

**2016**

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

**PUBLIC SECTOR MANAGEMENT AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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Chief Minister**

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## Outline

Since the establishment of the ACT Public Sector (ACTPS) in 1994 and the commencement of the *Public Sector Management Act 1994* (the PSM Act), there have been significant changes in culture, structure, administration and expectations of the Service. These developments have in some cases led, and in others followed, developments in other jurisdictions. In that same period, there has also been a growth of regulation governing all private and public sector employers in the arena of workplace rights and obligations.

In the *Governing the City State: One ACT Government - One ACT Public Service* Report released in February 2011, Dr Allan Hawke AC recommended that the PSM Act should be refreshed to better support a modern ACTPS.

The current ACTPS employment framework comprises enterprise agreements made under the *Fair Work Act 2009 (Cwlth)* as the primary source of entitlements for non-executive staff. These agreements prevail over Territory legislation. The role of the PSM Act and Standards therefore has been to provide the main source of entitlements for executives, as well as additional rights, protections and entitlements for non-executive staff. However, the PSM Act and Standards have not been adequately maintained to complement the changing agreements.

The resulting complex employment framework has created inconsistent practices across the service and led to confusion about the application of the law, as well as a high administrative burden in managing staff.

It is proposed that the PSM Act be amended to cover all ACT Public Sector entities except Territory Owned Corporations. The amendments also formally establish the Senior executive Service and contain heads of power for the employment of ACT public servants. The amendments further embed the concept of a values-based service by vesting all employment powers at the Head of Service level and applying the ACTPS values to the whole of the public sector.

The major features of the amendment Bill are:

- high level employment heads of power with detail left to standards and policy;
- new public sector principles that set expectations of a high-performing, efficient and accountable public sector;
- inclusion of the ACTPS values which will explicitly apply to the whole public sector, including statutory officeholders and agency heads;
- creation of the office of Public Sector Standards Commissioner (which will be a statutory appointment made by the Chief Minister) with functions relating to upholding public service values;

- establishment of a Senior Executive Service in the ACTPS;
- removal of the anachronistic concept of ‘office’ in relation to executives to facilitate executive mobility across ACTPS directorates; and
- the key concept of merit is refocused to concentrate on outcomes rather than simply an expression of process.

Consistent with the objective to create a principles-based legislative framework, the amendment Bill consolidates several sections of the PSM Act. It has seven parts with the substantive content organised as follows:

- values and operation of the public sector (Part 2);
- establishing provisions for the public service (i.e. the administrative arrangements) and the top management structure comprising the Head of Service, directors-general and senior executive service (Part 3 and 4);
- employment powers (Part 5);
- end of employment matters (Part 6);
- re-entry to the service provisions (Part 7); and
- the office of Public Sector Standards Commissioner role and clarification of application of values to public sector members (Part 8).

### **Human rights issues**

Section 9 (2) (a) deliberately includes actions by a public servant that are undertaken outside of official duties. Emergent case law on the impact of out of hours conduct on the employment relationship demonstrates increasing societal and institutional acceptance of this connection. This is particularly true of employee participation in social media fora where there is significant potential for reputational damage to the employer. The need to retain public confidence in the public service outweighs any impingement on an individual’s right to privacy, freedom of expression or participation in democratic processes.

Section 9 (4) places a positive obligation on employees to report **any** maladministration or misconduct of which they become aware. This provision is deliberately broader than the definition in the Public Interest Disclosure Act 2012 which provides a narrow definition of “disclosable conduct”. The intent of the clause is to require employees to report all levels of maladministration and or misconduct that fall below the threshold of disclosable conduct. Further it is the intent of the clause to promote a reporting culture where it is not acceptable to choose not to report misconduct or maladministration of which the employee was reasonably aware. This clause is a cornerstone of transparency and anti corruption measures across the public sector.

Termination of commissioner – the termination provisions are similar to termination provisions for other statutory office holders such as the Auditor-General and provide an appropriate means to suspend, and if necessary end, the appointment of a Commissioner for alleged misconduct, physical or mental incapacity or criminal convictions where the offence is punishable by imprisonment for at least one year. It is essential to the maintenance of public confidence that where there is demonstrable concern that the office holder may not be fit and proper to hold office that there is a process which can end the appointment so that public confidence in the office can be immediately restored. It is not possible to expect, that in such circumstances of lost confidence, the appointment continue and the prescribed process enables the entire Assembly to consider the matter which in itself is an appropriate safeguard.

## **Part 1 Preliminary**

### ***Section 1 Name of Act***

This is a technical clause that names the short title of the Act. The name of the Act will be the *Public Sector Management Amendment Act 2016*.

### ***Section 2 Commencement***

This clause provides that the amendments take effect from 1 July 2016.

### ***Section 3 Legislation Amended***

This clause identifies the legislation amended by the Act, which is contained in schedule 1 to the Act.

### ***Section 4 Offences against Act – Application of Criminal Code etc***

This is a technical provision setting out that other legislation applies in relation to offences against this Act.

### ***Section 5 Objects of Act***

Section 5 (a) specifies *how* the public sector is to conduct itself in how it performs its functions. The provision emphasises the importance of political neutrality and the desire to be a values-based organisation.

Section 5 (b) provides a high level statement of the role of the ACTPS that recognises the dual nature of what the public service does serving both the Government of the day and the community on behalf of the Government.

Section 5 (c) reinforces the first object by emphasizing a continuous obligation to model and advance the public sector principles and values.



This part defines the ACT Public Sector and outlines the basis for public sector operations and performance, and equates how the sector goes about its work with what is to be achieved in terms of importance. The focus is on a high-performing, values-based organisation, acting with a single purpose in a co-ordinated manner to serve the Government of the day.

## **Division 2.1 Public Sector Standards**

### ***Section 6 What is a public service job?***

Section 6 defines a public service job as the set of functions an employee is required to exercise by virtue of their employment in the service.

### ***Section 7 What are public sector values?***

Section 7 prescribes the public sector values as respect, integrity, collaboration and innovation. These values were developed following extensive consultation with staff in 2011 and currently enshrined in the *ACTPS Code of Conduct* first issued by the Commissioner for Public Administration in October 2012.

Section 7 requires that the values be demonstrated by all employees at all times when carrying out their duties. However, the provision recognises that how this looks in practice will differ depending on the nature of the work undertaken by the employee concerned. The values are also to be the lens through which the workings of the public sector are viewed, to judge and assess performance.

Note that while the provision refers to *employment*, an expansive definition of this term is applied for the purposes of the section. This is to ensure that all who comprise the public sector are subject to the values regardless of their method of engagement or appointment.

### ***Section 8 What are public sector principles?***

Section 8 contains new public sector principles that are to be applied in the course of employment by employees. There are two principles: 1) the best practice principle and 2) the merit and equity principle.

The best practice principle, like the values, must be demonstrated and applied by employees when doing their jobs. They are to work collaboratively, use resources wisely, focus on the needs of Government and the community, be responsible for their actions and make sound, justifiable decisions.

The merit and equity principle is directed at the head of service as it applies to the management of the public service. However, it is expected that most employees will be required to uphold the merit and equity principle from time to time through delegation.

