

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Sector Management Amendment Bill 2010

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2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Public Sector Management Amendment Bill 2010

A Bill for

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

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

J2009-527

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Public Sector Management Amendment Act 2010*.

3 **2 Commencement**

- 4 (1) This Act commences on a day fixed by the Minister by written
5 notice.

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

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

- 11 (2) If this Act has not commenced within 2 years beginning on its
12 notification day, it automatically commences on the first day after
13 that period.

- 14 (3) The Legislation Act, section 79 (Automatic commencement of
15 postponed law) does not apply to this Act.

16 **3 Legislation amended**

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

18 *Note* This Act also amends the *Tobacco Act 1927* (see s 82).

19 **4 New section 9A**

20 *insert*

21 **9A Misconduct**

22 The misconduct procedures that apply to a public employee are—

- 23 (a) if an industrial instrument applies to the employee and includes
24 procedures for misconduct—the misconduct procedures in the
25 industrial instrument; or
26 (b) in any other case—the prescribed misconduct procedures.

1 **5** **Definitions for div 3.7**
2 **Section 39, definition of *designated group***

3 *substitute*
4 ***designated group*** means a group of any of the following people:
5 (a) an Aboriginal person or Torres Strait Islander;
6 (b) a person who has migrated to Australia and whose first
7 language is a language other than English;
8 (c) a child of a person mentioned in paragraph (b);
9 (d) a person who has a disability.

10 **6** **Equal employment opportunity programs**
11 **Section 40 (1) (a)**

12 *omit*
13 relevant staff organisations
14 *substitute*
15 relevant unions

16 **7** **Access and equity programs**
17 **Section 41 (1) (a)**

18 *omit*
19 relevant staff organisations
20 *substitute*
21 relevant unions

1 **8 Industrial democracy programs**
2 **Section 42 (1) (a)**

3 *omit*
4 relevant staff organisations
5 *substitute*
6 relevant unions

7 **9 Joint council**
8 **Section 44 (2)**

9 *omit*
10 relevant staff organisations
11 *substitute*
12 relevant unions

13 **10 Section 65**

14 *substitute*

15 **65 Application of merit principle**

- 16 (1) This section applies if a function under this Act is exercised in
17 relation to any of the following employment matters:
- 18 (a) an appointment;
- 19 (b) an engagement under section 28 (Chief executives—
20 engagement) or section 72 (Executives engagement);
- 21 (c) an engagement by a contract under section 30 (Chief
22 executives—temporary contracts) or section 76 (Executives—
23 temporary contracts), if the period of engagement is more than
24 9 months;
- 25 (d) a transfer to an office of a higher classification for a period of
26 more than 3 months;

- 1 (e) a promotion;
- 2 (f) a fixed term engagement if the period of engagement is for
3 more than 12 months.
- 4 *Note* **Function** includes authority, duty and power (see Legislation Act, dict,
5 pt 1).
- 6 (2) The relevant chief executive exercising the function must ensure
7 that—
- 8 (a) all people who are eligible have, as far as practicable, a
9 reasonable opportunity to apply for the appointment,
10 engagement, transfer or promotion; and
- 11 (b) the decision is made on the basis of an assessment of the
12 relative efficiency of the applicants, having regard to—
- 13 (i) the nature of the duties to be performed; and
- 14 (ii) the relevant abilities, qualifications, experience, personal
15 qualities and potential for development of the applicants.
- 16 (3) For subsection (2) (a), the people who are eligible may be limited if
17 the position is an identified position.
- 18 (4) Without limiting subsection (2), a function under this Act must be
19 exercised—
- 20 (a) without patronage or favouritism; and
- 21 (b) without discrimination that is unlawful under the
22 *Discrimination Act 1991*.
- 23 (5) For subsection (4) (b), the exercise of a function that is in
24 accordance with an approved program for women or people in a
25 designated group is not unlawful under the *Discrimination Act 1991*.
- 26 (6) In this section:
- 27 **approved program** means—
- 28 (a) an equal employment opportunity program; or

- 1 (b) a prescribed program to encourage the appointment,
2 engagement, promotion or transfer of women or people in a
3 designated group.

4 *designated group*—see section 39.

