

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Sector Management Amendment Bill 2004

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(As presented)

(Chief Minister)

Public Sector Management Amendment Bill 2004

A Bill for

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

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

1 Name of Act

This Act is the *Public Sector Management Amendment Act 2004*.

2 Commencement

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

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

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

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

3 Legislation amended

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

4 Section 26

substitute

26 Powers relating to certain Calvary Health Care staff

(1) This section applies if an agreement is in force between the Territory and Calvary Health Care ACT Limited for staff at Calvary Health Care ACT Limited (Public Division) to be employed under this Act.

(2) The chief executive officer, Calvary has all the powers of a chief executive in relation to the people employed in the branch of the service that provides services required to enable Calvary Health Care ACT Limited (Public Division) to exercise its public hospital functions as if those people were employed in an administrative unit under the chief executive officer's control.

(3) For the administration of the service in relation to the branch mentioned in subsection (2), a reference in this Act to an administrative unit includes a reference to that branch.

(4) In this section:

chief executive officer, Calvary means the person engaged to exercise the functions of the position of chief executive officer (however described) of Calvary Health Care ACT Limited (Public Division) under the rules of Calvary Health Care ACT Limited.

5 Section 28 heading

substitute

28 Chief executives—engagement

6 Section 28 (5) to (7)

omit

7 New section 28AA

after section 28, insert

28AA Chief executives—contract variation

(1) A contract under section 28 may be varied at any time by a written agreement between the parties.

Note If a person engaged by a contract under s 28 is transferred or assigned under s 33A, the person's contract is taken to be varied by the transfer or assignment (see s 33A (4)).

(2) However, a variation of a contract under section 28 that would do either or both of the following is void:

(a) extend the period of employment under the contract to longer than 5 years and 3 months;

- 1 (b) increase the rate at which remuneration or an allowance is
2 payable to the person employed otherwise than in accordance
3 with the management standards.
- 4 (3) Also, a contract under section 28 may be varied to extend the period
5 of employment under the contract to longer than 5 years only if the
6 contract as varied requires the person employed to be on leave for
7 the period of employment that exceeds 5 years.
- 8 (4) This section applies in relation to a contract under section 28
9 whether the contract was entered into before or after the day this
10 section commences.
- 11 *Note* This section was inserted by the *Public Sector Management Amendment*
12 *Act 2004*, s 7.
- 13 (5) Subsection (4) and this subsection expire 1 year after the day this
14 section commences.

15 **8 New section 28D**

16 *insert*

17 **28D Notice or payment if chief executive not re-engaged**

- 18 (1) This section applies in relation to a person engaged by a contract
19 under section 28 (Chief executives—engagement) if the Chief
20 Minister does not intend to re-engage the person under that section
21 to exercise the functions of the same office of chief executive or
22 another office of chief executive.
- 23 (2) Three months or more before the day the contract ends, the Chief
24 Minister may give the person written notice that the person will not
25 be re-engaged.
- 26 (3) An amount equal to 1/4 of the person's final annual salary is
27 payable to the person by the Territory if, when the person's contract
28 ends—

(a) the Chief Minister has not given a notice under subsection (2);
and

(b) the person has not accepted another position in the public sector; and

(c) the person is not entitled to a redundancy payment (however described) for not being re-engaged.

Note Section 248B provides that the Territory or a Territory instrumentality must not, without the commissioner's written consent, employ a person who has received, or to whom is payable, an amount mentioned in s 28D (3) within the 3-month period immediately after the day the contract ends.

(4) The amount must be paid within 3 months after the day the contract ends.

(5) In this section:

final annual salary, for a person engaged by a contract under section 28, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments in lieu of employer-provided benefits).

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

(6) This section applies in relation to a contract—

(a) whether the contract was entered into before or after the day this section commences (the ***commencement day***); but

(b) only if the contract ends later than 3 months after the commencement day.

Note This section was inserted by the *Public Sector Management Amendment Act 2004*, s 8.

(7) Subsection (6) and this subsection expire 1 year after the commencement day.

