

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**PUBLIC SECTOR MANAGEMENT BILL 1994**

**EXPLANATORY MEMORANDUM**

**PART I**

Circulated by authority of  
Rosemary Follett, Chief Minister

**NB.** To assist in ease of understanding, some paragraphs of this Explanatory Memorandum deal with more than one clause, and not necessarily in strict numerical order. In some cases a generic clause title has been used for such paragraphs.

## **PART I PRELIMINARY**

### **Introduction**

The preliminary Part of the Bill sets out basic information about the Bill, including its title, date of commencement and exemptions from its operation.

### **Title and commencement**

#### **Clause 1 & 2**

Clauses 1 and 2 provide the short title of the Bill and commencement details.

### **Interpretation**

#### **Clause 3**

Clause 3 gives the definitions of the major terms used throughout the Bill. Other words and phrases are defined in the particular Part, Division or clause in which they appear.

Key definitions are:

- "administrative unit" is a Department or other unit established by the Chief Minister under clause 13, but is distinguished in clause 3 from a Territory instrumentality;
- "autonomous instrumentality" refers to two Territory instrumentalities, ACT Electricity and Water, and the Legal Aid Commission, which will exercise a higher degree of management autonomy than other agencies because the Bill gives them various powers that are otherwise exercised by the Commissioner. This is in recognition of ACTEW's status as a large commercial entity and the Legal Aid Commission's role of representing non-government clients, in some cases against the Government.

- "government agency" is a collective term for administrative units (eg Departments and Bureaux), Territory instrumentalities (eg statutory authorities) and statutory office holders and their organisations (eg the Clerk of the Assembly and the Secretariat). Officers and employees may be employed in any of these entities.
- "officer" and "employee", which are the two broad types of people to be employed under the Bill;
- "public employee", which covers, in addition to people employed under the Bill, all other people employed in the public sector;
- "relevant Chief Executive", which refers to the person in control of the government agency in which an officer or employee is working, whether that person is a Chief Executive appointed under clause 25 of the Bill, the head of an authority or a statutory office holder;
- "statutory office holder" refers to an office established by an Act, such as the Discrimination Commissioner appointed under the *Discrimination Act 1991*;
- "Territory instrumentality" is a body corporate established under an Act or under company law - examples are ACT Electricity and Water and the Milk Authority of the ACT.

#### Operation of Act Clause 4

This clause enables the provisions of the Bill to apply whether work of the ACT Government Service is undertaken within or outside the ACT.

#### Application Clause 5

One of the major purposes of the Bill is to regulate employment matters in the ACT Government Service. Clause 5 restricts the general application of the Bill so that in general it does not apply to persons who are not employees, including certain office-holders.

## **PART II**

# **ADMINISTRATION OF THE PUBLIC SECTOR**

### **Introduction**

Part II establishes the ACT Government Service, and defines the values, principles, and employee obligations that apply in the public sector. It also provides for the administrative arrangements.

The administrative arrangements provisions in Division 3 complement section 43 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth), which deals with Ministerial portfolios.

### **Division 1      Values and general principles**

The values and principles listed in this Division are central to the new Service.

The values, principles and employee obligations expressed in this division were developed through a consultative process with staff and community representatives. They reflect the priorities and values of the community the ACT Government serves, and their prominence in the Act signifies the importance which the Government attaches to them.

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

Clause 6 details the fundamental values and principles which Government agencies are to apply.

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

This clause sets out the specific principles that apply in the general administration of the public sector. These principles are based on the values.

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

Clause 8 expresses the values as more specific principles that apply in relation to employment matters.

**General obligations of  
public employees  
Clause 9**

Clause 9 places specific obligations on public employees specifying the standards of behaviour expected of people employed in the public sector.

Officers and employees may be liable for disciplinary action in accordance with Part IX if they do not comply with the provisions of clause 9 (see clause 11 (2)). The only exception to this is the obligation to report corruption, fraud and maladministration in paragraph 9(t), as it would be unreasonable to discipline an officer for not coming forward with information where to do so may impose a heavy personal cost on the officer.

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

This clause provides that clauses 6, 7, 8, and 9 are made subject to this Act. This is based on the principle that general obligations should be subject to specific obligations, which might otherwise conflict with the general. For example, the general obligation to be responsive to the requirements of the Government in clause 6 must, for the Legal Aid Commission, be subject to the requirements of legislation such as the *Legal Aid Act 1977* which provide for certain functions to be performed at arm's length from Government.

**Legal effect  
Clause 11**

Sub-clause 1 provides that nothing in this Division creates or affects legal rights. This is intended to ensure that a failure to achieve the goals and standards of public administration in this Part is (subject to sub-clause 2) dealt with by political or administrative sanction rather than by the courts. Political or administrative sanctions might include criticism in the Legislative Assembly, adverse comment by the Auditor-General or other reviewing officer, or counselling from a Minister or Chief Executive.

Sub-clause 2 provides for a breach of clause 9 (other than paragraph 10 (t)) to be dealt with as a disciplinary matter under Part IX (see note on clause 9).

## **Division 2            Constitution of the ACT Government Service**

Division 2 deals with the legal existence of the Service.

### **ACT Government Service Clause 12**

This clause establishes the Service and provides that it is constituted by various officers, and by employees. It also provides that members of the Service are employed by a single employer - the Territory. This is a significant change from previous arrangements under which employment powers existed in a wide range of ACT legislation.

The Government has made this change so that important employer obligations and initiatives can be managed with consistency. This change will also streamline administration, and encourage a much more straightforward and simple employer-employee relationship.

## **Division 3            Administrative Arrangements**

Division 3 provides for the Chief Minister to determine the administrative structure of the Service, subsequent to decisions about administrative arrangements. It also deals with the technical side of the allocation of responsibility for administrative units to Ministers and the arrangements to apply in the case of changes to administrative arrangements. It should be read in conjunction with Part V of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth).

### **Constitution of administrative units Clause 13**

This clause provides for the Chief Minister's power to divide the Service into administrative units (eg Departments) to facilitate its effective operation, and to allocate those units to the control of Chief Executives. Administrative units consist of the offices within those units.

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

This clause provides for the allocation by the Chief Minister of responsibility for administrative units to Ministers and for the allocation to administrative units of responsibility for matters within the Minister's responsibilities. These arrangements are to be notified in the Gazette and are part of the Administrative Arrangements Orders.

**Machinery of  
Government changes:  
officers and employees  
Clauses 15 & 16**

These clauses provide for consequential changes to staffing arrangements where the Chief Minister has approved changes to the administrative arrangements. Clause 15 relates to officers and Clause 16 to employees.

Clause 15 provides that where an administrative unit is abolished or has some of its functions transferred to another administrative unit, the Chief Minister or the Commissioner may transfer the offices of the administrative unit so affected to another administrative unit.

Where offices are transferred in accordance with this clause:

- the occupant and duties of the transferred position stay the same,
- the hours of the position, whether full or part time, stay the same, and
- action in progress to fill a vacant office which has been transferred may continue as if the position had always been a part of the new area.

Clause 16 provides similar powers to those in Clause 15 for application to employees, except that the powers are vested in the Commissioner only. Because employees do not occupy an office, it is their employment that is transferred. Administrative arrangements changes do not of themselves affect the term of a temporary employee's contract.

## **PART III MANAGEMENT OF THE SERVICE**

### **Introduction**

This Part provides for the management of the Service at a broad level. It deals with the roles of the Commissioner, Chief Executives and SES officers and the Commissioner's whole of Service responsibilities in relation to equal employment opportunity, Access and Equity, and Industrial Democracy.

### **Division 1      Preliminary**

#### **Interpretation Clause 17**

This clause provides for interpretations in this Part.

### **Division 2      Role of the Commissioner**

This Division provides for the establishment and staffing of the office of Commissioner for Public Administration and outlines the duties and powers of that office. The office is intended to ensure an effective and efficient framework for general and personnel management in the Service and is required to advise the Chief Minister on these matters. The Commissioner deals mainly with issues of a Service-wide nature.

#### **Appointment and functions of the Commissioner Clauses 18, 19 & 20**

These clauses provide for the appointment by the Chief Minister of a person to be the Commissioner for Public Sector Management and detail the functions of the Commissioner. Acting appointments are also provided for.

Clause 65 does not apply because the appointment is a Government appointment, not a conventional merit-based appointment within the Service.



Sub clause 20(2) allows the Commissioner to exercise the powers of any Chief Executive. This reserve power will enable the Commissioner to take action in unusual circumstances, such as between the death of a Chief Executive and the appointment of a person to act in the vacant position. Under sub clause 36(3) this power cannot be delegated.

**Reviews and  
Investigations  
Clauses 21 & 22**

These clauses provide the Commissioner with the ability to undertake reviews and investigations into matters relevant to the management of the public Service, such as a program evaluation.

Clause 21 provides that the Commissioner can authorise reviews of the Service as a whole or any part of the Service or of a government agency, and make recommendations to relevant Chief Executives as a result of those reviews. Disagreed recommendations emerging from reviews must be referred to the Chief Minister. This clause does not apply to autonomous instrumentalities.

Clause 22 provides that the Commissioner can summon people and documents and enter Government premises, to assist these reviews. Failure to obey a summons is an offence under the clause.

**Records of members  
Clause 23**

This clause provides that the Commissioner is responsible for ensuring the keeping of basic records regarding members of the Service. This record will serve a similar evidentiary and statistical role to the Continuous Record of Personnel maintained by the Commonwealth.

The Chief Executive Officer of an autonomous instrumentality keeps the records for staff in that agency.

**Arrangements relating to  
staffing****Clauses 24 & 25**

These clauses are part of the mechanism under which authorities and the organisations under statutory office holders will be staffed under this Act. In the case of Territory instrumentalities, where an Act requires staff to be public servants, the Chief Executive Officer of that instrumentality gains the same powers in relation to employment matters affecting those staff as if he or she was a Chief Executive appointed under clause 28 of the Bill.

In the case of statutory office holders, the same consequence follows if the Chief Minister declares the statutory office holder to have the powers of a Chief Executive. This will allow the Chief Minister to make such a declaration where the office concerned is able to operate viably, or is required to operate, with the same degree of self-sufficiency as a full Department.

**Powers relating to certain  
staff providing services  
for Calvary Hospital  
(ACT) Incorporated  
Clause 26**

This clause is intended to achieve a similar effect to clauses 24 and 25 for Calvary Hospital, the Public Division of which is staffed by public servants. Special provision is required because Calvary Hospital is not a statutory entity.