5 *equal employment opportunity program*—see section 39.

6 *identified position* means a position that the relevant chief executive
7 has decided, in accordance with a prescribed process, must be filled
8 by—

- 9 (a) an Aboriginal person or Torres Strait Islander; or
10 (b) a person who has a disability.

11 **11 Sections 70 and 71**

12 *substitute*

13 **70 Appointment on probation**

14 (1) The appointment of a person to the service as an officer is subject to
15 a period of probation under this section, unless 1 of the following
16 sections applies to the appointment:

- 17 (a) section 71 (Appointment on probation—prescribed training
18 office);
19 (b) section 71A (Appointment on probation—teachers);
20 (c) section 71C (Appointment without probation).

21 (2) Probation begins on the day the person is appointed and the
22 appointment is taken to be confirmed 12 months after the day the
23 person is appointed unless—

- 24 (a) the appointment is earlier confirmed under this section; or
25 (b) the appointment is earlier ended under this section; or
26 (c) the probationary period is earlier extended under section 71B.

- 1 (3) The appointment may be confirmed any day after the day the officer
2 is appointed if the relevant chief executive is satisfied that—
- 3 (a) the officer has undergone a medical examination to assess the
4 person's standard of health and fitness and the examination
5 confirms that the standard of health and fitness of the person is
6 satisfactory; or
- 7 (b) it is unnecessary, in the circumstances, to require the officer to
8 undergo a medical examination.
- 9 (4) The appointment may be ended at any time before the appointment
10 is confirmed or taken to be confirmed if the relevant chief executive
11 is satisfied that—
- 12 (a) the officer has not undergone a medical examination to assess
13 his or her standard of health and fitness; or
- 14 (b) the officer has undergone a medical examination to assess his
15 or her standard of health and fitness and an authorised doctor
16 provides a report that the standard of health and fitness of the
17 officer is not satisfactory; or
- 18 (c) on the basis of a report from the officer's supervisor, or another
19 appropriate officer—the performance of the officer's duties is
20 not satisfactory; or
- 21 (d) the officer is not a fit and proper person to remain an officer of
22 the service; or
- 23 (e) the officer is an excess officer.
- 24 (5) An appointment on probation must not be ended unless the officer
25 has been given at least 14 days written notice of—
- 26 (a) the reason for ending the appointment; and
27 (b) the day the appointment will end.

- 1 (6) Unless otherwise determined by the commissioner, an officer whose
2 appointment has been ended under this section is not eligible for a
3 further appointment to the service for the period of 12 months
4 beginning immediately after the day the appointment ends.

5 **71 Appointment on probation—prescribed training office**

- 6 (1) The appointment of a person to the service as an officer in a
7 prescribed training office is subject to a period of probation under
8 this section.

- 9 (2) Probation begins on the day the person is appointed and is taken to
10 be confirmed 6 months after the day the officer completes the course
11 of training required for the prescribed training office unless—

- 12 (a) the appointment is earlier confirmed under this section; or
13 (b) the appointment is earlier ended under this section; or
14 (c) the probationary period is earlier extended under section 71B.

- 15 (3) The appointment may be confirmed any day after the officer
16 successfully completes the course of training required for the
17 prescribed training office if the relevant chief executive is satisfied
18 that—

- 19 (a) the officer has undergone a medical examination to assess the
20 person's standard of health and fitness and the examination
21 confirms that the standard of health and fitness of the officer is
22 satisfactory; or
23 (b) it is unnecessary, in the circumstances, to require the officer to
24 undergo a medical examination.

- 25 (4) The appointment may be ended any time before the appointment is
26 confirmed or taken to be confirmed if the relevant chief executive is
27 satisfied that—

- 28 (a) the officer has not undergone a medical examination to assess
29 his or her standard of health and fitness; or

- 1 (b) the officer has undergone a medical examination to assess their
2 standard of health and fitness and an authorised doctor
3 provides a report that the standard of health and fitness of the
4 officer is not satisfactory; or
- 5 (c) on the basis of a report from the officer's supervisor, or another
6 appropriate officer—the performance of the officer's duties is
7 not satisfactory; or
- 8 (d) the officer is not a fit and proper person to remain an officer of
9 the service; or
- 10 (e) the officer is an excess officer; or
- 11 (f) the officer has not successfully completed the course of
12 training required for the prescribed training office.
- 13 (5) An appointment on probation must not be ended unless the officer
14 has been given at least 14 days written notice of—
- 15 (a) the reason for ending the appointment; and
16 (b) the day the appointment will end.
- 17 (6) Unless otherwise determined by the commissioner, an officer whose
18 appointment has been ended under this section is not eligible for a
19 further appointment to the service for the period of 12 months
20 beginning immediately after the day the appointment ends.

