                            Auditor-General Act 1996**

15   **[1.30]    Section 8 (2) (e)**

16          *omit*

17          the merit principles set out in the *Public Sector Management*  
18          *Act 1994*, section 65 (Application of merit principle)

19          *substitute*

20          an open and accountable selection process

1 **[1.31] Section 9B (2) (a)**

2 *substitute*

3 (a) the public sector standards commissioner;

4 **[1.32] Section 9C**

5 *substitute*

6 **9C Auditor-general's staff**

7 (1) The auditor-general may employ staff on behalf of the Territory.

8 (2) The auditor-general's staff must be employed under the *Public*  
9 *Sector Management Act 1994*.

10 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the  
11 auditor-general in relation to the employment of staff (see *Public Sector*  
12 *Management Act 1994*, s 151).

13 **[1.33] Section 9E**

14 *substitute*

15 **9E Other arrangements for staff and facilities**

16 The auditor-general may arrange with the head of service to use the  
17 services of a public servant or Territory facilities.

18 *Note* The head of service may delegate powers in relation to the management  
19 of public servants to a public servant or another person (see *Public*  
20 *Sector Management Act 1994*, s 18).

21 **[1.34] Section 9F (a)**

22 *substitute*

23 (a) a member of staff mentioned in section 9C; or

1 **[1.35] Section 37 (3), new definition of *staff***

2 *insert*

3 *staff* means—

- 4 (a) staff mentioned in section 9C; and  
5 (b) a contractor mentioned in section 9D; and  
6 (c) a public servant mentioned in section 9E.

7 **[1.36] Dictionary, note 2**

8 *insert*

- 9 • head of service  
10 • public servant

11 **Part 1.8 Board of Senior Secondary**  
12 **Studies Act 1997**

13 **[1.37] New section 6 (2) and (3)**

14 *insert*

15 (2) For section 6 (1) (a), if the board appoints a public servant, the  
16 public servant must be appointed in accordance with any conditions  
17 determined by the head of service.

18 (3) A determination is a notifiable instrument.

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

1 **[1.38] Section 18**

2 *omit*

3 board staff member mentioned in section 19

4 *substitute*

5 consultant engaged under section 19 or a public servant mentioned  
6 in section 19A

7 **[1.39] Section 19**

8 *substitute*

9 **19 Consultants**

10 (1) The board may, for the Territory, engage consultants to, or to  
11 perform services for, the board.

12 (2) Consultants are to be engaged on written terms decided by the board  
13 that are approved by the Minister.

14 (3) However, this section does not give the board a power to enter into a  
15 contract of employment.

16 **19A Arrangements for staff**

17 The board may arrange with the head of service to use the services  
18 of a public servant.

19 *Note* The head of service may delegate powers in relation to the management  
20 of public servants to a public servant or another person (see [Public](#)  
21 [Sector Management Act 1994](#), s 18).

22 **[1.40] Dictionary, note 2**

23 *insert*

- 24 • head of service  
25 • public servant



1 **[1.43] Dictionary, note 2**

2 *insert*

- 3 • head of service  
4 • public servant

5 **Part 1.11 Children and Young People**  
6 **Act 2008**

7 **[1.44] Section 727I**

8 *substitute*

9 **727I Arrangements for staff**

10 The head of service must, on request of the CYP death review  
11 committee, arrange with the committee for the committee to use the  
12 services of a public servant.

13 *Note* The head of service may delegate powers in relation to the management  
14 of public servants to a public servant or another person (see *Public*  
15 *Sector Management Act 1994*, s 18).

16 **[1.45] Dictionary, note 2**

17 *insert*

- 18 • head of service

1 **Part 1.12** **Climate Change and Greenhouse**  
2 **Gas Reduction Act 2010**

3 **[1.46] Dictionary, note 2**

4 *insert*

- 5 • public sector body  
6 • public service  
7 • territory instrumentality

8 **[1.47] Dictionary, definition of *government agency***

9 *substitute*

10 *government agency* means—

- 11 (a) the public service; or  
12 (b) a public sector body; or  
13 (c) a territory instrumentality.