**Division 3      Chief Executives**

This Division provides for the establishment of a group of Chief Executives to be the senior managers of the Departments and Bureaux which carry out the business of the ACT Government Service. Under the Bill, and consistent with the Government's intention to provide for appropriate levels of responsibility and accountability, Chief Executives have the authority and powers to support the effective operation of their organisations.

**Appointment of Chief Executives**

Clauses 27, 28 &amp; 31

These clauses provide for appointment of Chief Executives by the Chief Minister. The provisions of clause 65, which deal with the application of the merit principle in selection of other officers, do not apply. This is consistent with arrangements applying to similar positions in the Australian Public Service and recognises that merit for these direct Government appointments is not necessarily assessed in the same way as for other officers.

In addition, clause 31 provides that defects or irregularities in the appointment process of Chief Executives do not invalidate or call into question a Chief Executive's appointment.

**Responsibilities**

Clause 29

This clause provides that under the relevant Minister, Chief Executives are responsible for the general workings of their administrative unit. They are also responsible for advising their Minister on all matters which relate to their unit. Chief Executives must also administer their units having regard to the interest of the Government and the Service as a whole. This recognises the importance of balancing local and Service-wide needs.

**Transfer**

Clause 30

Chief Executives form the uppermost management team of the Service. They may be assigned responsibility for a specific administrative unit, for several units (clause 34), or for special duties (clause 29).

To allow for changing needs and priorities, clause 30 provides that the Chief Minister may reallocate their responsibilities, and transfer Chief Executives between different Chief Executive positions at any time.

Again, clause 65 does not apply in recognition of the nature of these positions.

**Acting Appointment**

Clause 32

This clause provides for acting appointments, which are used to fill vacant Chief Executive positions, or to provide coverage for the positions of Chief Executives who are absent, ill or for some other reason unable to do their job.

Again, clause 65 does not apply, in recognition of the nature of these positions.

**Part time offices****Clause 33**

This clause provides that the Chief Minister can convert a position to part time hours if the occupant agrees. The occupant must also agree to any subsequent variation to the hours of the position.

**Dual appointment of  
Chief Executives****Clause 34**

The purpose of the clause is to allow the flexibility of one Chief Executive heading more than one administrative unit, (for example, if both units are small), or to cover a temporary absence. The Chief Executive is, however, only ever paid the highest salary level applying.

The clause recognises that dual appointments should only exist where the relevant instrument provides specifically to that effect. Chief Executives can be temporarily or permanently transferred between jobs, but until a transfer is permanent, they retain their original position. As with the dual appointment of a substantive Chief Executive, if an acting Chief Executive acts in a second Chief Executive position, they do not retain the position they were originally acting in unless the appointment states the contrary.

**Remunerative  
employment outside the  
Service****Clause 35**

This clause requires Chief Executives to obtain the approval of the Chief Minister to take other paid work.

**Division 4 Powers of delegation**

This Division provides for the delegation by the Commissioner and Chief Executives of their powers.

**Delegation by  
Commissioner or Chief  
Executives****Clause 36 (1), (2), (3), (4)  
& (5)**

Under this clause, the Commissioner and the Chief Executives can delegate their powers to other persons in the public sector. If the proposed delegate is not an employee or office-holder, the Commissioner or Chief Executive must be satisfied that it is necessary to delegate to that person.

Sub clause 36(3) provides that the Commissioner's power to exercise any of the powers of a Chief Executive cannot be delegated.

**Sub-clause 36 (6)**

Both the Commissioner and the Chief Executives can give directions on how the delegated power is to be used.

**Sub-clause 36 (7)**

Powers can be delegated either to an office or position, or to an individual. The former is the most common form of delegation, and allows for senior staff movements without amending delegations. Powers can be validly delegated to a person who will occupy an office even though that office has still to be created.

**Delegation by  
autonomous  
instrumentality  
Clause 37**

This clause makes it clear that an autonomous instrumentality may delegate to its chief executive officer powers it has under this Act.

**Division 5**

**Constitution and role of the Senior Executive Service**

This Division provides for the establishment of the Senior Executive Service. Arrangements provided by this Division are consistent with those applying in the Commonwealth and the concept of a single senior management cadre in the Service whose members can be deployed across the Service as the needs and priorities of government require.

**The Senior Executive  
Service  
Clause 38**

This clause provides that the Senior Executive Service is made up of all SES officers. These officers:

- undertake higher level policy advice, managerial and professional responsibilities in administrative units, and
- may be deployed by the Commissioner within the Service so as best to promote the values and principles of the Service.

The Commissioner's responsibility for SES officers recognises the generalist nature of SES skills and the particular need to take a whole of Service approach at senior levels.

## **Division 6            Whole of government management responsibilities**

This Division requires the Commissioner to develop and implement whole of Service programs to give effect to the Government's intentions in relation to equal employment opportunity, access and equity and industrial democracy in the Service. One aspect of industrial democracy is provision for the establishment of a joint union-management forum known as Joint Council.

### **Interpretation Clause 39**

This clause provides definitions relevant to this Part.

### **Equal Employment Opportunity, Access and Equity and Industrial Democracy Clauses 40, 41, & 42**

These clauses impose responsibilities on the Commissioner to develop programs for equal employment opportunity, access and equity and industrial democracy after consultations with relevant groups and within 12 months of the commencement of this Bill. These programs may then be implemented by the Public Sector Management Standards.

### **Application of sections 40, 41, & 42 to autonomous instrumentalities Clause 43**

This clause provides for autonomous instrumentalities to prepare their own equal employment opportunity, access and equity and industrial democracy plans.

### **Joint council Clause 44**

This clause provides for the establishment of Joint Council, a joint union and management body that allows representatives of the employers and employees in the Service to consult formally on matters of common interest. The establishment, constitution and functions of the Joint Council will be prescribed by the Standards.

**Division 7 Clerk of the Legislative Assembly**

This Division establishes the office of Clerk of the Legislative Assembly and provides for matters related to his or her office. It also provides for the staff required by the Clerk to assist in the Clerk's functions.

**Interpretation  
Clause 45**

This clause provides for interpretation in this Division.

**Office; appointment and  
acting arrangements;  
terms and conditions  
Clauses 46, 47, 52, 53**

Under these clauses, the office of Clerk is established and the Executive appoints him or her on the advice of the Speaker. By applying section 73 of the Self Government Act, the Commonwealth Remuneration Tribunal will be able to set the Clerk's remuneration. Other terms and conditions are set by the Public Sector Management Standards. The Speaker may appoint the Deputy Clerk to act as Clerk. Clause 47 allows the Speaker to grant the Clerk leave.

**Disclosure of Interests  
Clause 48**

This clause requires the Clerk to notify the Speaker of his or her pecuniary interests.

**Resignation and  
retirement  
Clauses 49 & 51**

These clauses provide for the resignation and retirement of the Clerk. The provision for compulsory age retirement ceases in 1996, as do other compulsory age retirement clauses in the Bill.

**Suspension and removal  
from office  
Clause 50**

Under this clause the Executive must remove the Clerk on the resolution of the Assembly, on the grounds of misbehaviour or incapacity. The Executive can also remove the Clerk, on the advice of the Speaker, if he or she is absent for a certain period without leave. The Executive may suspend the Clerk on the same grounds on the advice of the Speaker, who must then notify the Assembly. The suspension terminates 3 sitting days later, unless the Assembly has resolved in the meantime to remove the Clerk.

**Staff  
Clause 54**

This clause requires the staff assisting the Clerk to be officers and employees employed under this Bill.

**PART IV****Creation, classification and abolition of offices in the Service****Division 1****Creation and abolition of offices**

The fundamental organisational unit in the ACT Government Service is the office (sometimes referred to as a position). This Division provides for the creation and abolition of offices by Chief Executives within their organisations. To maintain an appropriate consistency in structures across the ACT Government Service, each office must correspond with a classification which has been approved in a Standard or by the Commissioner.

**Creation and abolition of offices****Clause 55**

This clause provides that Chief Executives can create and abolish offices in approved classifications in their administrative units.

**Classification of offices and officers****Clause 56 (1)**

To be created, offices must belong to a classification that is approved by the Standards or the Commissioner.

**Clause 56 (2) & (3)**

The relative ranking of offices is based on the maximum rate of pay applicable to each office. If the maximum amounts are equal, then the positions are of equal classification. If one is greater than the other, then it is the higher office.

**Clause 56 (5)**

This sub-clause is included to avoid doubt: because awards have the force of Commonwealth law, they prevail over Territory law and things done under Territory law.

**Clause 56 (6)**

This sub-clause provides that in the application of this clause to autonomous instrumentalities "Commissioner" should be read as the chief executive officer of the instrumentality concerned.



**SES classifications****Clause 57**

This clause limits the power to define what constitutes an SES position to the Commissioner. This is consistent with the Commissioner's overall responsibility for the SES. Similar arrangements exist in the Australian Public Service.

**Sub-clause 57 (2)**

This sub-clause provides for the application of this provision in relation to the autonomous instrumentality.

**Re-classification of offices****Clause 58**

This clause provides that Chief Executives can, subject to the Standards, change the classification of offices subject to the Standards. The clause also allows the Commissioner to direct a Chief Executive to reclassify an office. The power of the Commissioner in this regard is linked to the Service-wide responsibilities of the Commissioner and, for example, enables effect to be given, where necessary, to the outcomes of reviews undertaken pursuant to clause 21. In the case of autonomous instrumentalities, the Commissioner's powers are exercised by the chief executive officer.

**Employment streams****Clause 59**

This clause allows the Commissioner to establish employment streams consisting of related classifications, such as a teaching stream or an administrative stream. The Public Sector Management Standards can prescribe the conditions for moving from one stream to another, such as possessing the relevant qualifications and winning a position on merit. This mechanism will help to ensure that officers seeking to move from one type of work to another are appropriately skilled to do so.

**Division 2****Part-time Offices**

This Division provides for and in part regulates permanent part time work in the ACT Government Service. These provisions are consistent with those operating in the Australian Public Service and should be read in conjunction with relevant industrial awards providing for part time work.

**Part time offices  
Clause 60**

This clause provides for the declaration by Chief Executives of offices as part time offices. One of the major features of the clause is its emphasis on the voluntary agreement of the person involved to a change in their working hours.

**Hours of attendance for  
part-time officers  
Clause 61**

This clause provides that Chief Executives may determine the work hours for any given position, subject to the occupant's consent and to limits in the Standards.