21 **71A Appointment on probation—teachers**

- 22 (1) The appointment of a person as a teacher is subject to a period of
23 probation under this section.
- 24 (2) Probation begins on the day the person is appointed and is taken to
25 be confirmed 18 months after the day the person is appointed
26 unless—
- 27 (a) the appointment is earlier confirmed under this section; or
28 (b) the appointment is earlier ended under this section; or

- 1 (c) the probationary period is earlier extended under section 71B.
- 2 (3) The appointment may be confirmed any day after the day the officer
3 is appointed if the relevant chief executive is satisfied that—
- 4 (a) the officer has undergone a medical examination to assess the
5 person's standard of health and fitness and the examination
6 confirms that the standard of health and fitness of the officer is
7 satisfactory; or
- 8 (b) it is unnecessary, in the circumstances, to require the officer to
9 undergo a medical examination.
- 10 (4) The appointment may be ended any time before the appointment is
11 confirmed or taken to be confirmed if the relevant chief executive is
12 satisfied that—
- 13 (a) the officer has not undergone a medical examination to assess
14 his or her standard of health and fitness; or
- 15 (b) the officer has undergone a medical examination to assess their
16 standard of health and fitness and an authorised doctor
17 provides a report that the standard of health and fitness of the
18 officer is not satisfactory; or
- 19 (c) on the basis of a report from the officer's supervisor, or another
20 appropriate officer—the performance of the officer's duties is
21 not satisfactory; or
- 22 (d) the officer is not a fit and proper person to remain an officer of
23 the service; or
- 24 (e) the officer is an excess officer.
- 25 (5) An appointment on probation must not be ended unless the officer
26 has been given at least 14 days written notice of—
- 27 (a) the reason for ending the appointment; and
- 28 (b) the day the appointment will end.

1 (6) Unless otherwise determined by the commissioner, an officer whose
 2 appointment has been ended under this section is not eligible for a
 3 further appointment as a teacher for the period of 12 months
 4 beginning immediately after the day the appointment ends.

5 (7) In this section:

6 *teacher* means a person who holds an office classified as a teacher
 7 under the management standards or a relevant industrial instrument.

8 **71B Extension of period of probation**

9 (1) A period of probation for a person may be extended if—

10 (a) the appointment has not been confirmed or taken to be
 11 confirmed; and

12 (b) the relevant chief executive is satisfied that the extension is
 13 reasonably required to assess the person's suitability for office.

14 **Examples—par (b)**

15 1 Glen is appointed as an officer. Six weeks after starting work a family crisis
 16 occurs and Glen is absent on authorised unpaid leave for a 12-week period.
 17 Glen's extended absence means that there has not been a long enough period
 18 at work to assess whether work performance is satisfactory so an additional
 19 period of probation is reasonable.

20 2 Josephine is appointed as a teacher and undergoes a medical assessment to
 21 assess her standard of health and fitness. The report from the authorised
 22 doctor is delayed because the doctor is taken ill and cannot complete the
 23 report before the probationary period would be taken to be confirmed under
 24 s 71A (2). An additional period of probation is reasonable to allow for a
 25 medical assessment report to be provided.

26 3 Mai is appointed to a prescribed training office. The training required for the
 27 office usually takes two years to complete. An additional period of probation
 28 is reasonable to allow time for Mai to complete the required training.