14 **Part 1.13** **Commissioner for Sustainability**  
15 **and the Environment Act 1993**

16 **[1.48] Dictionary, note 2**

17 *insert*

- 18 • head of service  
19 • public servant

1 **[1.49] Dictionary, definition of *principal officer*, paragraph (a)**

2 *omit*

3 Commissioner for Public Administration

4 *substitute*

5 head of service

6 **Part 1.14 Construction Occupations**  
7 **(Licensing) Act 2004**

8 **[1.50] Section 112 (1)**

9 *omit*

10 is a public authority for

11 *substitute*

12 must prepare an annual report under

13 **Part 1.15 Crimes Act 1900**

14 **[1.51] Section 49A, definition of *senior officer*, examples and**  
15 **note**

16 *substitute*

17 **Examples—par (a) (ii)**

- 18 • the head of service  
19 • a director-general

20 **Example—par (a) (iii)**

21 an executive under the *Public Sector Management Act 1994*

22 *Note* 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    **[1.52]    Section 153 heading**

2            *substitute*

3    **153        Disclosure of information by territory officer**

4    **[1.53]    Dictionary, note 2**

5            *insert*

- 6                    • head of service

7    **Part 1.16                    Crimes (Child Sex Offenders)**  
8                                    **Act 2005**

9    **[1.54]    Section 132ZL, definition of *government agency***

10           *substitute*

11           *government agency* means—

- 12            (a) the public service; or  
13            (b) a public sector body; or  
14            (c) a territory instrumentality.

15    **[1.55]    Dictionary, note 2**

16           *insert*

- 17                    • public service  
18                    • public sector body

19    **[1.56]    Dictionary, note 2**

20           *omit*

- 21                    • statutory office-holder

1 **Part 1.17** **Crimes (Restorative Justice) Act**  
2 **2004**

3 **[1.57] Section 22 (2), example, note 2**

4 *substitute*

5 *Note 2* A director-general may delegate any powers given to the  
6 director-general under this Act under the *Public Sector Management*  
7 *Act 1994*, s 20.

8 **Part 1.18** **Crimes (Sentence**  
9 **Administration) Act 2005**

10 **[1.58] Section 292 (3)**

11 *omit*

12 director-general

13 *substitute*

14 head of service

15 **[1.59] Dictionary, note 2**

16 *insert*

- 17
  - head of service

18 **Part 1.19** **Crimes (Sentencing) Act 2005**

19 **[1.60] Dictionary, note 2**

20 *insert*

- 21
  - head of service



1 **[1.64] Section 30**

2 *substitute*

3 **30 Director's staff**

4 (1) The director may employ staff on behalf of the Territory.

5 (2) The director's staff must be employed under the *Public Sector*  
6 *Management Act 1994*.

7 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the director  
8 in relation to the employment of staff (see *Public Sector Management*  
9 *Act 1994*, s 151).

10 **[1.65] Section 32**

11 *substitute*

12 **32 Other arrangements for staff and facilities**

13 The director may arrange with the head of service to use the services  
14 of a public servant or Territory facilities.

15 *Note* The head of service may delegate powers in relation to the management  
16 of public servants to a public servant or another person (see *Public*  
17 *Sector Management Act 1994*, s 18).

18 **[1.66] Dictionary, note 2**

19 *insert*

- 20 • head of service  
21 • public servant

1    **[1.67]    Dictionary, definition of *member of the staff*,**  
2            **paragraph (a)**

3            *omit*

4            (Staff)

5            *substitute*

6            (Director's staff)

7    **[1.68]    Dictionary, definition of *member of the staff*,**  
8            **paragraph (c)**

9            *omit*

10           (Other staffing arrangements)

11           *substitute*

12           (Other arrangements for staff and facilities)

13    **Part 1.23                    Electoral Act 1992**

14    **[1.69]    Section 7 (1) (d)**

15           *substitute*

16           (d) to provide information and advice on matters relating to  
17           elections to—

18                (i) the Assembly; and

19                (ii) the Executive; and

20                (iii) the head of service; and

21                (iv) directors-general; and

22                (v) statutory office-holders; and

23                (vi) territory authorities; and

- 1 (vii) territory instrumentalities; and  
2 (viii) political parties; and  
3 (ix) MLAs; and  
4 (x) candidates at elections;

5 **[1.70] Section 10**

6 *omit*

7 **[1.71] Section 12 (2) (e)**

8 *substitute*

- 9 (e) in accordance with an open and accountable selection process.