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

This clause provides that part time status;

- is not altered by an officer's unattachment, or reappointment to the Service as an unattached officer following a disciplinary matter, and
- may apply to a person's appointment or reappointment as an unattached officer after retirement or standing for election, where the relevant Chief Executive is satisfied that the person will go from unattachment to a part time office.

## **PART V**

### **Employment in the Service**

#### **Division 1      Preliminary**

This Division deals mainly with the definition and application of the merit principle in clause 65.

##### **Interpretation Clause 63**

This clause provides interpretations relevant to this Division.

##### **Application Clause 64**

This clause provides for the application of this Part to ACTEW and to the Legal Aid Commission. In particular the clause enables powers under this Part that are otherwise exercised by the Commissioner to be exercised by the Authority in the case of ACTEW and the Commission in the case of the Legal Aid Commission.

#### **Division 2      Personnel management**

##### **Application of merit principle Clause 65**

This clause provides for what is commonly known as the merit principle. This principle must be applied in relation to:

- appointments,
- transfers between employment streams
- temporary transfers to a higher office for periods in excess of 3 months, and
- promotions.

Applying the merit principle under this clause requires making sure that everyone who is eligible has a reasonable chance to apply for a position, and that selection is based on relative efficiency. The clause requires that the selection process must not be influenced by patronage, favouritism, or unlawful discrimination.

The clause also defines discrimination as not including discrimination that is lawful and which complies with a program approved under the managements standards dealing with equal employment opportunity.

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

**Clause 66**

This clause requires that information on appointments, transfers and promotions and staff movements are notified in the (Commonwealth) Gazette. This is important in giving effect to merit and appeal rights.

**Division 3      Appointment of officers other than Chief  
Executives**

This Division covers the main features of appointment to the Service. Appointment of officers is to be the preferred method of staffing in the Service for officers other than Chief Executives.

**Employment in the  
Service**

**Clause 67**

This clause provides that employment in the Service will be by appointment as an officer or engagement as a temporary employee. Arrangements to apply to employment of temporary staff are further detailed at Division 7.

**Appointments - generally**  
**Clause 68**

This clause details arrangements to apply to the appointment of officers to the Service. Chief Executives are able to approve the appointment of officers other than SES officers, who are appointed by the Commissioner except for ACTEW and the Legal Aid Commission, which appoint their own SES officers with the Commissioner's agreement. Persons who are appointed must be selected according to proper processes, and the officer appointing them has to be satisfied that they are fit and proper persons having regard to the factors in paragraph 68 (2)(c). This clause also provides that persons appointed to the Service must also be either Australian citizens or permanent residents of Australia.

**Classification of  
unattached officers  
Clause 69**

Appointments are usually made to an office. This clause provides for persons to be appointed as unattached officers where the Commissioner or Chief Executive making the appointment determines the classification of the person and checks that normal qualification requirements are satisfied.

**Appointments to be on  
probation  
Clause 70**

This clause provides that the appointment of officers should be on probation except where special circumstances, as defined in this clause, exist. Probation is designed to allow time to assess the officer's work performance and medical fitness, before an appointment is confirmed.

The clause provides that a probationary appointment may be terminated by the Chief Executive or the Commissioner in accordance with the grounds specified at sub clause 70(9).

The period of probation for officers is normally a minimum of 6 months and may be extended, where further time is required to assess performance or medical fitness, to a maximum of 2 years from the date of appointment. A probationary appointment is automatically confirmed after 2 years, subject to the officer's satisfactory medical health and fitness.

**Appointments on  
probation - training  
offices and teaching  
offices  
Clause 71**

This clause provides for modified probation arrangements to apply to officers appointed to prescribed training offices or to positions where teaching qualifications are required.

## **Division 4      Appointment, transfer and promotion of Senior Executive Service officers**

This Division provides arrangements for the staffing of SES positions.

### **Notification of vacancies in SES offices Clause 72**

This clause provides that vacancies in the SES must be advertised in the Gazette, unless they are going to be filled by a transfer. Unlike other positions however, persons outside the Service, as well as officers, can apply for these positions. The clause also provides that SES vacancies (other than those occurring in ACTEW or the Legal Aid Commission - see clause 64) must be advised to the Commissioner in advance of advertising action to enable consideration of alternative staffing arrangements.

### **The selection process Clauses 73 & 74**

These clauses provide for a two stage decision making process in relation to the staffing of SES vacancies:

- a selection process (as prescribed - see clause 68), leading to a recommendation for filling a vacancy, and
- the involvement of an Executive Staffing Committee.

### **Process of Executive Staffing Committee**

Clause 73 provides that where the Chief Executive supports a recommendation received following a selection process, that recommendation must then be referred to the Commissioner. (If the Chief Executive rejects the recommendation, it proceeds no further). Clause 74 provides for the convening by the Commissioner of an Executive Staffing Committee to consider the recommendation received in accordance with clause 73 should be endorsed.

This Committee is made up of the following officers or their nominees:

- the Commissioner;
- the Chief Executive of the promoting agency; and
- the Chief Executive of the Chief Minister's Department.

If the proposed promotion is in the agency of either of these two officials, another Chief Executive may be chosen to complete the Committee.

This measure allows for input from both Service-wide perspectives and the head of the agency affected. The purpose of this Committee is to ensure that senior promotions are not made by a single official who, in a small jurisdiction such as the ACT, may be more readily subject to inappropriate political involvement in the merit process.

**Appointment or  
promotion of SES  
officers in ACT Electricity  
Authority and Legal Aid  
Commission (ACT)**  
Clause 75

This clause provides that recommendations to appoint or promote a person to an SES position in either ACTEW or the Legal Aid Commission require the agreement of the Commissioner. Where the Commissioner does not agree with a recommendation, the recommendation lapses.

**Transfer of Senior  
Executive Service  
officers**  
Clause 76

This clause provides that the Commissioner, subject to consultation with relevant Chief Executives, can transfer SES officers both between and within administrative units.

Clause 77

This clause provides for the direction of SES officers to perform temporarily the duties of other SES positions which are of the same or equal classification to the officer's own position. The clause provides that Chief Executives can direct SES officers to perform other duties within their administrative unit at level, whereas the Commissioner can direct at level between administrative units. When an officer is directed to undertake work in another administrative unit, the power to give directions to that officer is also transferred between the two Chief Executives involved.

The clause also provides that when planning these transfers, Chief Executives and the Commissioner must consider:

- the efficiency of the Service,
- the career development of the officer,
- the officer's views and
- where necessary, any special qualifications the position may need.

This clause also applies to persons employed to perform SES duties.

**Clause 82**

This clause provides for temporary performance of duties, usually called temporary transfer. Procedural requirements for selection for temporary transfer are to be provided by the Standards.

**Cancellation  
Clause 78**

The Commissioner has the power to cancel appointments, transfers and promotions to SES offices before they take effect. This can be invoked, for example, if there is error or fraud.

**No appeals  
Clause 79**

There are no appeals for appointment, transfer or promotion to an SES job, or for the cancellation of these.

**Fixed term appointments  
Clause 80**

SES officers can be appointed permanently, or (unlike other officers) for a fixed term of not more than 5 years.

**Sub-clause 80 (8)**

SES officers on fixed-term appointments leave the Service either

- when the period of the appointment expires, or
- if the Commissioner terminates the appointment by giving reasonable notice to the officer.

In both cases, people are eligible for reappointment to the Service.

Compensation payable on the early termination of a fixed term appointee may be determined by the original contract of employment.



**Superannuation  
arrangements  
Clause 81**

This clause provides for continuation of the arrangement by which employer obligations to contribute towards a fixed term SES officer's superannuation can be met where the officer is not covered by Commonwealth superannuation scheme membership.

**Division 5      Promotions and transfers of officers other  
than Chief Executives and SES officers**

This Division provides arrangements for the management of staff movement within the Service on promotion and transfer. The arrangements are consistent with those applying in the Australian Public Service. The Division also provides for rights of appeal in relation to promotion decisions. Appeals against promotion decisions will continue to be considered by the Commonwealth Merit Protection and Review Agency (MPRA) in accordance with arrangements being negotiated with the Commonwealth.

Schedule 2 lists the Territory instrumentalities subject to the application of the provisions of the Merit Protection Act.

**Transfers and  
promotions  
Clause 83**

Chief Executives may fill vacancies by promotions or transfers in compliance with this Bill and the Standards. Vacancies can only be filled by promotion if the vacancy was previously advertised in the Gazette, unless the Standards provide for exceptions. Where a vacancy is to be filled by transfer, this may only occur after the views of the officer involved have been considered by the Chief Executive.

**Appeals  
Clauses 84, 85, 86 & 87**

These clauses provide arrangements for appeals against promotions.

Clause 84 provides that eligible officers who applied for a promotion but were unsuccessful can appeal against the promotion. This right is restricted to those positions which are identified by the Standards as subject to appeal and the only ground for appeal is the greater efficiency of the appellant.

In addition to the above provision, Clause 86 provides that excess officers can appeal against all promotions up to and including their current level.

Clause 85 provides that appeals are decided by the Promotion Appeal Committee, established under the *Merit Protection (Australian Government Employees) Act 1986* (Cwth). This Act will continue to apply to the Service (see clause 235). The outcome of appeals must be notified in the Gazette.

Clause 87 provides that although there are promotions which are not appealable, these promotions can still be reviewed by the MPRA. Grounds for an officer to apply are that the merit principle was not applied (see clause 48) or there was a serious defect in the selection process. The procedures of the MPRA in such a review are the same as in a promotion appeal (see clause 73 (10)). However, the recommendation of the MPRA to the Chief Executive is advisory only.

**Joint Selection  
Committees**  
Clause 88 & 89

These clauses provide for the convening of Joint Selection Committees as an alternative process to select officers for promotion and transfer.

The clauses provide that decisions made in accordance with the recommendation of a Joint Selection Committee are not subject to appeal or review.

Joint Selection Committees (other than for teachers) are comprised of a Convenor nominated by the MPRA, a representative nominated by the agency concerned and a representative of the relevant union. Joint selection committees for teachers consist of a Convenor nominated by the Chief Executive and two or three other persons nominated by the Chief Executive and approved by the staff organisation (ie union).

Clause 89 provides for the establishment of management initiated Joint Selection Committees. These committees only include a union representative if the union agrees to participate. In addition, if the advice of the Committee is not unanimous, or the Chief Executive does not accept the Committee's advice, a promotion under this clause is appealable.