The provision requires that the head of service must exercise his or her management functions so as to be an equitable employer, which is defined in the dictionary at the end of the legislation. The intention is to place a requirement on those managing people to be proactive in ensuring a diverse workplace through their hiring decisions and the development opportunities provided to staff.

The merit and equity principle also requires that decisions around who is to exercise a function are made in accordance with the best practice principle. This requirement is intended to be a modern recasting of the previous merit principle, with the focus now on staffing decisions that produce the most efficient and effective outcome for the public sector, rather than simply on procedural matters. They are also intended to ensure that a person selected is not just the best technically qualified or experienced candidate, but someone who is the best fit for the workplace on an overall assessment that also takes into account their personal characteristics and workplace circumstances.

A fair and transparent process will still be necessary to fulfil aspects of the best practice principle around being accountable and making fair decisions. The regulations will provide further detail around how the merit aspects of this principle can be satisfied.

### ***Section 9 Public sector conduct***

Like section 9 of the PSM Act, section 9 of the Bill prescribes the minimum standard of conduct expected of public sector members. Section 9 is founded on the values and signature behaviours contained in the *ACTPS Code of Conduct*, and remain the formal mechanism against which misconduct by employees will be judged. In this sense, they are the inverse of the deliberately aspirational and positive statements of expectation set out in the *ACTPS Code of Conduct*.

Section 9 covers the same ground as section 9 of the unamended PSM Act. It remains the case that misconduct procedures are articulated in enterprise agreements for non-SES employees, and the standards will mirror those procedures in relation to the SES.

Section 9(1) specifies minimum requirements for what an employee must do in exercising his or her functions (i.e. doing their job). The requirements include avoidance or management of conflicts of interest, obeying a reasonable direction, and complying with the law, unremarkably, an employee must be careful, unbiased, honest and courteous. The obligation to offer assistance the public in understanding the obligations on them, or the entitlements available to them, under Territory laws is carried over unamended from the PSM Act.

Section 9(2) is deliberately broader in its application than section 9(1) and it prescribes actions that a public sector member must not do. It applies outside the performance of official functions. The proscribed behaviours are completely inconsistent with an individual continuing as an employee. They include using information gained through employment or Territory resources improperly, making comments that appear to be on behalf of Government without requisite authority and damaging the reputation of the public sector or the ACT Executive.

Proscribed behaviour, when acting in connection with employment, includes bullying, harassment and intimidation. These requirements apply not only when an employee is doing his or her job, but at any time that a member is in the workplace, or interacting with other members or doing anything that relates to his or her work and/or employment.

A public sector member must not apply improper influence, favouritism or patronage when doing their job.

Failure to act in a way that is consistent with section 9 may lead to misconduct proceedings and a finding of misconduct with any attendant sanctions. *Misconduct procedure* is defined in the dictionary at the end of the legislation, and mentions that processes may be located in industrial instruments (which is the case for the majority of staff at the time the proposed Bill is being introduced) or standards.

Section 9(4) replaces section 9(q) of the PSM Act, and requires an employee to tell either the head of their agency, or if that person, is allegedly involved, the Public Sector Standards Commissioner, about maladministration or misconduct of another employee. While it is unlikely that misconduct action would be instigated against an employee who fails to disclose maladministration or misconduct by another employee unless that employee was also involved in the maladministration or misconduct – in which case the misconduct would be the alleged act or omission itself – this provision plays an important role in providing legal authority for an employee to report alleged misconduct. It sits alongside provisions in the *Public Interest Disclosure Act 2012* in this regard.

The obligations in section 9 are to be read subject to other legal rights or requirements. This was also the case under previous section 9, and is important as an employee's functions in their job can appear to conflict with their section 9 requirements on paper. It is not intended that section 9 curtail the ability of an employee to fulfil his or her role in any aspect.

An expansive definition of *employment* is applied for the purposes of section 9. This is to ensure that all employees are subject to the minimum conduct requirements.

In this regard, later sections of the Bill provide for allegations regarding breaches of section 9 by statutory office-holders and heads of public sector entities to be considered by the Public Sector Standards Commissioner. This is a new avenue of complaint that did not feature in the PSM Act, and a new role for the Commissioner. These provisions are not intended to displace or amend the bases on which a statutory office holder might be removed. Such requirements and grounds will remain in the relevant legislation establishing the office.

## **Division 2.2**

## **ACT Public Service**

Clause 7 of the Bill identifies that the Senior Executive Service has been established and reflects the three separate classifications within that structure as the head of service, directors-general and executives.

Clause 8 of the Bill removes a note related to the “office” of a director-general. This reflects the removal of the concept of “office” for executives.

Clause 9 of the Bill reinforces the authority of the Chief Minister to make determinations as to Ministerial responsibility for administrative units and for which administrative units will implement which actions.

Clause 10 of the Bill simplifies language while maintaining the requirement for selection processes to be completed following a transfer of offices between administrative units where the successful candidate has been notified of the outcome.

Clause 11 of the Bill modernises language from “shall be” to “is”.

## **Part 3**

## **Members of the public service**

Part 3 sets out the conditions for the engagement of the head of service and executives and the creation of non executive offices. It also provides for a senior leadership and management structure for the effective and efficient operation of the service.

## **Division 3.1 Head of service**

Division 3.1 houses the arrangements for the appointment, functions and operations of the Head of Service, the most senior official in the ACTPS.

### ***Section 17 Head of service functions***

Section 17 prescribes that the Head of Service is responsible for leadership and management of the ACTPS and is answerable to the Chief Minister.

Section 17 (2) and (3) specifies leadership and management functions dealing with stewardship of Government policy, programs and services across the directorates. In leading the service, the role is required to drive implementation of whole of government strategies, promote collegiality, provide direction and promote the values within the service. The management functions focus on the Head of Service deciding the public service structure, employee numbers, and organisation of the service and promoting equitable employment outcomes.

### ***Section 18 Delegation by head of service***

Section 18 enables the Head of Service to delegate functions, and to sub-delegate a function, to both employees and people outside the ACTPS, whether they are public sector members or outside the public sector altogether.

It is necessary, given the broad range of functions prescribed for the Head of Service, that there are adequate arrangements for delegating powers to others. In the case of the functions of the Head of Service it is appropriate to provide for non-service delegates to cover the possibility that the Head of Service may need to use services outside of the public service when, for example, exercising some of the prescribed management functions. However, the decision to delegate to a non-public service delegate is not to be taken lightly, as reflected in section 21(2) which requires the Head of Service to consider whether the function needs to be exercised by an external person.

### ***Section 19 Functions of director-general***

Section 19 prescribes that a director-general is responsible for leadership of a directorate and leadership in the ACTPS, and is answerable to both the Minister responsible for the directorate and the Head of Service.

The directorate functions and the leadership functions for a director-general are prescribed and endeavour to recognise the tension between a director-general fulfilling their individual remit on the one hand and addressing whole-of-service responsibilities on the other. The prescribed directorate functions emphasise managing the business of the directorate and providing advice and reporting to both the Minister and the Head of Service. The prescribed leadership functions emphasise the responsibility for implementing whole of government strategies, working in a co-operative and collegiate manner and promoting and upholding the public sector values and principles and appropriate conduct.