10 **[1.72] New section 12C (1) (ba)**

11 *insert*

- 12 (ba) has been the head of service; or

13 **[1.73] Section 18A (2) (a)**

14 *substitute*

- 15 (a) the public sector standards commissioner;

16 **[1.74] Section 31**

17 *substitute*

18 **31 Commissioner's staff**

- 19 (1) The commissioner may employ staff on behalf of the Territory.

1            (2) The commissioner's staff (other than staff mentioned in  
2            section 32 (1) (a)) must be employed under the *Public Sector*  
3            *Management Act 1994*.

4            *Note*     The *Public Sector Management Act 1994*, div 8.2 applies to the  
5            commissioner in relation to the employment of staff (see *Public Sector*  
6            *Management Act 1994*, s 151).

7            **[1.75]     Section 33B (1) (b)**

8            *omit*  
9            commissioner's  
10           *substitute*  
11           commissioner's

12           **[1.76]     Section 33C (1)**

13           *omit*  
14           staff of the electoral commission  
15           *substitute*  
16           commissioner's staff

17           **[1.77]     Section 67 (1) (a)**

18           *substitute*  
19           (a) the head of service; or  
20           (aa) a director-general; or

1 **[1.78] Section 340**

2 *omit*

3 director-general of the administrative unit responsible for the *Public*  
4 *Sector Management Act 1994*, division 3.4 shall

5 *substitute*

6 head of service must

7 **[1.79] Dictionary, note 2**

8 *insert*

- 9 • head of service  
10 • public sector body  
11 • public sector standards commissioner  
12 • public service

13 **[1.80] Dictionary, definition of *government agency***

14 *substitute*

15 ***government agency*** means—

- 16 (a) the public service; or  
17 (b) a public sector body; or  
18 (c) a territory instrumentality.

1            **Part 1.24                            Environment Protection Act 1997**

2            **[1.81]            Section 17 (1)**

3                            *omit*

4                            makes a disclosure about a matter under the *Public Sector*  
5                            *Management Act 1994*, section 9 (j),

6                            *substitute*

7                            discloses a conflict of interest in accordance with the *Public Sector*  
8                            *Management Act 1994*, section 9 (1) (b),

9            **Part 1.25                            Financial Management Act 1996**

10            **[1.82]            Dictionary, note 2**

11                            *insert*

- 12    • public employee  
13    • public servant

14            **Part 1.26                            Firearms Regulation 2008**

15            **[1.83]            Section 15 (2) (c)**

16                            *omit*

17                            a person engaged or employed by

18                            *substitute*

19                            a public servant in

20            **[1.84]            Dictionary, note 2**

21                            *insert*

- 22    • public servant

1 **Part 1.27** **First Home Owner Grant Act 2000**

2 **[1.85] Section 52 (1) (c)**

3 *omit*

4 works in an administrative unit of the public service

5 *substitute*

6 is a public servant

7 **[1.86] Dictionary, note 2**

8 *insert*

- 9
  - public servant

10 **Part 1.28** **Food Regulation 2002**

11 **[1.87] Section 8**

12 *omit*

13 to which the chief health officer belongs

14 *substitute*

15 responsible for the *Public Health Act 1997*, section 7 (Chief health  
16 officer)



1           (2) The commission's staff must be employed under the *Public Sector*  
2           *Management Act 1994*.

3           *Note*     The *Public Sector Management Act 1994*, div 8.2 applies to the chief  
4           executive officer in relation to the employment of staff (see *Public*  
5           *Sector Management Act 1994*, s 151).

6   **[1.93]     Dictionary, note 2**

7           *insert*

- 8                     • public servant

9   **Part 1.31                     Gene Technology Act 2003**

10   **[1.94]     Dictionary, note 2**

11           *insert*

- 12                     • administrative unit  
13                     • public servant

14   **Part 1.32                     Government Procurement**  
15                                   **Act 2001**

16   **[1.95]     Section 21**

17           *substitute*

18   **21           Arrangements for staff**

19           The board may arrange with the head of service to use the services  
20           of a public servant.

21           *Note*     The head of service may delegate powers in relation to the management  
22           of public servants to a public servant or another person (see *Public*  
23           *Sector Management Act 1994*, s 18).