**Procedure of Joint  
Selection Committee  
Clause 90**

This clause provides for general working procedures, and arrangements to reconvene Joint Selection Committees if one of the members no longer participates.

**Taking effect etc of  
promotions and transfers  
Clause 91**

This clause provides that the Standards will specify the date upon which promotions and transfers take effect. The new salary is paid from that day.

**Death of officer before  
appeal determined  
Clause 92**

This clause provides that appeals are taken to lapse where the appellant dies before a matter is determined.

**Cancellation of  
promotion or transfer  
Clause 93**

This clause provides that the Chief Executive may cancel a promotion or transfer before it takes effect. This is to allow for circumstances where it is inappropriate for the action to proceed, such as those involving mistake or fraud.

**Other transfers  
Clauses 94, 95, & 96**

These clauses provide for the transfer of officers and employees within and between administrative units in particular situations.

Clause 94 permits the Commissioner to play a role in a deadlock between departments where a proposed transfer is not agreed. Clause 95 facilitates "job swaps" or other multiple transfers.

Clause 96 enables the Commissioner to direct permanent and temporary transfers between agencies in the interests of the efficient administration of the Service. This authority is relevant to the effective redeployment of excess or potentially excess officers in the Service.

**Clause 97**

This clause provides arrangements to apply where specified positions are to be filled in accordance with the order of passing examinations.

**Clause 98**

This clause provides for the declaration of certain offices as training offices and for arrangements to apply to promotion to those offices. The occupant of a training office is entitled to be advanced automatically to a higher office on completing prescribed training.

**Division 6****Temporary performance of duties - offices other than SES offices**

This Division provides for officers to perform temporarily the duties of another office either within an agency or in another agency of the Service.

**Interpretation****Clause 99**

This clause provides interpretations relevant to this Division.

**Directions to act****Clause 100**

This clause provides that a Chief Executive may direct an officer to perform all or part of the duties of an office within the Chief Executive's agency. The clause also provides that directions may not be given to an officer of another agency without the approval of the Chief Executive of that agency. Directions issued in accordance with this clause are to be expressed as having effect until a particular date or until the occurrence of a particular event.

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

This clause requires that where a Chief Executive has directed an officer to act in an office for a period in excess of 3 months or for a period which is to end with the occurrence of a particular event, the direction to act must be publicised. This clause only applies to those offices where if an officer was promoted to the office, the promotion would be appealable. The intention of this clause is to ensure that officers who may wish to appeal against the direction to act are made aware of the direction.

**Appeals****Clause 102**

Under clause 102 officers may appeal against the giving of a direction to act. Such appeals may only be on the grounds of superior efficiency and can only be made by officers in relation to whom the office affected by the direction to act is a higher office. The Standards may specify other conditions in relation to appeals under this clause.

**Clause 104**

Under clause 104, the Promotion Appeals Committee under the Merit Protection Act determines the appeal, on the basis of relative efficiency.

**Clause 105**

Under clause 105, where the appeal is successful the Chief Executive must give effect to it. In certain

**Clause 103**

circumstances appeals lapse (see clause 103).

**Division 7****Temporary Employment**

This Division provides for the employment of temporary staff to provide assistance for periods of fixed duration where no officer of the Service is available or possesses the skills required for the tasks to be undertaken. The Division provides clear limits on the use and duration of temporary employment.

**Power to engage employees****Clause 106**

The Service is a career Service and, to the extent possible, is staffed by permanent officers. Chief Executives may employ temporary staff provided that they are satisfied that:

- there is no suitable officer available in the Service, or
- the task is urgent or specialised, and it is impractical to use an officer.

Chief Executives are required to take reasonable steps to ascertain the availability of suitable officers.

**Overseas employment****Clause 107**

This clause allows temporary employment overseas of persons recruited overseas. It does not prevent overseas posting of Australia-based staff.

**Temporary employment -  
generally  
Clause 108**

Temporary staff are employed under one of the following arrangements:

- a short term basis, that is, for less than 12 months. (In short term temporary employment, a streamlined merit process will apply under the Standards) or
- a longer term basis, that is, for more than 12 months, but not more than 5 years. (In longer term temporary employment, the standard merit process will apply).

**Sub-clause 108(3)**

Chief Executives may extend contracts, as long as they do not exceed the above time limits. If this requirement is breached, clause 113 will operate.

**Sub-clause 108(4)**

The Commissioner may determine, or the Standards may set, conditions on temporary employment. These conditions can be used for fixed term employees. This is intended to cover special employment arrangements that do not fit with standard terms and conditions. This situation might arise, for example, in employing the Head Chef at the International Hotel School.

**Entry to the workforce  
programs  
Clause 109**

This clause provides that temporary employment may sometimes be used to enable people to participate on special employment programs.

**Casual employment  
Clause 110**

This clause provides for casual employment in the Service. Casual employment will be regulated in detail in the Standards.

**Employment of  
unsuccessful election  
candidates  
Clause 111**

This clause provides that employees who have resigned to contest election to prescribed legislative bodies and were not elected may be re-employed upon application to the Commissioner.

**Termination of  
employment  
Clause 112**

The Chief Executive can terminate casual employment at any time and can terminate temporary employment by giving reasonable notice at any time. If temporary employment is not terminated by the Chief Executive, the employment terminates at the end of the contract.

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

To prevent the establishment of an ongoing employment relationship in breach of both statutory limits and appointment requirements, this clause provides that there is no ongoing contract of employment where a person continues to work after their employment has ceased or been terminated. This is without prejudice to the person's right to receive fair value for work done, in recognition of the legal principle of *quantum meruit*.

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

This clause is intended to prohibit the re-employment of persons who have been retired from Territory employment as excess officers without a reasonable break in employment, unless the Commissioner approves otherwise.

**Division 8      Miscellaneous**

**APS officers entry to  
ACTGS  
Clause 115**

This provision provides the ACT part of the reciprocal mobility provisions. The Commonwealth will also need to provide mobility rights for ACT officers to the APS.

**Sub-clause 115(4)**

Commonwealth officers can apply for jobs advertised in the Gazette, and if they win the job, they are appointed to the ACTGS. Appointments under this provision are deemed to be promotions and the normal appeal provisions apply.

- Sub-clause 115(3)** This appointment is not on probation unless the officer was on probation in the Commonwealth. The clause also deals with when these appointments take effect.
- Sub-clause 115(4)(h)** APS officers who gain appointment to the ACTGS have their Commonwealth service counted in calculating their entitlements in the ACTGS.
- Officers of the APS appointed to Chief Executive or SES offices**  
**Clause 116** This clause provides for the recognition of prior service for Commonwealth officers appointed as Chief Executives or SES officers in the ACTGS. It also provides that former APS officers appointed as SES officers are not required to serve probation in the ACTGS if they have already served probation in the APS.
- Reappointment provisions**  
**Clause 117** This clause provides that Chief Executives can reappoint former officers (eg officers who have resigned after maternity leave may be reappointed to the Service under this provision). If the person had been dismissed for misconduct or had received a payment on leaving the Service as an excess officer within certain periods, the appointment may only be made with the consent of the Commissioner.
- Clause 118** This clause provides that the Commissioner, or Chief Executive as appropriate, may reappoint officers who resign to contest an election and who are not successful.
- Unattached officers**  
**Clause 119** Chief Executives can unattach officers with their consent, and the person is included in the same agency in which they used to have an office.
- Staffing arrangements between the ACTGS and other bodies**  
**Clause 120** This clause provides that people can be seconded from other organisations to work in the ACTGS. The requirement for these secondments is, however, that the person must work under the direction of the Commissioner, and not their usual employer.
- Clause 121** This clause provides that officers can also be loaned to other governments, and during that time they should report to their host agency and not the Commissioner.



**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**PUBLIC SECTOR MANAGEMENT BILL 1994**

**EXPLANATORY MEMORANDUM**

**PART II**

**Circulated by authority of  
Rosemary Follett, Chief Minister**

## **PART VI**

### **RETIREMENT AND REDEPLOYMENT**

#### **Division 1      Retirement and redeployment of Chief Executives**

##### **Interpretation Clause 122**

This clause provides interpretations relevant to this part.

##### **Age retirement Clauses 123 & 124**

These clauses provide age retirement provisions for Chief Executives.

Clause 123 provides that Chief Executives can voluntarily retire after reaching 55 years of age. Clause 124 provides that Chief Executives must retire at age 65 unless there is a prior arrangement made to extend employment past that age.

Sub clause 124(5) provides that the requirement for retirement at age 65 will cease to operate after 3 March 1996.

##### **Retirement of Chief Executives on the ground of incapacity Clause 125**

This clause provides that, where the Commissioner, after making appropriate inquiries, reports to the Chief Minister that a Chief Executive is physically or mentally incapacitated, the Chief Minister can retire the Chief Executive. The clause also provides that, for a retirement to be considered a retirement on the ground of invalidity under the Commonwealth superannuation schemes, a certificate from the relevant Commonwealth Superannuation Board of Trustees is required.

##### **Termination of appointment Clause 126**

This clause provides that the Chief Minister can terminate the appointment of Chief Executives, who then become unattached Chief Executives, unless they continue to hold another Chief Executive position.

**Redeployment of  
unattached Chief  
Executives  
Clause 127**

This clause provides for the redeployment and retirement of unattached Chief Executives. The clause provides that the Commissioner must take all reasonable steps to find suitable duties for Chief Executives who are not attached to a position, and who do not hold a comparable office outside the Service.

However, if this does not appear possible within a reasonable time, the Chief Executive may be transferred into the SES. If the Chief Executive about to be transferred would prefer to retire, this retirement is considered a compulsory retirement. Alternatively, the Commissioner can give the Chief Executive a notice offering them the opportunity to retire by a certain date.

Special benefits attach to these retirements (which are considered to be compulsory), and these are set out in the notice.

**Special benefits available  
to retiring unattached  
Chief Executives  
Clause 128**

This clause provides that Chief Executives who retire in accordance with clause 127 are entitled to a specified benefit. Benefits applicable to this clause are to be prescribed in the Standards.

**Division 2                      Retirement and redeployment of SES officers**

**Interpretation  
Clause 129**

This clause provides a definition of "Appeal Committee" relevant to this Division.

**Age retirement  
Clauses 130 & 131**

These clauses provide age retirement provisions for SES officers.