### ***Section 20 Delegation by director-general***

Section 20 enables a director-general to delegate functions, and to sub-delegate a function delegated to him or her by the Head of Service, to both employees and non-service delegates.

It is necessary, given the broad range of functions prescribed for directors-general, that there are adequate arrangements for delegating powers to others. In the case of the functions of the director-general it is appropriate to provide for non-service delegates to cover the possibility that a director-general may need to use services outside of the public service when, for example, exercising some management functions. However, the decision to delegate to a non-public service delegate is not to be taken lightly, as reflected in section 20(2) which requires a director-general to consider whether the function needs to be exercised by an external person.

### ***Section 21 Exercise of certain director-general functions by head of Access Canberra***

Section 21 prescribes that the head of access Canberra may exercise any function of a director-general as declared by the Chief Minister.

This section recognises that Access Canberra is the single point of contact for business and regulation in the ACT. It is a pivotal business area in regard to red tape reduction. Section 24 is required to enable the fully effective and efficient operation of Access Canberra and to eliminate the need for unnecessary bureaucratic process.

### ***Section 22 Executive functions***

The provision specifies that an SES employee is responsible for leadership in the service and is answerable to the Head of Service and the director-general. The leadership functions for an SES employee are prescribed and endeavour to recognise the tension between an SES employee fulfilling their individual responsibilities on the one hand and addressing whole-of-service responsibilities on the other. Leadership functions emphasise responsibility for implementing whole of government strategies, promoting co-operation and collegiality and promoting and upholding public sector values and principles and appropriate conduct.

### ***Section 23 Creation of office***

Section 23 provides the power for the head of service to create an office in an administrative unit and determine the classification of the office.

### ***Section 24 Classification of officer***

Section 24 specifies that the classification of an officer is the classification of the office that the officer is appointed to.

### ***Section 25 Employees***

Section 25 sets out the functions of a temporary employee and the circumstances in which a temporary employee may be engaged.

### ***Division 3.6 Management of the service***

Division 3.6 houses the minimum requirements for ensuring the ACTPS is an equitable employer.

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

Section 26 places an onus on the head of service to develop strategies to ensure that:

- (a) the Territory is an equitable employer;
- (b) disadvantage in relation to public service employment is eliminated;
- (c) that public servants are able to appropriately participate in decisions that affect them; and
- (d) that the Canberra community is given fair and timely access to resources to which they are entitled.

### ***Section 27 Application of the merit and equity principle***

Section 27 sets out the circumstances under which full merit assessments must be applied to selection processes. These include engagements as an executive for periods greater than 9 months, permanent appointment of an officer to a vacant office, transfers of an officer to a higher office for a period exceeding 3 months, a promotion of an officer to a vacant office and fixed term employment of an employee for a period greater than 12 months.

This section also requires the head of service to ensure all eligible people have a reasonable opportunity to apply for selection and that selection is based on a comparative assessment of the applicants.

Section 27 (3) provides the authority for limitations to be placed on eligibility to ensure the Territory is an equitable employer and to eliminate disadvantage.

### ***Section 28 Establishment of joint council***

Section 28 obliges the head of service to establish a consultative forum to facilitate discussions between relevant unions and the service.

### ***Section 29 Notification of certain employment matters***

Section 29 specifies the employment actions that the head of service must cause to be notified in the Gazette.

## **Part 4 Engagement of senior executive service**

### ***Section 30 Definitions***

Section 30 sets out the definitions that apply to an “engager” and to “statutory employment terms” to give context to executive engagements under Part 4.

### ***Section 31 Engagement of SES member***

Section 31 provides the Chief Minister with the authority to engage the head of service and the head of service with the authority to engage directors-general and executives. This section sets out minimum requirements for contracts and that additional terms will be contained in the contract itself.

### ***Section 32 Record about directors-general and executives***

Section 32 sets out the minimum details that the head of service must keep a record of in relation to directors-general and executives.

### ***Sections 33-36 Change to SES member’s SETs***

Section 33 of the Bill describes the circumstances in which an executive’s job may change at the discretion of the Head of Service. These provisions are intended to cover the full range of changes to a public service executive’s employment throughout the course of their career.

This section introduces the phrase ‘statutory employment terms’ or SETs which are defined in the dictionary as describing aspects on an employee’s job including the functions assigned to them, the directorate in which they are employed, their classification, hours of work and period of employment.

The section covers all previously distinct movement powers under the PSM Act (for example the powers to transfer, promote, reassign or redeploy executives within and between directorates, machinery of government changes and restructures) but create more general grounds on which changes to jobs and SETs can be made. These

changes also cover powers previously related to the management of offices including change from full-time to part-time hours, change between permanent, temporary or casual employment and reclassification.

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

This section sets out that an executive's job must be changed where they lose the ability to perform an inherent requirement of the position and no suitable alternate role is available.

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

This section sets out that an executive's job may be changed where the executive makes a reasonable request for change, where the change is required for the efficient and effective management of the service or where the executive wins another executive role through a selection process.

### ***Section 36 SETs changed by change in administrative arrangements***

See 33 – 36

### ***Section 37 Suspension of SES member***

Section 37 provides the authority for the head of service to suspend a director-general or executive with or without pay.

### ***Sections 38- 42 End of SES members engagement***

Section 38 specifies the reasons for which the head of service may end the contract of a director-general or executive. Reasons include loss of eligibility, invalidity, misconduct, head of service loss of confidence in the executive, being surplus to requirements or in the interests of the service.

Section 39 provides that a director-general or executive may resign from the service.

These sections also set out that a director-general or executive may be considered to have resigned through abandonment of employment.

Section 42 places limitations on circumstances when the head of service can end an engagement due to mental or physical incapacity subject to the requirements of individual superannuation legislation applying to the executive.

## **Part 5 Employment of officers and employees**

This is a relocation in the Act and its definition has therefore been restated.

### ***Section 63 Definitions – pt 5***

This section provides definitions of “appellable level position” and “joint selection committee” for the purposes of Part 5.



## **Division 5.2 Change to office**

### ***Section 65 Reclassification of office***

Section 65 specifies that the head of service may change the classification of an office. If the classification of the office is changed to a higher office the office becomes vacant and the officer who previously occupied the office becomes unattached.

### ***Section 66 Part-time office***

Section 66 provides that an office may be changed from full-time to part-time with the consent of the officer occupying the office.

### ***Section 68 Appointment to a vacant office***

Section 68 provides the authority to appoint a permanent officer to a vacant office. It sets out that such an appointment can only be made following a process conducted in accordance with the merit and equity principles. This is a minor change to modernise language without altering content.

Section 68 (2) (c) changes the previous requirement for an appointee to be “a fit and proper person” to a requirement that “the person is suitable for appointment”.

### ***Section 69 Record about officers***

Section 69 specifies the details of officers that the head of service must keep a record in respect of.

### ***Section 70 Appointment on probation***

Clause 23 of the Bill amends section 70 (4) by renaming the reasons for which probation can be terminated as “unsuitability criteria”.