1 **Part 1.35** **Heritage Act 2004**

2 **[1.100] Section 117, note 2**

3 *substitute*

4 *Note 2* The director-general may delegate the function under this section, for  
5 example, to the council secretary (see *Public Sector Management*  
6 *Act 1994*, s 20).

7 **[1.101] Section 121, note 2**

8 *omit*

9 s 36C

10 *substitute*

11 s 20

12 **Part 1.36** **Human Rights Act 2004**

13 **[1.102] Dictionary, note 2**

14 *insert*

- 15 • public employee  
16 • public service

17 **Part 1.37** **Human Rights Commission**  
18 **Act 2005**

19 **[1.103] Division 3.10 heading**

20 *substitute*

21 **Division 3.10** **Consultants of commission**



- 1           (2) A public servant subject to an arrangement under subsection (1)  
2           must act in accordance with the direction of a member, and not  
3           otherwise.

4   **[1.107] Dictionary, note 2**

5           *insert*

- 6                     • head of service  
7                     • public servant

8   **Part 1.40                     Judicial Commissions Act 1994**

9   **[1.108] Section 13**

10           *substitute*

11   **13 Arrangements for staff**

- 12           (1) A commission may arrange with the head of service to use the  
13           services of a public servant.

14           *Note*     The head of service may delegate powers in relation to the management  
15                     of public servants to a public servant or another person (see *Public*  
16                     *Sector Management Act 1994*, s 18).

- 17           (2) A public servant subject to an arrangement under subsection (1)  
18           must act in accordance with the direction of a member, and not  
19           otherwise.

20   **[1.109] Dictionary, note 2**

21           *insert*

- 22                     • head of service  
23                     • public servant

1      **Part 1.41                      Lakes Act 1976**

2      **[1.110]      Dictionary, note 2**

3                      *omit*

- 4                              • public employee

5      **Part 1.42                      Law Officers Act 2011**

6      **[1.111]      Section 22**

7                      *substitute*

8      **22                      Solicitor-general's staff**

- 9                      (1) This section applies if a direction under section 17 (1) (c)  
10                              (Solicitor-general's functions and entitlements) is in force.
- 11                      (2) The solicitor-general may employ staff on behalf of the Territory.
- 12                      (3) The solicitor-general's staff must be employed under the *Public*  
13                              *Sector Management Act 1994*.

14                      *Note*      The *Public Sector Management Act 1994*, div 8.2 applies to the  
15                              solicitor-general in relation to the employment of staff (see *Public*  
16                              *Sector Management Act 1994*, s 151).

17      **[1.112]      Section 24**

18                      *substitute*

19      **24                      Other arrangements for staff and facilities**

20                      The solicitor-general may arrange with the head of service to use the  
21                              services of a public servant or Territory facilities.

22                      *Note*      The head of service may delegate powers in relation to the management  
23                              of public servants to a public servant or another person (see *Public*  
24                              *Sector Management Act 1994*, s 18).

1 **[1.113] Dictionary, note 2**

2 *insert*

- 3 • head of service  
4 • public servant

5 **Part 1.43 Legal Aid Act 1977**

6 **[1.114] Sections 68 (2) and 68A (5) and (6)**

7 *omit*

8 commissioner for public administration

9 *substitute*

10 public sector standards commissioner

11 **[1.115] Dictionary, note 2**

12 *insert*

- 13 • public sector standards commissioner

14 **Part 1.44 Legal Profession Act 2006**

15 **[1.116] Dictionary, note 2**

16 *insert*

- 17 • public employee  
18 • public servant

19 **Part 1.45 Legislation Act 2001**

20 **[1.117] Dictionary, part 1, definitions of *commissioner for public***  
21 ***administration and designation***

22 *omit*

1    **[1.118]    Dictionary, part 1, definition of *gazette*, paragraph (b)**

2            *substitute*

- 3            (b) for a notice or other information that must or may be notified  
4            or published in the *gazette*—a place approved by the public  
5            sector standards commissioner.

6    **[1.119]    Dictionary, part 1, new definition of *head of service***

7            *insert*

8            *head of service* means the head of service under the *Public Sector*  
9            *Management Act 1994*.