Clause 130 provides that SES officers can voluntarily retire after reaching 55 years of age. Clause 131 provides that SES officers must retire at age 65 unless there is a prior arrangement made to extend employment past that age.

Sub clause 131(4) provides that the requirement for retirement at age 65 will cease to operate after 3 March 1996.

**Management of SES  
officers excess to  
requirements**

**Clauses 132, 133, 134 &  
137**

These clauses provide arrangements for the management of SES officers who become excess to requirements.

Clause 132 provides for processes to be followed by the Commissioner in assessing whether the services of an officer can be reasonably be used in the Service at the officer's classification level. The clause also provides for the affected officer to be advised of the assessment being undertaken and given the opportunity to provide comment.

Clause 133 provides for actions by the Commissioner where it has been established, in accordance with clause 132, that an officer is excess to requirements. In accordance with this clause, the Commissioner can notify the officer that they are to be retired, or reassigned to a lower classification (either attached or unattached).

Clause 133 also provides that the Commissioner may, where it is necessary to give effect to a direction that an officer is to be assigned to a lower classification, arrange for promotions or transfers to be delayed, cancelled or brought within the Commissioner's control until the placement of the officer is arranged.

Clause 134 provides that officers issued with a notice under clause 133, may appeal to an Appeal Committee against the giving of the notice. After hearing the appeal, the Appeal Committee can either confirm or revoke the notice.

Clause 137 provides for the payment of a benefit, prescribed in the Standards, to be payable to an officer retired in accordance with clause 133.

**Invalidity retirement and  
redeployment of SES  
officers**

**Clauses 135, 136 & 138**

These clauses provide for the management of the retirement and redeployment of SES officers on the grounds of ill health.

Clause 135 provides that with the consent of the officer, the Commissioner can retire an officer on the grounds of invalidity.

Clause 136 provides that, if an officer is going to be redeployed or retired on medical grounds, the Commissioner can unattach the officer from their position. This enables the position to be filled as soon as possible.

Clause 138 provides that, for a retirement to be considered a retirement on the ground of invalidity under the Commonwealth superannuation schemes, a certificate from the relevant Commonwealth Superannuation Board of Trustees is required.

### **Division 3      Retirement and redeployment of officers other than Chief Executives and SES officers**

#### **Interpretation Clause 139**

This clause provides interpretations relevant to this Division.

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

This clause explains that the power of Chief Executives to reduce an officer's classification within their own agency is the power to assign them to a lower office, while the power of the Commissioner to reduce an officer's classification is a power to reassign them either within the agency or to a different agency. This includes the power to unattach them and reduce their classification.

#### **Age retirement Clause 141 & 142**

These clauses provide age retirement provisions for officers other than Chief Executives and SES officers. The provisions also apply to officers whose probation has not been confirmed and to fixed term temporary employees.

Clause 141 provides that officers covered by this clause can voluntarily retire after reaching 55 years of age.

Clause 142 provides that these officers must retire at age 65 unless there is a prior arrangement made to extend employment past that age.

Sub clause 142(5) provides that the requirement for retirement at age 65 will cease to operate after 3 March 1996.

**Reduction in  
classification &  
retirement  
Clauses 143 & 144**

These clauses provide for the management of circumstances where officers are not satisfactorily performing the duties of their job (for the reasons outlined in these clauses) or are excess to requirements.

Clause 143 provides that Chief Executives may reduce an officer in classification or retire an officer from the Service and details the processes to be followed in considering and implementing such action.

The clause provides that action under this clause may be taken where the officer:

- is unable to perform appropriate duties because of physical or mental capacity;
- is inefficient;
- is not qualified to perform the duties
- is excess.

The clause also provides that before taking actions to reduce an officer's classification or retire the officer, Chief Executives should take reasonable steps to find suitable alternative employment for the officer and should consult with the Commissioner in regard to the possibility of placing the officer elsewhere in the Service.

Clause 144 gives similar powers to the Commissioner as those given to Chief Executives in clause 143, allowing the Commissioner to initiate action where an officer is incapacitated, inefficient, unqualified or excess. The powers of the Commissioner under this clause are limited, however, to reduction in classification and do not extend to retirement. The Commissioner is required to consider the prospects of redeploying the officer elsewhere in the Service.

**Invalidity retirement &  
redeployment  
Clauses 145 & 146**

Clause 145 provides that a certificate from the Commonwealth Superannuation Board is required before officers can be retired on invalidity grounds. This ensures that the invalidity retirement is acceptable for superannuation purposes.

Clause 146 provides that officers for whom an authorised medical practitioner has recommended redeployment or retirement on medical grounds can be unattached by their Chief Executive. This allows the position to be filled while these processes are finalised.

**Appeals**  
**Clause 147**

This clause provides that officers who have been notified that they might be reduced in classification or retired under clauses 143 or 144, can appeal against this notice. The Appeal Committee hears the appeal and either confirms or revokes the notice.

## **PART VII LONG SERVICE LEAVE**

### **Introduction**

This Part deals with establishing eligibility, determining qualifying employment and calculating payment for long service leave.

Consistent with the intention of the Government to avoid detriment to the conditions of service of ACT officers in the transition to a separate ACT Government Service, this Part provides for long service leave conditions and entitlements which reflect those currently provided by the *Long Service Leave (Commonwealth Employees) Act 1976*.

This Part also provides for a common long service leave regime across Territory employment.

### **Interpretation Clause 148**

This clause provides definitions and interpretations applicable to Part VII.

Sub clause 148(1) defines officers as "Category A officers" for the purposes of this part where the whole of the officer's service has been in either a full or a part time capacity. "Category B officers" are those officers who do not fall into Category A and are those officers who have a mixture of full time and part time service. This definition allows for the establishment of long service leave credits relevant to full and part time service.

### **Meaning of public authority Clause 149**

This clause provides a definition of the term "public authority" for application to this Part.

### **Eligible employment Clauses 150 and 153**

Clauses 150 and 153 provide for the determination of the types of employment which may be taken into account as service for the purposes of establishing eligibility for long service leave under Clause 154.

Clause 150 provides that the Standards may specify that service with other organisations may be recognised for the purposes of establishing eligibility for long service leave. Recognition of prior service can be limited by the Standards to particular situations or times.



Clause 153 defines those types of employment which are to be considered as Territory employment for the purposes of establishing eligibility for long service leave. Under this clause, Territory employment includes service in statutory offices established by ACT legislation.

This clause also provides for the exclusion of specified employment for the purposes of long service leave as long service leave for these types of employment is provided by other means.

**Salary for long service  
leave purposes  
Clauses 151 & 152**

These clauses provide that the Standards may specify the extent to which allowances and other payments are to be included in salary for the purposes of long service leave.

**Period of employment  
Clause 154**

This clause provides that for periods of employment to be recognised for the purposes of long service leave, they must be continuous. Employment which will be recognised is:

- continuous Territory employment; and
- continuous periods of employment of a type recognised by the standards (clause 150) which are also continuous with Territory employment.

Employment for the purposes of this clause does not include employment with an eligible service or employer where the basis of remuneration was fees, allowances or commission only.

**Continuity of employment  
Clause 155**

This clause provides that continuity of service is broken by a gap of more than 12 months between periods of eligible service. This time limit may be extended in cases where the person left eligible employment because of ill health or to undertake a prescribed course of full time study. In cases where continuity of service is preserved in accordance with this clause, any break in service does not count as employment for the purposes of accrual of long service leave entitlements.

**Status of periods of absence****Clause 156**

This clause provides for the treatment of certain periods of absence for the purpose of long service leave.

Sub clause 156(2) provides that periods of absence without leave do not count as service. Sub clause 156(3) provides that leave, whether with or without pay, may count as service subject to sub clauses (4) and (5).

Sub clause 156(4) provides that leave without pay for illness or defence service counts as service; other leave without pay does not count unless an approving authority determines that it should count, or where, in accordance with sub clause 156(5), the leave is for the purposes of being a full time union official or to hold another office recognised in the Standards, in which case the leave counts as service for purposes relating to entitlements.

**Concurrent employment****Clause 157**

This clause provides that where officers have concurrent qualifying periods of employment, only one can be used for the calculation of long service leave.

**Long service leave and payments in lieu of long service leave****Clause 158**

This clause provides that after 10 years' qualifying service, officers are eligible to be granted long service leave either on full pay or half pay.

When an officer with at least 10 years service leaves the Service, their remaining long service leave credits may be paid out. These payment calculations are based on the rate of pay the officer would have received if he or she proceeded on long service leave at the time of leaving the Service.

This clause also allows officers to request that their outstanding long service leave credit not be paid in lieu. This is to allow for the transfer of service for long service leave purposes to a new employer.

Where an officer who has at least 10 years of service dies, payment in lieu of long service leave may be made to the dependants of that officer.

**Extended leave or pay in  
lieu of leave for officers  
not entitled to long  
service leave  
Clause 159**

The purpose of this clause is to allow for the granting of long service leave or payment in lieu thereof to officers who separate from the service in certain specified circumstances without satisfying the requirement for 10 years' qualifying service. Any leave granted or payment made will be calculated in accordance with the method detailed in this Part.

Where an officer has not less than 1 year's service and not more than 10 years' service and is to cease to be an officer by reason of age retirement or retrenchment the officer may be granted long service leave but such leave may not extend beyond the date upon which the officer is to cease to be an officer.

Where an officer has not less than 1 year's service and not more than 10 years' service and separates from the Service by reason of

- age retirement;
- retrenchment; or
- ill health,

the officer may be paid in lieu of long service leave.

Where an officer who has not less than 1 year's service and not more than 10 years' service dies, payment in lieu of long service leave may be made to the officer's dependants.

**Calculation of long  
service leave credit  
Clauses 160 & 161**

These clauses provide for the calculation of long service leave credits. The clauses provide for a rate of accrual of three tenths of one month for each year of full or part time service if the officer has exclusively full time or exclusively part time service (Category A officer). If the officer has some of each type of service (Category B officer), the rate of credit is the same but there is a credit for full time service and one for part time service. The credit available to an officer is the product of his or her total accrued credit less any long service leave used previously.

**Rate of salary while  
absent on long service  
leave**

**Clause 162**

This clause provides for long service leave to be taken at the officer's current rate of salary, but provides formulae for establishing a current rate where the officer, for example, worked variable hours or is currently full time but is using credits accrued for earlier part time service.

**Rate of salary in relation  
to pay in lieu of leave**

**Clause 163**

This clause provides that where an officer is to be paid in lieu of long service leave the rate of salary for payment is that which would have been applicable had the officer proceeded on long service leave.