- 1 **9 Section 29**
- 2 *substitute*
- 3 **29 Chief executives—responsibilities**
- 4 (1) A person exercising the functions of an office of chief executive
- 5 must, in relation to each administrative unit under the person's
- 6 control—
- 7 (a) be responsible, under the relevant Minister, for its
- 8 administration and business; and
- 9 (b) advise that Minister on all matters relating to the unit; and
- 10 (c) have regard to the interests of the government and the service
- 11 as a whole.
- 12 (2) The Chief Minister may assign a chief executive to special duties on
- 13 behalf of the Territory.
- 14 **10 Section 30 heading**
- 15 *substitute*
- 16 **30 Chief executives—temporary contracts**
- 17 **11 Section 30 (4)**
- 18 *substitute*
- 19 (4) The period mentioned in subsection (3) (b) must not be longer than
- 20 2 years.
- 21 **12 Section 30 (10) to (12)**
- 22 *omit*

13 New section 30A*insert***30A Chief executives—variation of temporary contracts**

- (1) A contract under section 30 may be varied at any time by a written agreement between the parties.
- (2) However, a variation of a contract under section 30 that extends the period of employment under the contract to longer than 2 years is void.
- (3) This section applies in relation to a contract under section 30 whether the contract was entered into before or after the day this section commences.

Note This section was inserted by the *Public Sector Management Amendment Act 2004*, s 13.

- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

**14 Negotiation and execution of contracts
Section 31 (1)***substitute*

- (1) A contract under section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts), or a variation of a contract under section 28AA (Chief executives—contract variation) or section 30A (Chief executives—variation of temporary contracts), must be signed on the Territory's behalf by the Chief Minister.

1 **15 Section 32 heading**

2 *substitute*

3 **32 Chief executive engagements not affected by defects etc**

4 **16 New sections 33A and 33B**

5 *insert*

6 **33A Chief executives—transfer or assignment**

7 (1) The Chief Minister may, in writing, for a person engaged by a
8 contract under section 28 (Chief executives—engagement)—

9 (a) transfer the person from the office of chief executive under the
10 contract to—

11 (i) another office of chief executive; or

12 (ii) any other office (including an executive office) in an
13 administrative unit; or

14 (b) assign the person to exercise other stated functions in the
15 public sector.

16 (2) The Chief Minister may transfer or assign the person only if the
17 Chief Minister has—

18 (a) given the person an opportunity to state his or her views about
19 the transfer or assignment; and

20 (b) considered the person's views (if any).

21 (3) A transfer under subsection (1) (a) (i) may be made only to an office
22 that has the same classification as, or a lower classification than, the
23 office from which the person was transferred.

24 (4) The transfer or assignment is taken to be a variation of the contract.

25 (5) The transfer or assignment of a person under this section does not
26 affect—

- 1 (a) the rate at which remuneration or an allowance is payable to
2 the person under the contract; or
- 3 (b) the period of the person's employment under the contract; or
- 4 (c) the right to terminate the person's employment if the contract
5 provides for termination under section 28A (Early termination
6 of contract).
- 7 (6) If a person engaged by a contract under section 28 is transferred to
8 an office, or assigned to exercise stated functions, under this section,
9 the person must exercise the functions of the office or exercise the
10 stated functions.
- 11 (7) This section applies in relation to a person engaged by a contract
12 under section 28 whether the contract was entered into before or
13 after the day this section commences.
- 14 *Note* This section was inserted by the *Public Sector Management Amendment*
15 *Act 2004*, s 16.
- 16 (8) Subsection (7) and this subsection expire 1 year after the day this
17 section commences.

18 **33B Chief executive transfers or assignments under s 33A not**
19 **affected by defects etc**

- 20 (1) A transfer, or anything done in relation to a transfer, is not invalid
21 only because of a defect or irregularity in relation to the transfer.
- 22 (2) In this section:
- 23 *transfer* means a transfer or assignment of a person under
24 section 33A.

17 Section 34

substitute

34 Notification of chief executive's engagement etc

The Chief Minister must notify in the Gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 28 (Chief executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 33A (Chief executives—transfer or assignment).