10   **[1.120]    Dictionary, part 1, definition of *public employee***

11           *substitute*

12           *public employee* means—

- 13           (a) a public servant; or  
14           (b) a public sector member; or  
15           (c) a person employed by a territory instrumentality.

16   **[1.121]    Dictionary, part 1, new definitions**

17           *insert*

18           *public sector body* means—

- 19           (a) a body made up of public sector members; and  
20           (b) includes a body made up of 1 statutory office-holder.

21           *public sector member* means a public sector member under the  
22           *Public Sector Management Act 1994*, section 149.

23           *public sector standards commissioner* means the Public Sector  
24           Standards Commissioner under the *Public Sector Management*  
25           *Act 1994*.

1 **[1.122] Dictionary, part 1, definition of *territory instrumentality*,**  
2 **paragraph (a)**

3 *omit*

4 **Part 1.46 Legislative Assembly (Members'**  
5 **Staff) Act 1989**

6 **[1.123] Section 6 (1)**

7 *substitute*

8 (1) This section applies if a matter relating to the employment of a  
9 part 2 employee is not covered by this Act or by the agreement of  
10 employment.

11 (1A) The PSM Act applies in relation to the matter for the term indicated  
12 in the agreement of employment, as if the employee were employed  
13 under the [PSM Act](#), section 110 (Fixed term temporary  
14 employment).

15 **[1.124] Section 11 (1)**

16 *substitute*

17 (1) This section applies if a matter relating to the employment of a  
18 part 3 employee is not covered by this Act or by the agreement of  
19 employment.

20 (1A) The PSM Act applies in relation to the matter for the term indicated  
21 in the agreement of employment, as if the employee were employed  
22 under the [PSM Act](#), section 110 (Fixed term temporary  
23 employment).

24 **[1.125] Part 4**

25 *omit*

1    **[1.126]    Dictionary, note 2**

2            *omit*

- 3                            • public servant  
4                            • public service

5    **Part 1.47                            Legislative Assembly (Office of**  
6    **the Legislative Assembly)**  
7    **Act 2012**

8    **[1.127]    Section 7**

9            *substitute*

10    **7                            Clerk's staff**

11            (1) The clerk may employ staff on behalf of the Territory.

12            (2) The clerk's staff must be employed under the *Public Sector*  
13            *Management Act 1994*.

14            *Note*     The *Public Sector Management Act 1994*, div 8.2 applies to the clerk in  
15                            relation to the employment of staff (see *Public Sector Management*  
16                            *Act 1994*, s 151).

17    **[1.128]    Section 9 (2) (e)**

18            *omit*

19            the merit principles set out in the *Public Sector Management*  
20            *Act 1994*, section 65 (Application of merit principle)

21            *substitute*

22            an open and accountable selection process

1 **[1.129] Section 13 (2) (a)**

2 *substitute*

3 (a) the public sector standards commissioner;

4 **[1.130] Dictionary, note 2**

5 *omit*

- 6 • commissioner for public administration

7 **[1.131] Dictionary, note 2**

8 *insert*

- 9 • public sector standards commissioner

10 **Part 1.48 Lifetime Care and Support**  
11 **(Catastrophic Injuries) Act 2014**

12 **[1.132] Section 13**

13 *substitute*

14 **13 LTCS commissioner's staff**

15 (1) The LTCS commissioner may employ staff on behalf of the  
16 Territory.

17 (2) The LTCS commissioner's staff must be employed under the *Public*  
18 *Sector Management Act 1994*.

19 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the LTCS  
20 commissioner in relation to the employment of staff (see *Public Sector*  
21 *Management Act 1994*, s 151).



1 **Part 1.52 Ombudsman Act 1989**

2 **[1.137] New section 9 (12) (aa)**

3 *before paragraph (a), insert*

4 (aa) if the person is the head of service—the Chief Minister; or

5 **[1.138] Section 22 (4) (e)**

6 *omit*

7 the merit principles set out in the *Public Sector Management*  
8 *Act 1994*, section 65 (Application of merit principle)

9 *substitute*

10 an open and accountable selection process

11 **[1.139] Section 28A (2) (a)**

12 *substitute*

13 (a) the public sector standards commissioner;

14 **[1.140] Section 30**

15 *substitute*

16 **30 Ombudsman's staff**

17 (1) The ombudsman may employ staff on behalf of the Territory.