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

- 1 (2) The maximum additional period for probation under this section is
2 as follows:
- 3 (a) for section 70 (Appointment on probation)—6 months;
- 4 (b) for section 71 (Appointment on probation—prescribed training
5 office)—12 months;
- 6 (c) for section 71A (Appointment on probation—teachers)—
7 12 months.
- 8 (3) An appointment on probation must not be extended unless the
9 officer has been given at least 14 days written notice of—
- 10 (a) the reason for the extension; and
- 11 (b) the length of the extension; and
- 12 (c) the day the probationary period will end.
- 13 (4) An appointment that has been extended under this section may be
14 confirmed any day after the extension if the relevant chief executive
15 is satisfied that—
- 16 (a) the officer has undergone a medical examination to assess the
17 person’s standard of health and fitness and the examination
18 confirms that the standard of health and fitness of the officer is
19 satisfactory; or
- 20 (b) it is unnecessary, in the circumstances, to require the officer to
21 undergo a medical examination.
- 22 (5) An appointment that has been extended under this section may be
23 ended at any time before the appointment is confirmed or taken to
24 be confirmed if the relevant chief executive is satisfied that—
- 25 (a) the officer has not undergone a medical examination to assess
26 his or her standard of health and fitness; or

- 1 (b) the officer has undergone a medical examination to assess his
2 or her standard of health and fitness and an authorised doctor
3 provides a report that the standard of health and fitness of the
4 officer is not satisfactory; or
- 5 (c) on the basis of a report from the officer's supervisor, or another
6 appropriate officer—the performance of the officer's duties is
7 not satisfactory; or
- 8 (d) the officer is not a fit and proper person to remain an officer of
9 the service; or
- 10 (e) the officer is an excess officer.
- 11 (6) An appointment that has been extended under this section is taken to
12 be confirmed on the day notified as the day the probationary period
13 will end under subsection (3) (c) unless—
- 14 (a) the appointment is earlier confirmed under this section; or
15 (b) the appointment is earlier ended under this section.

16 **71C Appointment without probation**

- 17 (1) A relevant chief executive may appoint a person to an office without
18 probation if the chief executive is satisfied that—
- 19 (a) the appointment without probation is in the public interest; or
20 (b) immediately before the day of the appointment, for a period of
21 12 months or more, the person performed the duties of the
22 office, or an office with similar duties.
- 23 (2) A relevant chief executive must not appoint a person to an office
24 without probation unless the chief executive is satisfied that—
- 25 (a) the person has undergone a medical examination to assess the
26 person's standard of health and fitness and on the basis of the
27 examination, the standard of health and fitness of the person is
28 satisfactory; or

- 1 (b) it is unnecessary, in the circumstances, to require the person to
2 undergo a medical examination.

3 **12 Division 5.5 heading**

4 *substitute*

5 **Division 5.5 Promotion of officers**

6 **13 Sections 82 to 96**

7 *substitute*

8 **82 Definitions—div 5.5**

9 In this division:

10 ***appellable level position*** means an office—

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

14 ***joint selection committee***, for a promotion, means a committee
15 constituted as prescribed and includes—

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

18 ***office*** means an office other than—

- 19 (a) an office of chief executive; or
20 (b) an executive office.

1 **83 Promotion to vacant office**

- 2 (1) The relevant chief executive for an administrative unit in which a
3 vacant office exists may promote an officer to fill the vacant office
4 if the prescribed requirements are met.
- 5 (2) If an officer is promoted under this division the relevant chief
6 executive must give written notice of the promotion to the officer.

7 **84 Promotion appeal**

- 8 (1) An officer may appeal against the promotion of another person to a
9 vacant office under section 83 if—
- 10 (a) the promotion is to an appellable level position; and
11 (b) the officer applied for promotion to the vacant office.
- 12 (2) The appeal must be made in accordance with—
- 13 (a) if an industrial instrument applies to an officer and includes a
14 procedure for promotion appeals—the promotion appeals
15 procedure in the industrial instrument; or
- 16 (b) in any other case—the prescribed promotion appeals
17 procedure.
- 18 (3) In deciding the appeal a decision-maker must apply the criteria set
19 out in—
- 20 (a) if an industrial instrument applies to the officer and includes
21 criteria for decision making for promotion appeals—the
22 promotion appeals decision making criteria in the industrial
23 instrument; or
- 24 (b) in any other case—the prescribed promotion appeals decision
25 making criteria.