Section 70 (4) (a) and (b) is amended to update language from “his or her” to “the officer”.

Section 70 (6) is amended by clause 24 of the bill to remove discretion to appoint an officer who has had their probation ended, within 12 months of the probation so ending. Previously this could happen following consultation with the commissioner.

### ***Section 71 Appointment on probation – prescribed training office***

Section 71 (4) (a) is amended to update language from “his or her” to “the officer’s”.

Section 71 (6) is amended by clause 26 of the bill to remove discretion to appoint an officer who has had their probation ended, within 12 months of the probation so ending. Previously this could happen following consultation with the commissioner.

Section 71A (4) is amended by clause 27 of the bill to reflect the change in language of “unsuitability criteria”.

Section 71A (6) is amended by clause 28 of the bill to remove discretion to appoint a teacher who has had their probation ended, within 12 months of the probation so ending. Previously this could happen following consultation with the commissioner.

Section 71B (5) is amended by clause 29 of the bill to allow for termination of probation that has been extended at any time on unsuitability criteria grounds.

Section 71C (1) (b) is amended by clause 30 of the bill to update language from “performed the duties” to “exercised the functions”.

## **Division 5.4 Engagement of executives**

Division 5.4 is omitted by clause 31 of the bill. All matters relating to the engagement of executives have been relocated to Part 4 clauses 32 – 45.

## **Division 5.5 Definitions**

Division 5.5 is omitted by clause 32 of the bill as the definitions are no longer relevant.

### ***Section 83 Promotion to a vacant office***

Section 83 is amended by clause 33 of the bill to make reference to the merit and equity principles.

### ***Section 84 Promotion Appeal***

Section 84 (1) (a) is amended by clause 34 to update language from “level position” to “classification”.

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

Section 85 (1) is amended by clause 35 of the bill to update language from “his or her” to “the officer’s”.

Section 85 (2) (a) is amended by clause 36 of the bill to update language from “level position” to “classification”.

Section 85 (3) is amended by clause 37 of the bill to reflect expanded content from “retirement and redeployment” to “redeployment, underperformance and end of employment of officers”.

### ***Section 86 Review of certain promotion decisions***

Section 86 (1) is amended by clause 38 of the bill to update language from “reviewable level office” to “appealable classification”.

Section 86 (5) of the Act is omitted by clause 39 of the bill as the definition contained therein is no longer relevant.

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

Section 87 (3) of the Act is omitted by clause 40 of the bill as it has been relocated to section 31.

Section 87 (4) (a) is amended by clause 41 of the bill to emphasise that a joint selection committee is one agreed to by the principal union, as opposed to any union.

Section 87 (5) (a) is amended by clause 42 of the bill to update language from “level position” to “classification”.

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

Section 89 is amended by clause 43 of the bill to extend application of the clause to reviews as well as appeals.

***Section 90 Cancellation of promotion***

Section 90 is amended by clause 44 of the bill to extend application of the clause to reviews as well as appeals.

***Section 91 Definitions-div 5.6***

Section 91 is omitted by clause 45 of the bill as the definitions are no longer relevant.

***Section 92 Transfer to a vacant office***

Section 92 is amended by clause 46 of the bill to make reference to the merit and equity principles.

***Section 93 Simultaneous transfer within administrative unit***

Section 93 (2) (b) is omitted by clause 47 of the bill, a new note has been added to Section 93 (2) by clause 48 of the bill to make reference to the merit and equity principles.

***Section 94 Transfer between administrative units***

Section 94 is amended by clause 49 of the bill to reflect the removal of the concept of office for executive positions. To give effect to this the word “non executive“ has been inserted before the word “office”.

A new note has been added to Section 94 by clause 49 of the bill to make reference to the merit and equity principles.

***Section 95 – 98***

Sections 95 – 98 have been omitted by clauses 50 and 51 of the bill. This has been to consolidate all information dealing with transfers within the service into the new Division 5.7 clauses 105 - 109 of the bill.

***Sections 101 (1) and 102 (1)***

Section 101 (1) and 102 (1) are amended by clause 52 of the bill to update language from “level position” to “classification”.

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

Division 5.7, sections 105 – 109, houses all of the heads of power that enable movement within the service. It provides for promotion or transfer to a vacant office following completion of a required training course, prescription of an office as a “training office”, promotion or transfer to a “training office” and movement within and between administrative units.

## **Division 5.8 Temporary employment**

### ***Section 110 – 111 Temporary employment***

Clause 53 of the bill consolidates all requirements relating to temporary employment.. This amendment also clarifies that the requirement to use existing officers ahead of engaging a temporary employee is a requirement for an assessment only of those employees holding the classification of the vacant office. The amendment also gives effect to temporary employment being subject to the merit and equity principles.

### ***Section 112 Work performed after termination of temporary employment***

Section 112 is amended by clause 53 of the bill to modernise language. There is no material change to the intent of the clause which provides for payment of a temporary employee for services provided in good faith despite a contract having ceased.

### ***Section 113 Record about employees***

Section 113 sets out the record keeping requirements in relation to temporary employees.

## **Division 5.9 Unattached officers**

Division 5.9 is amended by clause 53 of the bill.

Sections 114 to 117 set out all of the matters regarding unattachment and the circumstances in which it can occur.

At section 115 the amendments introduce the ability to state that an officer is to become unattached on medical grounds.

## **Division 5.10 Secondment**

### ***Section 118 and 119 Secondments to and from the service***

Clause 53 of the amendment Bill provides for secondments to and from the ACT public service. Normally an ACTPS employee working for another Government

would raise an immediate (and insoluble) conflict of interest. However, secondment is a long-standing practice that is widely accepted as an exception to this rule. It supports the temporary meeting of specialist skills needs, and career development through rotations or particular on the job experiences.

Section 118 allows for secondments into the ACTPS. The section provides that a person on secondment is taken to be an employee for the purposes of sections 7, 8 and 9 of the Act (public sector values, principles and conduct).

Section 119 allows for the secondment of ACTPS employees to another employer, including another Government or the private sector. The section provides that employees on secondment will not be in breach ACT legislation if they are performing the job or task that they have been lawfully directed to do. This overcomes the possibility of misconduct provision applying or contraventions of other Territory law because a public servant is working for another employer doing work that may be at odds with the ACT Government agenda.

## **Part 6 Redeployment, underperformance and end of employment of officers**

Part 6, sections 121 – 127, deal with the processes and arrangements for managing a range of end of employment separations for officers including retirement, redeployment, reduction in classification, invalidity, underperformance, misconduct and forfeiture of office. Clause 54 of the bill facilitates a relocation of these sections and a modernisation of language. The effect of these sections is unchanged.

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

Part 7, sections 128 – 141, deal with the circumstances under which individuals who have separated from the service may be re-engaged. It includes provisions relating to former SES members, former officers and former temporary employees.

The nature of separations where re-entry is an entitlement include, unsuccessful election candidates, quashing of convictions and reasonable requests following abandonment of employment/forfeiture of office.

Clause 54 of the bill facilitates a relocation of these sections and a modernisation of language. The effect of these sections is unchanged.