**18 Application of merit principle
New section 65 (1) (ba)**

insert

- (ba) an engagement by a contract under section 30 (Chief executives—temporary contracts) or section 76 (Executives—temporary contracts), if the period of engagement is 9 months or more; or

19 Section 65 (1)

renumber paragraphs when Act next republished under Legislation Act

- 1 **20 Section 72 heading**
- 2 *substitute*
- 3 **72 Executives—engagement**
- 4 **21 Section 72 (5) to (7)**
- 5 *omit*
- 6 **22 New section 72A**
- 7 *insert*
- 8 **72A Executives—contract variation**
- 9 (1) A contract under section 72 may be varied at any time by a written
- 10 agreement between the parties.
- 11 *Note* If a person engaged by a contract under s 72 is transferred or assigned
- 12 under s 80A, the person's contract is taken to be varied by the transfer
- 13 or assignment (see s 80A (3)).
- 14 (2) However, a variation of a contract under section 72 that would do
- 15 either or both of the following is void:
- 16 (a) extend the period of employment under the contract to longer
- 17 than 5 years and 3 months;
- 18 (b) increase the rate at which remuneration or an allowance is
- 19 payable to the person employed otherwise than in accordance
- 20 with the management standards.
- 21 (3) Also, a contract under section 72 may be varied to extend the period
- 22 of employment under the contract to longer than 5 years only if the
- 23 contract as varied requires the person employed to be on leave for
- 24 the period of employment that exceeds 5 years.

- 1 (4) This section applies in relation to a contract under section 72
2 whether the contract was entered into before or after the day this
3 section commences.

4 *Note* This section was inserted by the *Public Sector Management Amendment*
5 *Act 2004*, s 22.

- 6 (5) Subsection (4) and this subsection expire 1 year after the day this
7 section commences.

8 **23 New section 75A**

9 *insert*

10 **75A Notice or payment if executive not re-engaged**

- 11 (1) This section applies in relation to a person engaged by a contract
12 under section 72 (Executives—engagement) if the relevant chief
13 executive for the person does not intend to re-engage the person
14 under that section.

- 15 (2) Three months or more before the day the contract ends, the relevant
16 chief executive may give the person written notice that the person
17 will not be re-engaged.

- 18 (3) An amount equal to 1/4 of the person's final annual salary is
19 payable to the person by the Territory if, when the person's contract
20 ends—

21 (a) the relevant chief executive has not given a notice under
22 subsection (2); and

23 (b) the person has not accepted another position in the public
24 sector; and

25 (c) the person is not entitled to a redundancy payment (however
26 described) for not being re-engaged.

27 *Note* Section 248B provides that the Territory or a Territory instrumentality
28 must not, without the commissioner's written consent, employ a person
29 who has received, or to whom is payable, an amount mentioned in

s 75A (3) within the 3-month period immediately after the day the contract ends.

(4) The amount must be paid within 3 months after the day the contract ends.

(5) In this section:

final annual salary, for a person engaged by a contract under section 72, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments in lieu of employer-provided benefits).

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

(6) This section applies in relation to a contract—

(a) whether the contract was entered into before or after the day this section commences (the *commencement day*); but

(b) only if the contract ends later than 3 months after the commencement day.

Note This section was inserted by the *Public Sector Management Amendment Act 2004*, s 23.

(7) Subsection (6) and this subsection expire 1 year after the commencement day.

24 Section 76 heading

substitute

76 Executives—temporary contracts

- 1 **25 Section 76 (4)**
- 2 *substitute*
- 3 (4) The period mentioned in subsection (3) (b) must not be longer than
- 4 2 years.
- 5 **26 Section 76 (10) to (12)**
- 6 *omit*
- 7 **27 New section 76A**
- 8 *insert*
- 9 **76A Executives—variation of temporary contracts**
- 10 (1) A contract under section 76 may be varied at any time by a written
- 11 agreement between the parties.
- 12 (2) However, a variation of a contract under section 76 that extends the
- 13 period of employment under the contract to longer than 2 years is
- 14 void.
- 15 (3) This section applies in relation to a contract under section 76
- 16 whether the contract was entered into before or after the day this
- 17 section commences.
- 18 *Note* This section was inserted by the *Public Sector Management Amendment*
- 19 *Act 2004*, s 27.
- 20 (4) Subsection (3) and this subsection expire 1 year after the day this
- 21 section commences.