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

**Clause 164**

This clause is intended to ensure that an officer who is employed under a Territory law and is considered to be employed in Territory service for the purposes of this part, may only receive long service leave benefits in respect of Territory service.

**Additional provisions  
relating to death of an  
officer**

**Clause 165**

This clause provides guidance in relation to payment in lieu of long service leave to the legal representative of a deceased officer and includes provision for payment to trusts or trustees where this is appropriate.

**Provisions relating to  
members of the  
Australian Capital  
Territory Teaching  
Service**

**Clause 166**

This clause provides long service leave arrangements for members of what is currently the ACT Teaching Service who were, prior to becoming members of that Service, employed in the teaching service of either New South Wales or South Australia. In accordance with this clause, affected officers maintain a right to have their long service leave entitlements determined under either this Part or the provisions applicable to the State teaching service in which they were formerly employed.

## PART VIII MATERNITY LEAVE

### Introduction

This Part is designed to:

- prevent some types of employment discrimination against women on the basis of pregnancy,
- safeguard the health of the mother in the period before and after confinement, and
- allow the new mother time off for child care.

Consistent with the intention of the Government to avoid detriment to the conditions of service of ACT employees in the transition to a separate ACT Government Service, this part provides for maternity leave conditions and entitlements which reflect those currently provided by the *Maternity Leave (Commonwealth Employees) Act 1973*.

### Interpretation Clause 167

This clause provides interpretations relevant to this part.

### Persons in relation to whom this Part applies Clause 168

This clause provides that these maternity leave provisions apply to women employed:

- under this Bill (both officers and employees),
- by Territory instrumentalities, and
- by a company which the Standards determine is covered by these provisions.

The clause also deems the holders of certain offices to be employees for the purposes of this Part and excludes certain persons who are not eligible or for whom provision is made by other means.

Clauses 169 to 173 provide the framework for absence on maternity leave.

**Absence on maternity  
leave  
Clause 169**

This clause provides that where an employee becomes pregnant, she is entitled to be absent on maternity leave for a total period of 52 weeks commencing at a point 6 weeks before the expected date of birth.

Maternity leave consists of:

- a compulsory period of absence which commences 6 weeks before the expected date of birth and continues until 6 weeks after the actual date of confinement, and
- an optional further period of leave, to take the total absence up to 12 months.

**Entitlement to paid  
maternity leave  
Clause 170**

All employees covered by clause 168 are entitled to maternity leave. This clause provides for a maximum of 12 weeks paid maternity leave absence for employees who have been confined and who have 12 months continuous service in eligible employment. Payment is to be at the rate that would have applied had the employee been absent on full pay on account of illness.

This clause also provides that applications for other leave during the period of maternity leave should be granted where an entitlement to leave exists.

**Unauthorised absences  
Clause 171**

This clause provides that, where an employee is absent without authority in a period immediately before a period of compulsory maternity leave absence, the employee is not entitled to payment as provided by clause 170 in respect of that compulsory absence. This provision does not affect the right of the employee to pay in respect of any recreation, long service or sick leave that may be granted for the same period.

**Absence on leave without  
pay  
Clause 172**

This clause provides for maternity leave arrangements where an officer has been granted leave without pay.

Sub clause 172(1) provides that where a woman is absent on approved leave without pay and is confined during the period of leave, she remains entitled to the grant of maternity leave as provided under this Part.

Sub-clause 172(2) limits the availability of maternity leave in cases where the period of leave without pay which has been granted exceeds six weeks. In such cases, unless the Chief Executive determines otherwise, the officer is not entitled to maternity leave until after the expiry of the approved period of leave without pay.

Sub-clause 172(3) provides that the limitation imposed by sub-clause 172(2) does not have effect until the officer has been absent for a period in excess of 6 weeks.

**Employees may continue to perform, or resume, duty in certain circumstances**  
Clause 173

This clause provides that employees may only work during the compulsory period of absence if their doctor certifies that they are fit for duty until a particular date.

Clauses 174 to 177 are intended to minimise disruption or detriment to an employee's career or employment by virtue of her absence on maternity leave.

**Other applications to resume duty**  
Clause 174

This clause provides that an employee may apply to resume duty at any time after expiry of the period of compulsory absence. The clause also provides for the review of disagreed requests to resume duty by the Commissioner.

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

This clause provides that maternity leave, whether with or without pay does not break an officer's continuity of service. Maternity leave with pay counts as service for all purposes.

**Officers on maternity leave****Clause 176**

This clause provides for the unattachment of officers on maternity leave which is without pay and after the officer's confinement. Unattachment may only take place with the consent of the officer. The clause also provides for the appointment of the officer to her previous position or a position as near as possible to that position in status and salary upon resumption after maternity leave.

**Temporary employees on maternity leave****Clause 177**

This clause provides that temporary employment should not be terminated while an employee is absent on maternity leave. Preference in re-employment as a temporary employee should be given to a woman whose employment is terminated following maternity leave. This provision continues conditions currently available under the *Maternity Leave (Commonwealth Employees) Act 1973 (Cwth)*.



## PART IX DISCIPLINE

### Introduction

This Part provides the framework for dealing with both contraventions of clause 9 (obligations of public employees) and criminal offences. The disciplinary processes outlined are consistent with arrangements currently provided under the *Public Service Act 1922* (Commonwealth) and are intended to balance fairness to the individual officer or employee with the interests of the Service as a whole.

Disciplinary provisions for the following groups are dealt with separately:

- Chief Executives (Division 2);
- other officers (Division 3);
- officers employed other than in the Service, referred to as "detached officers", (Division 4);
- employees (Division 5) and
- unattached officers in administrative units (Division 7).

### Division 1 Preliminary

#### Interpretations and definitions

#### Clauses 178 and 179

These clauses provide interpretations and definitions of terms used throughout this Part.

Misconduct is defined as a failure of an officer to fulfil his or her duty as an officer, and this happens only if the officer does not comply with the general obligations of public employees (at clause 9).

## Division 2      Chief Executives and certain unattached officers

This Division provides for:

- processes to be followed where Chief Executives are suspected of failing to fulfil their duties as officers (clause 181), and
- processes to be followed where Chief Executives have been convicted of a criminal offence, or have been found to have committed an offence without being convicted (clause 182).

### Interpretation Clause 180

This clause explains terms used in this Division. Throughout the Division, the term "officer" refers to Chief Executives and unattached Chief Executives.

### Disciplinary action in respect of Chief Executives Clause 181

Clause 181 provides for the process to be followed where Chief Executives are suspected of misconduct. In general, the Commissioner considers both statements made by the Chief Executive involved and the findings of a specially convened Board of Inquiry. The Commissioner then makes a recommendation to the Chief Minister, who decides on a course of action.

#### Sub-clause 181(1)

Where a Minister has reason to suspect a Chief Executive of misconduct, the Minister can suspend the Chief Executive from duty and charge them with misconduct. The Minister must immediately inform the Commissioner of the suspension and charge. The

#### Sub-clause 181(3)

Chief Executive then has an opportunity to respond to the charge. Even if they do not respond to the charge, sub-clause 181(4) prohibits this being interpreted as admission of guilt.

#### Sub-clause 181(5) & (6)

Unless the Chief Executive has admitted that the charge of misconduct is true, the Chief Minister appoints three people to form a Board of Inquiry. (The proceedings of Boards of Inquiry are dealt with in Division 6 of this Part). The Board investigates the charge and reports its findings to the Commissioner.

Sub-clauses 181(7) & (8) If the Chief Executive has admitted the charge, or if the Board of Inquiry has found the charge to be proved, the Commissioner recommends a course of action to the Chief Minister. The Chief Executive involved has the opportunity to make a submission to the Chief Minister via the Commissioner.

Sub-clause 191(9)

Sub clauses 181(10) & (11) The Chief Minister decides what action to take, if any. However, if the Chief Minister does not follow the Commissioner's recommendation, the Chief Minister must justify the decision in the Legislative Assembly.

These disciplinary processes do not allow Chief Executives a separate right of appeal. This is because the processes involve greater internal formality and input from Chief Executives than, for example, the processes for other officers (see Division 3).

#### **Conviction by courts of Chief Executives**

##### **Clause 182**

This clause establishes the process to be followed where a Chief Executive has been convicted of a criminal offence, or has been found to have committed an offence (without the court recording a conviction).

Sub-clause 182(2) & (3) The Commissioner must consider the circumstances and any statement submitted by the Chief Executive involved, before making a recommendation to the Chief Minister.

Sub-clause 182(4) & (5) The Chief Minister decides what action to take, if any. However, as with charges of misconduct, if the Chief Minister does not follow the Commissioner's recommendation, the Chief Minister must justify the decision in the Legislative Assembly.

Clause 183 This clause provides that Chief Executives charged with criminal offences may, where the Minister considers it is warranted in the interests of the Service, be transferred to other duties or suspended while the charge is determined. Suspension is without pay, unless the Commissioner determines otherwise.

Clause 184 This clause provides that where an officer has been suspended, the Minister may remove the suspension at any time and that a suspension must be reviewed after it has continued for more than 30 days. The suspension must be removed where a charge has been withdrawn or found not to have been proven.

### **Division 3      Officers other than Chief Executives**

This Division provides for:

- processes to be followed where officers are suspected of failing to fulfil their duties as officers (clauses 186 & 187),
- processes to be followed where officers have been convicted of a criminal offence, or have been found to have committed an offence without being convicted (clause 188),
- the suspension of officers (clauses 189 & 190), and
- changes to original decisions, including appeals, nullifications of convictions, and reviews of findings (clauses 191, 192, & 193).

#### **Interpretation Clause 185**

This clause provides that this Division applies to officers other than Chief Executives.

#### **Disciplinary procedures and appeals against them Clause 186**

This clause provides that if the officer authorised for the purposes of this provision considers that an officer may have not fulfilled their duty as an officer, they must either counsel the officer or charge them with misconduct. The officer being charged can have copies of the charge sent to their union and another person they would like involved as an assistant.

#### **Clause 187**

This clause requires that an inquiry must be held into the charges against the officer. Officers who were involved in laying the charges cannot be involved in this inquiry. This means in practice that the authorised officer, who laid the charge of misconduct, refers the matter to an inquiry officer. The officer being charged has the opportunity to put their views to the inquiry officer.

#### **Sub-clause 187 (6)**

This sub-clause provides that if the inquiry officer decides that the officer concerned did not fulfil their duty as an officer, the officer can be counselled or disciplined.