## **Part 8 Public Sector Standards Commissioner**

This part establishes the office of Public Sector Standards Commissioner (the Commissioner). The Commissioner is responsible for whole of sector investigation matters - with a particular emphasis on promoting and upholding the public sector principles and values.

### ***Section 142 Appointment of Public Sector Standards Commissioner***

Section 142 provides for the appointment by the Chief Minister of a person as the Public Sector Standards Commissioner. Unlike the PSM Act, the Chief Minister must make such an appointment.

The Commissioner is expected to be a part-time office, and the incumbent cannot also be a public servant. Section 142(2) requires a member of the ACTPS to resign from the ACTPS before taking up an appointment as Commissioner. The same condition would apply to a person appointed as acting Commissioner, but an ACTPS employee could hold delegated Commissioner functions without needing to resign. The bill also allows an appropriate existing office such as the Commonwealth Merit Protection Commissioner to become the ACT Public Sector Standards Commissioner.

The Commissioner is to be appointed for a term of up to five years and can be re-appointed.

As is the case with the Commissioner for Public Administration under the PSM Act, the appointment of the Commissioner is not subject to consultation and it is proposed this arrangement continue.

### ***Section 143 Functions of Commissioner***

Section 143 sets out the functions of the Commissioner with a focus on a whole of public sector role. It includes conducting investigations into management of the public sector and advising the Chief Minister of any systemic public service value issues that arise from those investigations.

Section 143 explicitly includes a power for the Commissioner to conduct investigations. The standards will prescribe the scope and powers at the Commissioner's disposal. They are expected to include the significant powers held by the Commissioner for Public Administration under the PSM Act in relation to Management Reviews, but also a more general investigations function at the request of the Chief Minister.

### ***Section 144 Leave of absence for Commissioner***

Section 144 provides that the Chief Minister may approve leave for the Commissioner.

### ***Section 145 Suspension and removal of Commissioner***

Section 145 provides an appropriate means to suspend, and if necessary end, the appointment of a Commissioner for alleged misconduct, physical or mental incapacity or criminal convictions where the offence is punishable by imprisonment for at least one year. It is similar to the prescription in other legislation where provision is made to suspend and remove statutory office holders. Where the Commissioner is suspended, the prescribed process requires the Legislative Assembly to consider a statement of reasons for the suspension from the Chief Minister, and to resolve the matter by either ending the suspension or ending the Commissioner's appointment.

### ***Section 146 Ending Commissioner’s appointment without suspension***

Where the Commissioner becomes bankrupt or insolvent or is absent without approval in excess of the prescribed period of time then the Chief Minister must end the appointment. The Chief Minister may also end the appointment with the consent of the Commissioner for physical or mental incapacity.

### ***Section 147 Arrangements for staff and facilities***

Section 147 enables the Commissioner to make appropriate arrangements for the provision of staff and facilities with the Head of Service. This provision will ensure that the Commissioner has appropriate support to perform the functions prescribed and replicates existing arrangements without going to the expense of establishing a separate office.

### ***Section 148 Delegation by Commissioner***

Section 148 enables the Commissioner to delegate functions to both an employee and non-public sector delegates. The provision does not prescribe when delegation can occur, leaving it open for delegation to public service employees to cover the Commissioner being on leave for example.

It is necessary, given the investigative functions prescribed for the Commissioner, that there are adequate arrangements for delegating powers to others. In the case of the functions of the Commissioner it is appropriate to provide for non-public sector delegates to cover the possibility that the Commissioner may need to use services outside of the public sector when, for example, investigating the management of all or part of the public sector. However, the ability to delegate to a non-public sector delegate is to be used sparingly, as reflected in section 148(2) which requires the Commissioner to consider whether the function needs to be exercised by an external person.

## **Division 8.2 Public sector members**

### ***Section 149 Meaning of public sector member etc***

Section 149 provides the meaning of public sector member and, importantly, it also provides a list of those offices or persons which are not included in the public sector, including a person prescribed by regulation. The definitions in this section are necessary in order to determine whether a particular office or person is subject to the application of the public sector standards and the conduct provisions or the extent to which they are subject to the standards and provisions.

### ***Section 150 Public sector standards for public sector member***

Section 150 clarifies that a public sector member does not necessarily fail to satisfy the public sector standards if the public sector member is taking an action that is consistent with their functions. This section is necessary to ensure that statutory office holders are able to discharge their responsibilities without being in breach of the provisions in Section 9. If it were not for this section then some statutory office holders may not be able to satisfactorily discharge their responsibilities, which may at times require them for example, to report on government compliance.

### ***Section 151 Certain statutory office-holders have management powers***

Section 151 provides for the application of the employment powers of the head of service by a statutory office holder who engages staff directly under the Act. These public sector employers are those statutory office holders whose establishing or other legislation prescribes that they may employ staff and that the staff are employed under the Act. In effect, for those public sector employers that engage staff directly, references to employment powers are read as references to the relevant public sector employer. While a director-general in the public service might exercise such powers under delegation from the head of service, a statutory office holder who is a public sector employer will exercise the powers in their own right and without reference to the head of service. This is appropriate as the statutory office holder is not part of the public service, but rather part of the broader public sector.

### ***Section 152 Application of whole-of-government strategies***

Section 152 prescribes that whole of government strategies apply to public sector employers and their staff who are engaged under this Act.

### ***Section 153 Alleged misconduct by statutory office holder***

Section 153 prescribes that the commissioner is to investigate alleged misconduct by a statutory office holder in the same way and utilising the same powers as if the alleged misconduct was by an employee. However, the commissioner must only investigate such alleged misconduct if requested to do so by the person who has the responsibility for appointing the statutory office holder.

This section appropriately ensures that the commissioner is the person who conducts the investigation of a statutory office holder where the person who has the responsibility for appointing the statutory office holder is sufficiently concerned about an allegation of misconduct as to warrant further inquiry.

### ***Section 154 Alleged mismanagement of public sector employer's staff***

Section 154 prescribes that the commissioner must investigate an allegation of mismanagement of the staff of a statutory office holder, who is a public sector employer, in the same way and utilising the same powers as if the staff member of the public sector employer was an employee.

### ***Section 155 Prescribed public sector member***

Section 155 enables a standard to identify a '*prescribed public sector member*' which refers to any other bodies prescribed in the regulations as being part of the public sector for the purposes of this Part. Given the diverse programs and services offered by the ACT Government and the corresponding variation in the bodies responsible for such services, the Bill allows the ACT Executive to prescribe other organisations as being '*prescribed public sector members*'.

### ***Section 223 Definitions – pt 11***

Section 223 is amended by clause 55 of the bill to omit the definition of “officer”.



### ***Section 241 Payment on leaving the service***

Section 241 is amended by clause 56 of the bill to consolidate end of employment payments for executives, officers and temporary employees.

### ***Section 242 Authorisation to share information***

Section 242 is amended by clause 56 of the bill to allow employment information concerning employees to be shared between administrative units on a need to know basis. Information was previously siloed and sharing of important employment information between Directorates was prohibited by various pieces of legislation.