28 Section 77*substitute***77 Chief executive officer, Calvary**

- (1) A person may be engaged under section 72 (Executives—engagement) or section 76 to exercise the functions of the position of chief executive officer, Calvary only if Calvary Health Care ACT Limited has agreed to the engagement in writing.
- (2) A contract under section 72 or section 76 by which a person is engaged to exercise the functions of the position of chief executive officer, Calvary may be varied only if Calvary Health Care ACT Limited has agreed to the variation in writing.
- (3) In this section:
- chief executive officer, Calvary*—see section 26 (4) (Powers relating to certain Calvary Health Care staff).

29 Section 80 heading*substitute***80 Executive engagements not affected by defects etc****30 New sections 80A and 80B***insert***80A Executives—transfer or assignment**

- (1) The relevant chief executive may, in writing, for a person engaged by a contract under section 72 (Executives—engagement)—
- (a) transfer the person from the executive office under the contract to another executive office that has the same classification; or
- (b) assign the person to exercise other stated functions in the public sector.

- 1 (2) The relevant chief executive may transfer or assign the person only
2 if the relevant chief executive has—
- 3 (a) if it is proposed to transfer the person to an executive office in
4 another administrative unit—consulted the chief executive of
5 the other administrative unit; and
- 6 (b) given the person an opportunity to state his or her views about
7 the transfer or assignment; and
- 8 (c) considered the person's views (if any).
- 9 (3) The transfer or assignment is taken to be a variation of the contract.
- 10 (4) The transfer or assignment of a person under this section does not
11 affect—
- 12 (a) the rate at which remuneration or an allowance is payable to
13 the person under the contract; or
- 14 (b) the period of the person's employment under the contract; or
- 15 (c) the right to terminate the person's employment if the contract
16 provides for termination under section 73 (Early termination of
17 contract).
- 18 (5) If a person engaged by a contract under section 72 is transferred to
19 another executive office, or assigned to exercise stated functions,
20 under this section, the person must exercise the functions of the
21 executive office or exercise the stated functions.
- 22 (6) This section applies in relation to a person engaged by a contract
23 under section 72 whether the contract was entered into before or
24 after the day this section commences.
- 25 *Note* This section was inserted by the *Public Sector Management Amendment*
26 *Act 2004*, s 30.
- 27 (7) Subsection (6) and this subsection expire 1 year after the day this
28 section commences.

80B Executive transfers or assignments under s 80A not affected by defects etc

(1) A transfer, or anything done in relation to a transfer, is not invalid only because of a defect or irregularity in relation to the transfer.

(2) In this section:

transfer means a transfer or assignment of a person under section 80A.

31 Section 81

substitute

81 Notification of executive's engagement etc

The administering chief executive must notify in the Gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 72 (Executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 80A (Executives—transfer or assignment).

32 New section 248B

insert

248B Engagement of certain former chief executives and executives prohibited

(1) This section applies to a person who—

- (a) was engaged by a contract under section 28 (Chief executives—engagement) and has received, or to whom is

- 1 payable, an amount mentioned in section 28D (3) (Notice or
2 payment if chief executive not re-engaged) in relation to the
3 contract; or
- 4 (b) was engaged by a contract under section 72 (Executives—
5 engagement) and has received, or to whom is payable, an
6 amount mentioned in section 75A (3) (Notice or payment if
7 executive not re-engaged) in relation to the contract.
- 8 (2) The Territory or a Territory instrumentality must not, without the
9 commissioner's written consent, employ the person within the
10 3-month period after the day the contract ends.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2004.

2 Notification

Notified under the Legislation Act on 2004.

3 Republications of amended laws

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