- 1 **85 Promotion appeal by excess officer**
- 2 (1) This section applies if an officer has been told in writing by the
- 3 relevant chief executive that he or she is an excess officer within the
- 4 meaning of section 139.
- 5 (2) The officer may appeal against the promotion of another person to a
- 6 vacant office if—
- 7 (a) the promotion is to an appellable level position; and
- 8 (b) the excess officer applied for transfer to the vacant office the
- 9 classification of which is equal to or lower than the
- 10 classification of the office occupied by the excess officer.
- 11 (3) An appeal under this section does not affect the operation of part 6
- 12 (Retirement and redeployment of officers).
- 13 (4) The appeal must be made in accordance with—
- 14 (a) if an industrial instrument applies to the officer and includes a
- 15 procedure for promotion appeals—the promotion appeals
- 16 procedures in the industrial instrument; or
- 17 (b) in any other case—the prescribed promotion appeals
- 18 procedure.
- 19 (5) In deciding the appeal a decision-maker must apply the criteria set
- 20 out in—
- 21 (a) if an industrial instrument applies to the officer and includes
- 22 criteria for decision making for promotion appeals—the
- 23 decision making criteria in the industrial instrument; or
- 24 (b) in any other case—the prescribed decision making criteria.
- 25 **86 Review of certain promotion decisions**
- 26 (1) An officer may apply for review of a promotion if—
- 27 (a) the promotion is to a reviewable level office; and

-
- 1 (b) the officer applied for promotion to the reviewable level office.
- 2 (2) The review must be conducted in accordance with—
- 3 (a) if an industrial instrument applies to an officer and includes a
4 review of promotion procedure—the review procedure in the
5 industrial instrument; or
- 6 (b) in any other case—the prescribed review of promotion
7 procedure.
- 8 (3) In deciding the review, a decision-maker must apply the criteria set
9 out in—
- 10 (a) if an industrial instrument applies to the officer and includes
11 criteria for review of promotion decisions—the criteria for
12 review in the industrial instrument; or
- 13 (b) in any other case—the prescribed criteria for review of
14 promotion decisions.
- 15 (4) If the relevant chief executive cancels the promotion as a result of
16 the review—
- 17 (a) the officer whose promotion is cancelled must for all purposes
18 be treated as having held the office from the date the
19 promotion took effect to the date of the cancellation; and
- 20 (b) the chief executive—
- 21 (i) must transfer the officer to an office with a classification
22 that is equal to the classification that the officer had
23 immediately before the promotion took effect; and
- 24 (ii) may if necessary create an office to allow the transfer
25 mentioned in subparagraph (i).

- 1 (5) In this section:
- 2 *reviewable level office* means an office—
- 3 (a) with a maximum salary level that is equal to or higher than the
- 4 minimum salary level for the senior officer grade C
- 5 classification; or
- 6 (b) for which teaching qualifications are not required.
- 7 **87 Promotion on advice of joint selection committee**
- 8 (1) The relevant chief executive for an administrative unit in which a
- 9 vacant office exists may promote an officer to fill the vacant office
- 10 if—
- 11 (a) a joint selection committee is established in relation to the
- 12 promotion; and
- 13 (b) the committee recommends the promotion.
- 14 (2) If a joint selection committee makes a recommendation to the chief
- 15 executive about a promotion the chief executive may—
- 16 (a) accept the recommendation; or
- 17 (b) not accept the recommendation.
- 18 (3) If an officer is promoted under this section the chief executive
- 19 must—
- 20 (a) notify the promotion in the gazette; and
- 21 (b) state in the notification that the selection involved—
- 22 (i) a joint selection committee agreed to by the principal
- 23 union (a *union agreed joint selection committee*); or
- 24 (ii) a management initiated joint selection committee; and
- 25 (c) state in the notification whether the promotion is appellable or
- 26 reviewable.

-
- 1 (4) A decision to promote under this section is not an appellable
2 decision or a reviewable decision if the promotion is in accordance
3 with—
- 4 (a) the recommendation of a union agreed joint selection
5 committee; or
- 6 (b) the unanimous recommendation of a management initiated
7 joint selection committee.
- 8 (5) A decision to promote under this section is an appellable decision
9 and a reviewable decision if—
- 10 (a) an officer is promoted to an appellable level position; and
- 11 (b) the officer seeking to appeal applied for promotion to the
12 position; and
- 13 (c) the promotion is not in accordance with—
- 14 (i) the recommendation of a union agreed joint selection
15 committee; or
- 16 (ii) the unanimous recommendation of a management
17 initiated joint selection committee.