Where the officer concerned is to be disciplined, the inquiry officer can:

- admonish the officer,
- fine the officer, or temporarily reduce their salary,
- transfer the officer at level, or to a lower level, or
- dismiss the officer from the Service.

Officers can also be suspended from duty, or directed to perform other duties, pending the outcome of the inquiry (see clause 189 below).

#### Clause 191

This clause provides officers with a right of appeal in some cases where the officer has been found guilty of misconduct. Officers only have a right of appeal where the disciplinary action is substantial. That is, where the officer has been admonished, fined \$50 or less, or transferred at level, there is no appeal right.

#### Sub-clause 191(2)(a) & 191(3)

The officer involved can appeal to a Disciplinary Appeal Committee either on the grounds that the charge should have been dismissed, or that the action taken was too severe. (The proceedings of Disciplinary Appeal Committees are dealt with in Division 6 of this Part). The Committee decides whether to confirm, revoke or vary the original decision.

#### Procedures relating to criminal offences and appeals against them Clause 188, 191 & 192

These clauses provide for actions to be taken by Chief Executives where an officer has been convicted of, or found by a court to have committed, a criminal offence. The Chief Executive can:

- counsel the officer,
- transfer the officer (either at level or to a lower level) or
- dismiss the officer from the Service.

Officers can also be suspended from duty, or directed to perform other duties, pending the Chief Executive's decision (see clause 189 below).

**Sub-clause 188(4)**

This sub-clause provides that, whether or not any action is taken against the officer because of a criminal offence, that offence can still be considered by the Commissioner, a Chief Executive, or any other person. For example, whether or not the officer has been counselled or transferred because of a criminal offence, other officers could still consider the offence when considering that officer for promotion.

**Clause 191**

This clause provides officers with a right of appeal in some cases where action has been taken because of criminal offences. Officers only have a right of appeal where the disciplinary action is substantial. That is, officers who have only been transferred at level have no right of appeal.

**Sub-clauses 191(2)(b) & (3)**

The officer involved can appeal to a Disciplinary Appeal Committee on the grounds that the action taken was too severe. (The proceedings of Disciplinary Appeal Committees are dealt with in Division 6 of this Part). The Committee decides whether to confirm, revoke or vary the original decision.

**Clause 192**

This clause provides that if an officer is dismissed or transferred because of a criminal conviction, and later the conviction is nullified, the officer can apply to the Commissioner to have the action reviewed.

If the application is refused, the officer can apply to a Disciplinary Appeal Committee to have the decision reviewed. This Committee either confirms the original recommendation, or recommends remedial action to the Commissioner.

**Suspension from duty  
Clause 189 & 190**

This clause provides that where an officer has been convicted of a criminal offence or where an authorised officer advises the Chief Executive that an officer may have failed to fulfil their duty as an officer, the Chief Executive can suspend the officer or direct the officer to perform other duties. A suspension would normally be without pay.

Clause 190 provides that where an officer has been suspended, the Chief Executive can remove the suspension, or direct that the officer receive all or part of their salary, at any time. In any case, the Chief Executive must review the suspension if it continues for more than 30 days. Suspensions should be removed where a charge has been withdrawn or found not to have been proven.

**Review of findings**  
**Clause 193**

This clause provides for a review process separate from the appeal mechanism in some cases of disciplinary action. Situations which are covered under this clause are:

- where an officer is found not to have fulfilled their duty as an officer, and has been fined, reduced in salary, transferred or dismissed from the Service, or
- where a detached officer (as defined in clause 194) has been found to have committed misconduct and has been dismissed from the Service.

This review process is initiated by the person disciplined where they believe that further evidence has come to light that may have influenced the decision. The person initially applies to the Merit Protection Review Agency (MPRA). If the MPRA establishes sufficient grounds for a review, it refers the application to a Disciplinary Appeal Committee. This Committee can either affirm the original decision, or recommend that the Commissioner take action to compensate the person or mitigate the severity of the disciplinary action.

**Division 4**  
**Officers employed otherwise than in the Service**

This Division provides a framework for disciplinary action for officers of the Service who are temporarily engaged in employment other than under this Bill or absent from duty on other than recreation or sick leave. An example may be an officer who is employed by a private sector organisation as part of a Service-wide development program. The framework provides for action to deal with misconduct by the officer committed either before or after commencing the alternative employment or absence.

**Interpretation  
Clause 194**

This clause defines detached officers as officers who are:

- employed both under this Act and under other arrangements, both as the holder of another office or an appointment or otherwise,
- employed by another person or body (including the Commonwealth, a State or another Territory) whether as the holder of an office or appointment of otherwise,
- employed on their own account or in partnership with others, and
- unattached and on leave of absence other than recreation or sick leave.

The clause also provides that these officers only fail to fulfil their duty as an officer if they engage in improper conduct. Improper conduct is defined as conduct which brings the Service into disrepute.

**Procedures dealing with  
misconduct and appeals  
against them  
Clauses 195 & 196**

These clauses provide for actions to be taken in regard to misconduct by detached officers in two situations:

- for misconduct committed before becoming an detached officer (clause 195), and
- for misconduct after becoming a detached officer (clause 196).

Clause 195 provides that, depending on the severity of the charge, detached officers can be counselled or dismissed from the Service for misconduct they committed before they became an detached officer. Arrangements for inquiries into charges against detached officers made in accordance with this clause are detailed in the Standards.

Clause 196 provides that if the misconduct is committed while the person is a detached officer, an inquiry can be held to investigate the allegation. Where the officer is found guilty of misconduct, the officer can be counselled or dismissed. The Standards further detail the arrangements for inquiries.



**Sub-clauses 195(5) &  
196(5)**

This sub clause provides that, whether or not a detached officer is counselled or dismissed because of misconduct, the misconduct can still be considered by the Commissioner, a Chief Executive, or any other person. For example, the misconduct could be considered when considering that officer for promotion.

**Clause 199**

The officer has the right of appeal to a Disciplinary Appeal Committee whether the alleged misconduct was committed before or after becoming a detached officer. The Committee may either confirm or set aside the finding or direction appealed against.

**Procedures dealing with  
criminal offences and  
appeals against them  
Clause 197**

This clause provides that detached officers who have committed, or been convicted of, a criminal offence can be dismissed from the Service.

**Sub-clause 197(3)**

This sub clause provides that, whether or not a detached officer is counselled or dismissed because of a criminal offence, the offence can still be taken into account by the Commissioner, a Chief Executive, or any other person. For example, the offence could be taken into account when considering that officer for promotion.

**Clause 199**

This clause provides that detached officers dismissed from the Service because of criminal offences can appeal to a Disciplinary Appeal Committee. The Committee may either confirm or set aside the finding or direction appealed against.

**When directions for  
dismissal take effect  
Clause 198**

This clause provides for the date of effect of decisions that officers should be dismissed from the Service in accordance with this Division.

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

This clause requires the provision of written reasons in support of findings or directions made in accordance with this Division.

**Division 5 Employees****Interpretation and  
application  
Clauses 201 & 202**

This Division provides for the application of the disciplinary provisions outlined in this Part to employees.

Schedule 1 makes technical changes to the disciplinary provisions so that they have a similar effect on employees as officers. This is necessary mainly because employees do not occupy an office in the same sense as officers do.

**Division 6 Boards of Inquiry and Disciplinary Appeal  
Committees**

This Division deals with the proceedings of Boards of Inquiry and Disciplinary Appeal Committees in detail. Boards of Inquiry apply only to Chief Executive Officers charged with misconduct, while Disciplinary Appeal Committees deal with appeals arising from disciplinary action in relation to non-Chief Executives (that is, other officers, detached officers and employees).

**Interpretation  
Clause 203**

This clause provides definitions relevant to this Division.

**Disciplinary Appeal  
Committees  
Clauses 204 & 205**

These clauses provide the procedures to be followed when lodging appeals with Disciplinary Appeal Committees.

Clause 204 provides that appeals should be in writing, addressed to and lodged with the Director of the MPRA and should specify the ground of appeal. Clause 205 provides time limits for the lodging of appeals.

**Sub-clause 206(2)**

This sub-clause provides for appellants to have reasonable access to all documents to be used by the Committee, before the Committee begins its proceedings.

**Boards of Inquiry  
Clauses 206 - 214**

These clauses provide procedures for the conduct and process of Boards of Inquiry.

Sub clause 206 (1) provides for Chief Executives being charged to have reasonable access to all documents to be used by the Board, before the Board begins its proceedings.

Clause 207 provides that, as a general principle, Boards of Inquiry should be held in public. However, the clause also provides arrangements for proceedings to take place in private where the Board considers this to be appropriate.

Clause 208 provides that the Board may summon witnesses to give evidence or produce documents. Clause 209 provides for the payment of witness' expenses. Clause 210 provides for the representation of parties and their right to examine witnesses and address the Board. Clause 211 provides legal protection to persons involved in a Board of Inquiry. Clause 212 details requirements for the notification of the findings of a Board of Inquiry.

Clauses 213 and 214 provide for the payment of the costs of a Board of Inquiry where a charge is dismissed or an inquiry lapses. In each case, scope exists for a determination that the costs of the officer to be met.

**Records of action taken  
Clauses 215 & 216**

This clause provides that the relevant Chief Executive is responsible for recording action (other than counselling) taken in relation to officers in the following situations:

- Chief Executives involved in disciplinary action (clause 181), or convicted by courts (clause 182),
- officers other than Chief Executives investigated for misconduct (clause 187), or convicted by courts (clause 188),
- decisions made by a Disciplinary Appeal Committee in relation to more serious action taken under 187 or 188 (clause 191),
- misconduct committed before becoming an detached officer (clause 195), or while an unattached officer (clause 196), or criminal offences committed by unattached officers (clause 197), and
- unattached officers (for the purposes of clause 219) in similar situations.

**Sub-clauses 215(2-8)**

These sub-clauses stipulate if and for how long a record should be kept on the officer's file, and under what conditions the record can be deleted or amended.

**Delegation  
Clause 217**

This clause provides for the delegation of the Director's powers under this Division.

**Division 7            Miscellaneous**

This Division deals with several matters associated with disciplinary proceedings, namely:

- periods of imprisonment,
- the discipline provisions relating to unattached officers, and
- recovering fines imposed under this Part.

**Imprisonment  
Clause 218**

This clause provides that any period of imprisonment or custody of an officer is counted as leave without pay, unless the officer is dismissed in relation to the offence. The Chief Executive also has the power to pay all or part of the person's salary during the imprisonment or custody.