This amendment allows information to be appropriately shared and strikes a balance between an individual's right to privacy and the need to ensure the ACTPS can maintain robust integrity assurance practices.

This clause further embeds the one service model and recognises the territory as the employer.

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

Section 243 is amended by clause 57 of the bill to modernise language from “shall be deemed” to “is taken”.

### ***Section 244 – 247***

Sections 244 – 247 are amended by clause 58 of the bill.

These amendments modernise language only and do not alter the effect of the sections.

### ***Section 248 Engagement of certain former officers and employees Prohibited***

Section 248 (A) – (C) are omitted by clause 59 of the bill. These sections have been relocated to Part 7.

### ***Section 249 Imprisonment***

Section 249 (4) and (5) is amended by clause 60 to modernise language.

Section 249 (6) is amended by clause 61 to modernise language.

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

Section 250 (2) is amended by clause 62 of the bill to update language from “shall” to “must”.

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

Section 250A is amended by clause 63 of the bill to reinforce that a monetary penalty imposed on a public servant as the result of a misconduct process must be paid by instalments where the penalty is more than ¼ of the salary of the public servant for a pay period.

### ***Section 251 Management Standards***

Section 251 is amended by clause 63 of the bill and sets out the range of matters about which the head of service may issue a management standard.

The amendments reflect the changes to the values, principles and conduct provisions of the Act and the broader application of whole of government strategies to the public sector.

## **Parts 11 and 13**

Parts 11 and 13 are amended by clause 64 of the bill to effect a renumbering of the clauses as parts 9 and 10.

## **Part 18 Transitional**

Clause 65 of the Bill creates a new part which houses the transitional provisions under the amendments.

Section 291 provides for the existing head of service contract at the commencement date to continue on the same terms and conditions until the cessation date nominated on the contract.

Section 292 provides for existing contracts of directors-general at the commencement date to continue on the same terms and conditions until the cessation date nominated on the contract.

Section 293 provides for existing contracts of executives at the commencement date to continue on the same terms and conditions until the cessation date nominated on the contract.

Sections 294 – 296 provide clarity as to the status of misconduct investigations commenced before, on or after the commencement date. Where a misconduct process is commenced prior to commencement day, the old Section 9 provisions will apply in finalising the matter.

Section 297 provides clarity on matters commenced under the auspices of the Commissioner for Public Administration transferring to the new office of the Public Sector Standards Commissioner. The section allows for these matters to be completed by the Public Sector Standards Commissioner or under delegation.

Section 298 provides that regulations may be made that modify the transitional arrangements.

Section 299 provides that the transitional arrangements apply for a period of 5 years. This period reflects the maximum period that an existing executive contract may apply for.

## **Schedule 1 – Legislation Amended**

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

Clause 1.1 – Section 10 (4) (a) and (b)

This clause clarifies that the Elected Body may communicate with the Head of Service or the head of a public sector body.

Clause 1.2 reflects that the terms head of service and public sector body are now defined in the Legislation Act.

Clause 1.3 broadens the definition of a government agency to include the public service (previously described as an administrative unit), a public sector body and/or a territory instrumentality

### **Part 1.2 ACT Civil and Administrative Tribunal Act 2008**

Clause 1.4 changes the title of Division 9.3 from “Registrar and staff” to “Registrar”. This reflects that the Registrar is able to exercise head of service powers in regard to employing staff under the PSM Act.

Clause 1.5 is omitted as the change to clause 1.4 makes it redundant.

Clause 1.6 includes the definition of a “territory instrumentality” reflecting the application of the Act to the public sector.

### **Part 1.3 ACT Teacher Quality Institute Act 2010**

Clause 1.7 updates the reference to the relevant section of the amended PSM Act for employment powers of heads of public sector bodies.

Clause 1.8 clarifies that an office operated by the Institute is subject to the same access to approved codes of practice as those administered by the director-general.

Clause 1.9 reflects the inclusion of the definition of a “public servant” in the Legislation Act.

### **Part 1.4 Administrative Decisions (Judicial Review) Act 1989**

Clause 1.10 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.11 reflects the inclusion of the definition of the “public sector standards commissioner and a “public servant” in the Legislation Act.

### **Part 1.5 Annual reports (Government Agencies) Act 2004**

Clause 1.12 reflects the change in responsibility for the preparation of the State of the Service report from the Commissioner for Public Administration to the head of service.

Clauses 1.13, 1.14 and 1.16 reflect the change in terminology from “public authority” to “public sector body”.

Clause 1.15 omits section 16 as it is not required due to statutory office holders automatically being public sector bodies under the Act.

Clauses 1.17, 1.18 and 1.19 reflect the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner and the change from the terms “statutory office holder and “territory instrumentality” to the single definition of “public sector body”.

Clause 1.20 expands the definition of “annual report” to capture all entities falling within the public sector.

Clauses 1.21 – 1.27 reflect changes in numbering within the Act.

### **Part 1.6 Architects Act 2004**

Clause 1.28 reflects that the Architects Board is automatically a public sector body under the Act and is therefore required to produce an annual report.

Clause 1.29 reflects the inclusion of the definition of a “public servant” in the Legislation Act.

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

Clause 1.30 reflects the amendments in the Act that move from a process to an outcome focus in the application of merit principles to selection processes.

Clause 1.31 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.32 reflects that the Auditor-General is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.33 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service further embedding the one service approach.

Clause 1.34 clarifies that delegations may be made to staff engaged under the Public Sector Management Act.

Clause 1.35 clarifies that all staff, howsoever engaged by the Auditor-General, are protected from personal liability for action performed honestly and without recklessness.

Clause 1.36 reflects that the terms “head of service” and “public servant” are now defined in the Legislation Act.

### **Part 1.8 Board of Senior Secondary Studies Act 1997**

Clause 1.37 introduces a new requirement that the appointment of a public servant to a board or committee under the BSSS Act is subject to any conditions determined by the head of service and that any such determination is a notifiable instrument.

Clauses 1.38 and 1.39 provide a new capacity for the Board to engage consultants on terms that are approved by the Minister. These clauses allow for delegation to both public servants and consultants engaged by the Board.

Clause 1.40 reflects that the term “head of service” is now defined in the Legislation Act.

### **Part 1.9 Canberra Institute of Technology Act 1987**

Clause 1.41 reflects that the Chief Executive Officer is able to exercise head of service powers in regard to employing staff under the PSM Act.

### **Part 1.10 Cemeteries and Crematoria Act 2003**

Clause 1.42 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service model.

Clause 1.43 reflects that the terms “head of service” and “public servant” are now defined in the Legislation Act.

### **Part 1.11 Children and Young People Act 2008**

Clause 1.44 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.45 reflects that the term “head of service” is now defined in the Legislation Act.

### **Part 1.12 Climate Change and Greenhouse Gas Reduction Act 2010**

Clause 1.46 and 1.47 applies the broader definition of a government agency as being the public service, a public sector body or a territory instrumentality.

### **Part 1.13 Commissioner for Sustainability and the Environment**

Clause 1.48 reflects that the terms “head of service” and “public servant” are now defined in the Legislation Act.

Clause 1.49 reflects the transition of certain functions from the Commissioner for Public Administration to the head of service.