18 **88 How promotions take effect**

- 19 (1) A promotion takes effect as prescribed.
- 20 (2) The salary payable for an office to which an officer is promoted
21 under section 83 or section 87 is payable on and after the prescribed
22 day.
- 23 (3) If an appeal against a promotion results in a different officer being
24 promoted to an office than had originally been promoted—the salary
25 payable to the different officer is payable on and after the
26 prescribed day for the original promotion.

1 **89 Death of officer before appeal decided**

2 If, before an appeal under section 84 against the promotion of an
3 officer has been decided, the officer dies, the appeal is deemed to
4 lapse on the day of the death, but the promotion does not take effect
5 unless the death occurred on or after the prescribed day in relation to
6 the promotion.

7 **90 Cancellation of promotion**

- 8 (1) Before the promotion of an officer to a vacant office in an
9 administrative unit takes effect, the chief executive of the
10 administrative unit may cancel the promotion.
- 11 (2) If a promotion of an officer under section 83 or section 87 that has
12 not taken effect stops being a promotion, because of a change in
13 rates of salary, the promotion is taken to be cancelled.
- 14 (3) If a promotion is cancelled, or is taken to be cancelled under this
15 section, any appeal under section 84 against the promotion lapses on
16 the day of the cancellation.

17 **Division 5.6 Transfer of officers**

18 **91 Definitions—div 5.6**

19 In this division:

20 ***appellable level position*** means an office—

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

24 ***joint selection committee***, for a transfer, means a committee
25 constituted as prescribed and includes—

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

1 *office* means an office other than—

- 2 (a) an office of chief executive; or
3 (b) an executive office.

4 **92 Transfer to vacant office**

- 5 (1) This section applies if 2 or more officers from an administrative unit
6 apply to transfer to a vacant office within the unit.
- 7 (2) The relevant chief executive for an administrative unit in which a
8 vacant office exists may transfer an officer from within the unit to
9 fill the vacant office if the prescribed requirements are met.
- 10 (3) If an officer is transferred under this division, the relevant chief
11 executive must give written notice of the transfer to the officer.
- 12 (4) A decision to transfer under this section is not an appellable decision
13 or a reviewable decision.

14 **93 Simultaneous transfer within administrative unit**

- 15 (1) This section applies if—
- 16 (a) 2 or more officers in an administrative unit occupy offices with
17 the same classification; and
- 18 (b) the relevant chief executive approves the simultaneous transfer
19 of the officers between the offices.
- 20 (2) The relevant chief executive may transfer the officers if the
21 prescribed requirements are met.
- 22 (3) A decision to transfer under this section is not an appellable decision
23 or a reviewable decision.

- 1 **94 Transfer between administrative units**
- 2 (1) This section applies if a chief executive proposes to transfer an
- 3 officer in an administrative unit to a vacant office within a different
- 4 administrative unit.
- 5 (2) The relevant chief executive for the vacant office (the *gaining chief*
- 6 *executive*) must ask the chief executive of the administrative unit in
- 7 which the officer is performing duties (the *releasing chief*
- 8 *executive*) to approve the transfer.
- 9 (3) If the releasing chief executive approves the transfer the gaining
- 10 chief executive may transfer the officer to fill the vacant office.
- 11 (4) If the releasing chief executive does not approve the transfer the
- 12 gaining chief executive may ask the commissioner to approve the
- 13 transfer.
- 14 (5) If approval is sought under subsection (4) the commissioner must—
- 15 (a) give the officer and the gaining and releasing chief executives
- 16 the opportunity to make submissions about the transfer; and
- 17 (b) consider the submissions; and
- 18 (c) either—
- 19 (i) transfer the officer; or
- 20 (ii) not transfer the officer.
- 21 (6) A decision to transfer under this section is not an appellable decision
- 22 or a reviewable decision.