**Application to unattached  
officers performing duty  
in administrative unit  
Clause 219**

This clause modifies the main disciplinary provisions for application to unattached officers who are continuing to perform duty within an administrative unit.

**Deduction of pecuniary  
penalty from salary  
Clause 220**

This clause provides that a fine imposed upon an officer under the terms of this Bill may be recovered directly from that officer's salary.

## **PART X FORFEITURE OF OFFICE**

### **Introduction**

This Part provides for the management of officers' extended unauthorised absence from duty. The provisions reflect those applying in the Australian Public Service and provide for reasonable opportunities for the officer involved to return to duty or explain the absence before retirement action is taken.

### **Forfeiture of office Clause 221**

This clause provides that where an officer is absent without permission for 4 weeks, and does not return to duty or satisfactorily explain their absence to the Chief Executive, the Chief Executive can initiate action to retire them from the Service.

### **Reappointment of officers deemed to have retired under section 221 Clause 221**

This clause provides that an officer retired in accordance with the forfeiture of office provisions can apply for reappointment. If the Chief Executive is satisfied that the applicant had reasonable grounds for their absence, the applicant can be reappointed.

### **Sub-clauses 222(3) & (4)**

If the Chief Executive refuses the application, the former officer can apply to the Merit Protection and Review Agency (MPRA) for a review of this decision.

## **PART XI**

# **REVIEW OF CERTAIN DECISIONS AND INVESTIGATION OF GRIEVANCES**

### **Introduction**

This Part provides rights of review of certain decisions or actions taken in relation to an officer. The review and grievance processes provided by this Part allow for initial consideration by an independent person nominated by the Chief Executive or the Commissioner. Should the officer remain aggrieved following this review, the matter may then be investigated by the Merit Protection and Review Agency (MPRA).

This Part also contains the formal mechanism by which the provisions of the *Commonwealth Merit Protection (Australian Government Employment) Act 1984* are applied, not only to reviews and grievances under this Part, but to appeals and reviews under other Parts of the Bill. The arrangements outlined in this part are consistent with those applying in the Australian Public Service.

### **Division 1 Preliminary**

#### **Interpretation Clause 223**

This clause provides interpretations relevant to this Part.

### **Division 2 Review of certain decisions**

This Division deals mainly with decisions relating to Studybank provisions. After an initial review by the internal review officer, officers can apply to the MPRA to review the decision in question.

**Application  
Clause 224**

This clause details those decisions that are subject to review in accordance with this Division. This Division applies where the Chief Executive or authorised officer has:

- refused to approve a course of study under Studybank,
- decided not to grant reimbursement of study costs of a program undertaken under Studybank, or not to grant payment prior to the completion of studies,
- made a decision in relation to the deemed classification of an office where not all duties of the office are being performed by an employee,
- decided not to grant leave for a course of study under Studybank, to grant it for a period other than that requested, or to grant the leave subject to conditions, and
- matters related to the internal review of decisions on the above issues.

**Review by the Internal  
appeal officer  
Clause 225**

This clause provides that an officer may request that the internal appeal officer review a decision of the type detailed at clause 224. The internal review officer may affirm, vary or set aside the original decision and must provide written advice of this to the officer seeking review.

**Review by the Merit  
Protection and Review  
Agency  
Clauses 226 - 228**

These clauses provide that following a review by the internal review officer, the officer involved can apply to the MPRA for a review of the original decision, or of the internal review officer's decision. The internal review officer must furnish documents as prescribed to the MPRA and to the employee involved.



**Official directions to be  
carried out  
Clause 229**

This clause provides that directions that are being reviewed (either by the internal review officer or the MPRA) and have not been varied or withdrawn must, as far as practicable, be carried out by the officer who is the subject of the direction.

**Division 3      Investigation of grievances by the MPRA**

This Division deals with employees' right to have grievances investigated by the MPRA. Grievances differ from reviews in that grievances can be a concern about any matter other than those specifically excluded (see clause 230 below), whereas reviews involve reviewing a specific decision.

**Application  
Clause 230**

This clause details those matters which cannot be the subject of a grievance to the MPRA.

**Investigation by the  
internal appeal officer  
Clause 231**

This clause provides that an aggrieved officer may request that the internal appeal officer review a decision covered by this Division and provides processes for the lodgement and investigation of the grievance.

**Investigation by the  
MPRA  
Clause 232**

This clause provides that where an officer remains aggrieved following a review by the internal review officer, they can apply to the MPRA for a review of the original decision or of the internal review officer's decision.

**Clause 233**

This clause requires the internal review officer to furnish documents as prescribed to the MPRA and to the employee involved.

**Official directions to be  
carried out  
Clause 234**

This clause provides that directions that are being reviewed (by either the internal appeal officer or the MPRA) and have not been varied or withdrawn, must, as far as practicable, be carried out by the officer subject to the direction.

**Division 4      Merit Protection****Application of the  
provisions of Merit  
Protection Act  
Clause 235**

This clause and its related schedule, Schedule 3, are the formal mechanism under which the Territory is able to adopt the jurisdiction of the Merit Protection Review Agency. Section 6A of the *Merit Protection (Australian Government Employment) Act 1984* (Cwth) makes this possible and authorises the modifications in Schedule 3 to the Merit Protection Act. Those modifications tailor the Merit Protection Act to take account of the differences between the ACT Government Service and the Australian Public Service.

## PART XII WHISTLE BLOWING

### Introduction

This Part provides legal scope for officers or government contractors to report suspected corruption or maladministration to public officials other than their superiors. The provisions aim to support improvements in efficiency and eliminate improper or illegal practices by providing a clear process and protections for persons who suspect and report major shortcomings or illegalities in administration.

### Interpretation Clause 236

This clause provides interpretations relevant to this Part.

### Disclosure of Information to Auditor General or Ombudsman Clause 237

This clause provides that where officers or government contractors have reason to believe that they have information which indicates:

- an indictable offence against a law of the Territory, the Commonwealth or of a State or another Territory,
- a gross mismanagement or waste of public funds, or
- a substantial danger to public health or safety,

that information may be brought to the attention of the Auditor General or the Ombudsman.

The clause also provides that information may be disclosed despite any other provision of this Bill (eg the discipline provisions of Part IX) or any other law of the Territory.

### Sub-clause 237(2)

This sub clause provides that the person making the disclosure must also disclose their identity.

### Sub-clauses 237(4) & (5)

In the case of a disclosure to the Auditor-General, the matter is investigated as if it were an inspection under the *Audit Act 1989*. The Auditor-General has the discretion not to proceed with the investigation, if the disclosure is judged to be frivolous, vexatious or not made in good faith.

## • Sub clause 237(6)

In the case of a disclosure to the Ombudsman, the matter is investigated as if it were a complaint for the purposes of the *Ombudsman Act 1989*.

## Sub clause 237(7)

Disclosures made to both the Ombudsman and the Auditor-General must be recorded and included in the next annual report of the organisation receiving the information.

**Disclosure of information  
to authorised official  
Clause 238**

This clause provides that information may also be disclosed to an authorised official and provides for the treatment of information received by the official. In this clause, an authorised official is a person authorised to investigate disciplinary matters in accordance with sub-clause 186(1) of this Bill.

**Disclosure of information  
in certain circumstances  
Clause 239**

This clause provides protection in those cases where an officer or contractor discloses information as covered by this Part to persons other than the Auditor General or Ombudsman or an authorised official. Where this occurs and the person's conduct in doing so is considered reasonable, the person has not committed an offence. The factors to be assessed in determining whether the person has acted reasonably are listed in sub-clause 239(e).

**Protection of persons  
making disclosures  
under section 237, 238 or  
239  
Clause 240**

This clause protects whistle blowers from disciplinary action and prejudice in regard to employment or engagement resulting from their disclosure of information. The clause provides for penalties where persons are found to have prejudiced the employment or engagement of the whistle blower.

## **PART XIII MISCELLANEOUS**

### **Introduction**

This Part deals with matters not dealt with elsewhere in the Bill. Generally, it covers:

- information to be kept by Chief Executives,
- some types of improper conduct,
- the application of the *Occupational Health and Safety Act 1989* (ACT), and
- the scope of, and procedures relating to, the management standards.

### **Returns and information generally Clause 241**

This clause provides that Chief Executives must supply information relating to the administration of the Act or Standards to the Commissioner as requested.

### **Improper influence Clause 242**

This clause provides that officers and employees must not attempt to influence other people to gain promotions, transfers or other employment advantages for themselves.

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

This clause provides that as long as reports are made in good faith, supervisors and others who report on the conduct and work performance of other officers or employees are protected from any legal proceeding (eg defamation).

### **Second jobs Clause 244**

This clause requires that officers, but not employees, must have approval from their Chief Executive before accepting a second job of any description.

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

This clause provides that officers or employees cannot, except with the approval of the relevant Chief Executive, demand or accept payment over and above their official remuneration for services provided in connection with the performance of their duties.

**Payments to officers****Clause 246**

This clause provides that payments to officers and employees, other than salary, allowances or expenses provided for elsewhere, may only be made in accordance with the approval of the Commissioner.

**Personation at examinations****Clause 247**

This clause provides that impersonation of other people and other types of cheating in relation to examinations held under this Bill, is an offence.

**Contracts****Clause 248**

This clause provides that unless authorised to do so, officers must not incur any legal liability, or enter a contract, on behalf of the Territory.

**Occupational health and safety****Clause 249**

This clause provides for the application of the *Occupational Health and Safety Act 1989* to public employees of the Territory. Schedule 4 to this Bill modifies the application of the *Occupational Health and Safety Act 1989* (ACT) to provide occupational health and safety provisions for the public sector equivalent to those previously provided under Commonwealth legislation.

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

This clause abolishes a common law rule that would otherwise have prevented recovery of debts by third parties from the salaries of members of the Service through a garnishee order.

**Management standards****Clauses 251, 152 & 253**

These clauses provide that, with the approval of the Chief Minister, the Commissioner can make management standards to give detailed effect to the provisions of this Bill. As subordinate provisions, Standards must not be inconsistent with this Bill, and must be published as required. The publishing requirements aim to ensure that Standards are easily identified and obtained.

Because special provision is made in these clauses for citation and publication of Standards, Sections 4 and 6 of the *Subordinate Laws Act 1989* do not apply. This also has the effect that Standards are not disallowable instruments.