### **Part 1.14 Construction Occupations (Licensing) Act 2004**

Clause 1.50 reflects that the Registrar is automatically a public sector body under the Act and is therefore required to produce an annual report.

### **Part 1.15 Crimes Act 1900**

Clause 1.51 reflects the new language in the PSM Act and clarifies that a senior officer for the purposes of the crimes Act is the head of service, a director-general or a member of the Senior Executive Service.

Clause 1.52 reflects changes in terminology in relation to the sharing of protected information.

Clause 1.53 reflects that the term “head of service” is now defined in the Legislation Act.

### **Part 1.16 Crimes (Child Sex Offenders) Act 2005**

Clause 1.54 applies the broader definition of a government agency as being the public service, a public sector body or a territory instrumentality.

Clause 1.55 reflects that the terms “head of service” and “public sector body” are now defined in the Legislation Act.

Clause 1.56 omits the term statutory office holder as this is captured by clause 1.55.

### **Part 1.17 Crimes (Restorative Justice) Act 2004**

Clause 1.57 adds a new note reflecting the change to numbering in the PSM Act.

### **Part 1.18 Crimes (Sentence Administration) Act 2005**

Clause 1.58 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.59 reflects that the term “head of service” is now defined in the Legislation Act.

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

Clause 1.60 reflects that the term “head of service” is now defined in the Legislation Act.

### **Part 1.20 Cultural Facilities Corporation Act 1997**

Clause 1.61 reflects that the Chief Executive Officer is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

### **Part 1.21 Dangerous Substances Act 2004**

Clause 1.62 reflects that the term “public servant” is now defined in the Legislation Act.

### **Part 1.22 Director of Public Prosecutions Act 1990**

Clause 1.63 effects a title change from “members of the staff” to “staff of the office”.

Clause 1.64 reflects that the Director is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.65 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.66 reflects that the terms “head of service” and “public servant” are now defined in the Legislation Act.

Clause 1.67 clarifies that the staff referred to are those engaged by the Director under the PSM Act.

Clause 1.68 effects a language change to differentiate between a staffing engagement and a negotiated provision of support from within existing resources.

### **Part 1.23 Electoral Act 1992**

Clause 1.69 broadens the scope of entities to whom the Electoral Commissioner is to provide advice in relation to election to, in order to apply to the entire public sector.

Clause 1.70 omits section 10 and reflects that the Electoral Commission is automatically a public sector body under the Act and is therefore required to produce an annual report.

Clause 1.71 reflects the changes to the merit and equity provisions.

Clause 1.72 includes a former head of service as an eligible person for appointment to the role of Electoral Commissioner.

Clause 1.73 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.74 reflects that the Director is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.75 clarifies that the staff referred to are those engaged by the Commissioner under the PSM Act.

Clause 1.76 clarifies that the staff referred to are those engaged by the Commissioner under the PSM Act.

Clause 1.77 provides for the Electoral Commissioner to request information from the head of service as well as directors general.

Clause 1.78 modernises language from “shall” to “must” and more accurately identifies the head of service as the responsible officer.

Clauses 1.79 and 1.80 reflect that the terms “head of service”, “public sector body”, “public sector standards commissioner” and “public service” are now defined in the Legislation Act.

### **Part 1.24 Environment Protection Act 1997**

Clause 1.81 reflects the relocation within the PSM Act of matters relating to disclosures to interests.

### **Part 1.25 Financial Management Act 1996**

Clause 1.82 reflects that the terms “public employee” and “public servant” are now defined in the Legislation Act.

### **Part 1.26 Firearms Regulation 2008**

Clauses 1.83 and 1.84 replaces the term “a person engaged by” with the term “public servant” to more accurately describe the capacity in which the person is engaged.

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

Clause 1.85 replaces the term “works in an administrative unit of the public service” with the term “public servant” to more accurately describe the capacity in which the person is engaged.

Clause 1.86 reflects that the term “public servant” is now defined in the Legislation Act.

### **Part 1.28 Food Regulation 2002**

Clause 1.87 alters language with no change to effect with a view to more appropriately describing where administrative enforcement responsibility falls within the public service.

### **Part 1.29 Freedom of Information Act 1989**

Clause 1.88 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.89 omits the reference to Section 5 of the Annual Reports Act for consistency purposes and to eliminate redundancy.

Clause 1.90 reflects that the term “public sector standards commissioner” is now defined in the Legislation Act.

Clause 1.91 omits the definition of “public servant” as the term is not used in the Act.

### **Part 1.30 Gambling and Racing Control Act 1999**

Clause 1.92 reflects that the Chief Executive Officer is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.93 reflects that the term “public servant” is now defined in the Legislation Act.

### **Part 1.31 Gene Technology Act 2003**

Clause 1.94 reflects that the terms “administrative unit” and “public servant” are now defined in the Legislation Act.

### **Part 1.32 Government Procurement Act 2001**

Clause 1.95 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.



Clause 1.96 omits the definition of a public employee as the definition is now included in the Dictionary.

Clause 1.97 reflects that the terms “head of service”, “public employee” and “public servant” are now defined in the Legislation Act.

### **Part 1.33 Government Procurement Regulation 2007**

Clause 1.98 omits a note relating to delegated authority as this is now expressly included in the PSM Act.

### **Part 1.34 Health (National Health Funding Pool and Administration) Act 2013**

Clause 1.99 amends the dictionary reference to a director-general to reflect the correct section of the amended PSM Act.

### **Part 1.35 Heritage Act 2004**

Clauses 1.100 and 1.101 reflect section numbering changes in the PSM Act.

### **Part 1.36 Human Rights Act 2004**

Clause 1.102 reflects that the terms “director-general”, “public employee” and “public service” are now defined in the Legislation Act.

### **Part 1.37 Human Rights Commission Act 2005**

Clauses 1.103 and 1.104 reflect changes to the employment framework in relation to public sector bodies.

### **Part 1.38 Independent Competition and Regulatory Commission Act 1997**

Clause 1.105 reflects changes to the employment framework in relation to public sector bodies.

### **Part 1.39 Inquiries act 1991**

Clause 1.106 reflects changes to the employment framework in relation to public sector bodies.

Clause 1.107 defines the terms “head of service’ and “public servant”.

### **Part 1.40 Judicial Commissions Act 1994**

Clause 1.108 reflects changes to the employment framework in relation to public sector bodies.

Clause 1.109 defines the terms “head of service’ and “public servant”.

### **Part 1.41 Lakes Act 1976**

Clause 1.110 omits the term “public employee” from the Dictionary as the term is not used in the legislation.

### **Part 1.42 Law Officers Act 2011**

Clauses 1.111 and 1.112 reflect reflects that the Solicitor-General is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.113 defines the terms “head of service’ and “public servant”.

### **Part 1.43 Legal Aid Act 1977**

Clause 1.114 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.115 reflects that the term “public sector standards commissioner” is now defined in the Legislation Act.

### **Part 1.44 Legal Profession Act 2006**

Clause 1.116 reflects that the terms “public employee” and “public servant” are now defined in the Legislation Act.