18 (2) The ombudsman's staff—

19 (a) must be employed under the *Public Sector Management*  
20 *Act 1994*; or

1                    (b) if the Commonwealth ombudsman is the ombudsman—must  
2                    be appointed or employed under the *Public Service Act 1999*  
3                    (Cwlth).

4                    *Note*        The *Public Sector Management Act 1994*, div 8.2 applies to the  
5                    ombudsman in relation to the employment of staff under the *Public*  
6                    *Sector Management Act 1994* (see *Public Sector Management Act 1994*,  
7                    s 151).

8                    **30A            Direction to ombudsman’s staff**

9                    The ombudsman’s staff are not subject to direction from anyone  
10                    other than the following people in relation to the exercise of the  
11                    ombudsman’s functions:

- 12                    (a) the ombudsman;
- 13                    (b) another member of the ombudsman’s staff authorised by the  
14                    ombudsman to give directions.

15                    **[1.141]        Section 32**

16                    *omit*

17                    staff assisting the ombudsman

18                    *substitute*

19                    ombudsman’s staff

20                    **[1.142]        Dictionary, note 2**

21                    *insert*

22                                       • head of service

23                                       • public sector standards commissioner

24                                       • public servant

25                                       • public service

1 **Part 1.53** **Planning and Development**  
2 **Act 2007**

3 **[1.143] Section 25**

4 *substitute*

5 **25 Authority's staff**

- 6 (1) The chief planning executive may employ staff for the planning and  
7 land authority on behalf of the Territory.
- 8 (2) The planning and land authority staff must be employed under the  
9 *Public Sector Management Act 1994*.

10 *Note* The *Public Sector Management Act 1994*, div 8.2 applies to the chief  
11 planning executive in relation to the employment of staff (see *Public*  
12 *Sector Management Act 1994*, s 151).

13 **25A Arrangements for staff**

14 The chief planning executive may arrange with the head of service  
15 to use the services of a public servant.

16 *Note* The head of service may delegate powers in relation to the management  
17 of public servants to a public servant or another person (see *Public*  
18 *Sector Management Act 1994*, s 18).

19 **[1.144] Section 44**

20 *substitute*

21 **44 Land agency's staff**

- 22 (1) The chief executive officer may employ staff for the land agency on  
23 behalf of the Territory.

1            (2) The land agency's staff must be employed under the *Public Sector*  
2            *Management Act 1994*.

3            *Note*        The *Public Sector Management Act 1994*, div 8.2 applies to the chief  
4            executive officer in relation to the employment of staff (see *Public*  
5            *Sector Management Act 1994*, s 151).

6            **[1.145] Dictionary, note 2**

7            *insert*

- 8                            • head of service  
9                            • public servant

10            **Part 1.54                            Public Interest Disclosure**  
11    **Act 2012**

12            **[1.146] Section 17 (d)**

13            *omit*

14            an administrative unit

15            *substitute*

16            the public service

17            **[1.147] Dictionary, note 2**

18            *omit*

- 19                            • commissioner for public administration

20            **[1.148] Dictionary, note 2**

21            *insert*

- 22                            • head of service  
23                            • public sector standards commissioner  
24                            • public service

1 **[1.149] Dictionary, definition of *ACTPS entity*, paragraph (a)**

2 *substitute*

3 (a) the public service;

4 **[1.150] Dictionary, definition of *commissioner***

5 *omit*

6 commissioner for public administration

7 *substitute*

8 public service standards commissioner

9 **[1.151] Dictionary, definition of *head of service***

10 *omit*

11 **Part 1.55 Rates Act 2004**

12 **[1.152] Dictionary, note 2**

13 *omit*

14 • public employee

1            **Part 1.56                            Remuneration Tribunal Act 1995**

2            **[1.153]    Section 18**

3                            *substitute*

4            **18                            Arrangements for staff and facilities**

5                            The tribunal may arrange with the head of service to use the services  
6                            of a public servant or Territory facilities.

7                            *Note*            The head of service may delegate powers in relation to the management  
8                            of public servants to a public servant or another person (see *Public*  
9                            *Sector Management Act 1994*, s 18).