### **Part 1.45 Legislation Act 2001**

Clause 1.117 omits the definitions of “commissioner for public administration” and “designation” as they are no longer relevant.

Clause 1.118 reflects that the “gazette” is any place approved by the public sector standards commissioner.

Clause 1.119 introduces the definition of head of service.

Clause 1.120 broadens the definition of a “public employee” to capture all employees within the public sector.

Clause 1.121 introduces the definition of a “public sector body”, a “public sector member” and “public sector standards commissioner”.

Clause 1.122 omits part of the definition of a “territory instrumentality” as it is redundant.

### **Part 1.46 Legislative Assembly (Member Staff) Act 1989**

Clauses 1.123 and 1.124 provide amendments so that where terms and conditions are not articulated within this Act or the agreement of employment, then section 105 of the PSM Act (fixed term employment) applies.

Clause 1.125 omits a part relating to the rights of employees as these are now fully articulated in the PSM Act.

Clause 1.126 reflects that the terms “public service” and “public servant” are now defined in the Legislation Act.

### **Part 1.47 Legislative Assembly (Office of the Legislative Assembly) Act 2012**

Clause 1.127 reflects that the Clerk is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.128 reflects the intent of the merit and equity principles set out in the PSM Act.

Clauses 1.129, 1.130 and 1.131 reflect the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

### **Part 1.48 Lifetime Care and Support (Catastrophic Injuries) ACT 2014**

Clause 1.132 reflects that the LTCS commissioner is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

### **Part 1.49 Long service leave (Portable Schemes) Act 2009**

Clause 1.133 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.134 reflects that the term “head of service” is now defined in the Legislation Act.

### **Part 1.50 Magistrates Court Act 1930**

Clause 1.135 omits a section of the Act which requires staff to be engaged under the PSM Act as this is now redundant.

### **Part 1.51 National Environment Protection Council Act 1994**

Clause 1.136 alters the title of the section to differentiate between ACT public servants and Commonwealth public servants.

### **Part 1.52 Ombudsman Act 1989**

Clause 1.137 introduces a point of escalation in the case of a complaint being made against the head of service.

Clause 1.138 reflects the intent of the merit and equity principles set out in the PSM Act.

Clause 1.139 reflects the replacement of the office of the Commissioner for Public Administration with the Public Sector Standards Commissioner.

Clause 1.140 reflects that the Ombudsman is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.141 reflects changes to the employment framework in relation to public sector bodies.

Clause 1.142 reflects that the terms “head of service”, “public sector standards commissioner”, “public servant” and “public service” are now defined in the Legislation Act.

### **Part 1.53 Planning and Development Act 2007**

Clause 1.143 reflects that the chief planning executive of the planning and land authority is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act. It also changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.144 reflects that the chief planning executive of the land agency is able to exercise head of service powers in regard to employing staff under the PSM Act and updates the reference to the correct section of the Act.

Clause 1.145 defines the terms “head of service’ and “public servant”.

### **Part 1.54 Public Interest Disclosure Act 2012**

Clauses 1.146 – 1.151 reflect changes to terminology from “administrative unit” to “public service” and from “commissioner for public administration” to “public sector standards commissioner”.

### **Part 1.55 Rates Act 2004**

Clause 1.152 omits the definition of “public employee” as it is not used in the Act.

### **Part 1.56 Remuneration Tribunal Act 1995**

Clause 1.153 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.154 removes the exclusion of employees engaged under the PSM Act from determination of remuneration.

### **Part 1.57 Royal Commissions Act 1991**

Clause 1.155 reflects changes to the employment framework in relation to public sector bodies.

### **Part 1.58 Supervised Injecting Place Trial Act 1999**

Clause 1.156 reflects that the term “public employee” is now defined in the Legislation Act.

### **Part 1.59 Supreme Court Act 1993**

Clause 1.157 reflects changes to the employment framework in relation to public sector bodies.

Clause 1.158 reflects that the term “public servant” is now defined in the Legislation Act.

### **Part 1.60 Taxation Administration Act 1999**

Clauses 1.159 and 1.160 reflect changes to the employment framework in relation to public sector bodies.

### **Part 1.61 Territory Records Act 2002**

Clauses 1.161 – 1.166 reflect changes from “director-general” to “head of service”.

Clause 1.167 changes the ability to access public service resources from an arrangement with a director-general to an arrangement with the head of service, further embedding the one service approach.

Clause 1.168 and 1.169 reflect that the terms “public servant”, “public service” and “head of service” are now defined in the Legislation Act.

### **Part 1.62 Unclaimed Money Act 1950**

Clause 1.170 omits the definition of “trust account” as this now falls within the head of service responsibilities.

### **Part 1.63 Victims of Crime Act 1994**

Clause 1.171 clarifies reporting obligations under the Annual Reports Act.

### **Part 1.64 Workers Compensation Act 1951**

Clauses 1.172 and 1.173 reflect changes to the employment framework in relation to public sector bodies.

### **Part 1.65 Work Health and Safety Act 2011**

Clause 1.174 – 1.176 reflects changes to the employment framework in relation to public sector bodies.

## **DICTIONARY**

The Public Sector Management Amendment Act 2016 has introduced a range of different terms. Most of the terms defined in the dictionary signpost definitions contained in the body of the proposed Bill. Where this occurs, please refer to that part of the explanatory statement with commentary on the relevant provision.

For those terms used in the proposed Bill that are defined in the Legislation Act, please consult the relevant provision of that Act and any accompanying explanatory material for further explanation as to their meaning.

Those terms with full definitions in the dictionary to the proposed Bill are outlined below.

**Definition of *equitable employer***

This term is used in the context of the public sector principles. To be an equitable employer requires proactive effort to achieve a diverse workforce in a number of areas, being background, gender, sexual orientation, disability, and working age.

**Definition of *industrial instrument***

This term is used regularly in the proposed Bill to refer to other possible sources of conditions and entitlements for public service employees. In practice, the most common type of industrial instrument would be enterprise agreements, but there can be other documents such as contracts or deeds.

**Definition of *Minister, responsible for a directorate***

This term is used mostly in Part 3 of the proposed Bill. The definition identifies who is the relevant Minister in each of circumstance, including the possibility that there may be more than one Minister involved.

**Definition of *misconduct procedure* in relation to a public sector member**

This term is used throughout the proposed Bill. The definition directs the reader to an industrial instrument (most likely the relevant enterprise agreement) and, for executives, the standards.

**Definition of *permanent resident***

This term is used in the context of the eligibility requirements. The definition refers to a person who holds a permanent visa (under the federal *Migration Act 1958*, section 30), or a New Zealand citizen who holds a special category visa (under the federal *Migration Act 1958*, section 32).

**Definition of *public sector member***

This term is used through the proposed Bill and refers to any person who is in the public sector (defined in section 8).

**Definition of *SES employee***

This term is used throughout the proposed Bill and refers to an employee who is employed to perform the functions of a senior executive in the public service.

**Definition of *whole-of-government strategy***

This term is used in the context of the Head of Service, director-general and senior executive service functions. The definition refers to any strategy, target, policy, program or service that impacts more than one directorate.