10           **[1.154]    Schedule 1, part 1.2, 1st dot point**

11                            *omit*

12                            , other than a member employed under the *Public Sector*  
13                            *Management Act 1994*

14           **Part 1.57                            Royal Commissions Act 1991**

15           **[1.155]    Section 12**

16                            *substitute*

17           **12                            Arrangements for staff**

18                            (1) The staff of a commission must be public servants made available to  
19                            the commission by the head of service.

20                            *Note*            The head of service may delegate powers in relation to the management  
21                            of public servants to a public servant or another person (see *Public*  
22                            *Sector Management Act 1994*, s 18).

23                            (2) A public servant subject to an arrangement under subsection (1)  
24                            must act in accordance with the direction of a commissioner, and  
25                            not otherwise.

1 **Part 1.58** **Supervised Injecting Place Trial**  
2 **Act 1999**

3 **[1.156] Dictionary, note 2**

4 *insert*

- 5
  - public employee

6 **Part 1.59** **Supreme Court Act 1933**

7 **[1.157] Section 46B**

8 *omit*

9 **[1.158] Dictionary, note 2**

10 *insert*

- 11
  - public servant

12 **Part 1.60** **Taxation Administration Act 1999**

13 **[1.159] Section 76**

14 *omit*

15 **[1.160] New section 77 (2)**

16 *insert*

- 17 (2) However, the commissioner must not enter into a contract of  
18 employment under this section.

1            **Part 1.61                            Territory Records Act 2002**

2            **[1.161]    Section 7 (g)**

3                            *substitute*

4                            (g) the public service; or

5            **[1.162]    Section 8 (a)**

6                            *substitute*

7                            (a) for the Executive—the head of service; or

8            **[1.163]    Section 8 (g) and (h)**

9                            *substitute*

10                          (g) for the public service—the head of service; or

11                          (h) for a royal commission, board of inquiry or judicial  
12                                  commission—the head of service; or

13            **[1.164]    Section 25 (1) (b), (2) (b) and (3) (b)**

14                            *omit*

15                            relevant director-general

16                            *substitute*

17                            head of service

18            **[1.165]    Section 25 (4)**

19                            *omit*

20            **[1.166]    Section 33 (1), note 2**

21                            *omit*

1 **[1.167] Section 40**

2 *substitute*

3 **40 Arrangements for staff**

4 The director may arrange with the head of service to use the services  
5 of a public servant.

6 *Note* The head of service may delegate powers in relation to the management  
7 of public servants to a public servant or another person (see [Public](#)  
8 [Sector Management Act 1994](#), s 18).

9 **[1.168] Dictionary, note 2**

10 *omit*

- 11
  - director-general (see s 163)

12 **[1.169] Dictionary, note 2**

13 *insert*

- 14
  - head of service
  - 15 • public servant
  - 16 • public service

17 **Part 1.62 Unclaimed Money Act 1950**

18 **[1.170] Dictionary, definition of *trust account***

19 *omit*

1      **Part 1.63                      Victims of Crime Act 1994**

2      **[1.171]      Section 21**

3                      *substitute*

4      **21                      Victims services scheme—annual report**

5                      The annual reporting authority nominated in accordance with the  
6                      regulations must prepare an annual report under the *Annual Reports*  
7                      (*Government Agencies) Act 2004* about the operations of the scheme  
8                      within the relevant financial year.

9                      *Note*      *Financial year* has an extended meaning in the *Annual Reports*  
10                      (*Government Agencies) Act 2004*.

11      **Part 1.64                      Workers Compensation Act 1951**

12      **[1.172]      Division 8.2.2 heading**

13                      *substitute*

14      **Division 8.2.2              Establishment etc of DI fund**

15      **[1.173]      Section 166E**

16                      *omit*

17      **Part 1.65                      Work Health and Safety Act 2011**

18      **[1.174]      Schedule 2, section 2.18 (2)**

19                      *omit*

20                      staff assisting the commissioner

21                      *substitute*

22                      commissioner's staff

1 **[1.175] Schedule 2, section 2.23**

2 *omit*

3 **[1.176] Schedule 2, section 2.24**

4 *omit*

5 staff assisting the commissioner

6 *substitute*

7 commissioner's staff

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 8 June 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---