- 1 **95 Management initiated transfer—within administrative unit**
- 2 (1) This section applies if a relevant chief executive for an
3 administrative unit is satisfied that the efficient administration of the
4 unit requires the transfer of an officer from one part of the unit to
5 another.
- 6 (2) The relevant chief executive may transfer an officer to fill a vacant
7 office in the unit if the chief executive—
- 8 (a) gives the officer an opportunity to state his or her views in
9 relation to the transfer; and
- 10 (b) considers the views of the officer.
- 11 (3) A decision to transfer under this section is not an appellable decision
12 or a reviewable decision.
- 13 (4) In this section:
- 14 *officer* includes—
- 15 (a) an unattached officer; and
- 16 (b) an employee.
- 17 **96 Management initiated transfer—between administrative**
18 **units**
- 19 (1) This section applies if the commissioner is satisfied that the efficient
20 administration of the service requires the transfer of an officer from
21 1 administrative unit to another.
- 22 (2) The commissioner may transfer the officer, or direct a chief
23 executive to transfer the officer, from 1 administrative unit to
24 another if the commissioner—
- 25 (a) gives each of the following the opportunity to comment on
26 whether the transfer is in the interests of the efficient
27 administration of the service:
- 28 (i) the officer;

- 1 (ii) the relevant chief executive for the administrative unit
2 that would gain the officer (the *gaining chief executive*);
- 3 (iii) the relevant chief executive for the administrative unit
4 that would release the officer (the *releasing chief*
5 *executive*); and
- 6 (b) considers whether the transfer is in the interests of the efficient
7 administration of the service; and
- 8 (c) is satisfied that the efficient administration of the service
9 requires the transfer of an officer from 1 administrative unit to
10 another.
- 11 (3) A direction under subsection (2) must specify—
- 12 (a) the date of effect of the transfer; and
- 13 (b) whether the transfer is temporary or permanent; and
- 14 (c) if the transfer is temporary—the duration of the transfer.
- 15 (4) A decision to transfer under this section is not an appellable decision
16 or a reviewable decision.
- 17 (5) In this section:
- 18 *officer* includes—
- 19 (a) an unattached officer; and
- 20 (b) an employee.

- 1 **96A Management initiated transfer—additional consultation if**
2 **transfer of 2 or more officers**
- 3 (1) This section applies if the commissioner is satisfied for section 96
4 that the efficient administration of the service requires the transfer
5 of 2 or more officers from one administrative unit to another.
- 6 (2) In addition to requirements in section 95, the commissioner must
7 follow any relevant consultation requirement that is set out in an
8 industrial instrument that applies to an officer whose transfer is
9 required.
- 10 **96B Transfer on advice of joint selection committee**
- 11 (1) The relevant chief executive for an administrative unit in which a
12 vacant office exists may transfer an officer to fill the vacant office
13 if—
- 14 (a) a joint selection committee is established in relation to the
15 transfer; and
- 16 (b) the committee recommends the transfer.
- 17 (2) The joint selection committee must make a recommendation to the
18 chief executive about the transfer.
- 19 (3) The chief executive may—
- 20 (a) accept the recommendation; or
- 21 (b) not accept the recommendation.
- 22 (4) If an officer is transferred in accordance with a recommendation
23 under subsection (2) the chief executive must notify the transfer in
24 the gazette.
- 25 (5) If an officer is transferred on the recommendation of a union agreed
26 joint selection committee—the decision to transfer is not an
27 appellable decision or a reviewable decision.

- 1 (6) In this section:
2 *union agreed joint selection committee*—see section 87.

3 **96C How transfer takes effect**

4 A transfer takes effect as prescribed.

5 **96D Cancellation of transfer**

- 6 (1) Before the transfer of an officer to a vacant office in an
7 administrative unit takes effect, the chief executive of the
8 administrative unit may cancel the transfer.
9 (2) If a transfer is cancelled under this section, any appeal against the
10 transfer lapses on the day of the cancellation.

11 **14 Promotion of officers who complete courses of training**
12 **for special positions**
13 **Section 98 (3)**

14 *substitute*

- 15 (3) A decision to transfer or promote under this section is an appellable
16 decision.

17 **15 Temporary performance of duties—offices other than**
18 **offices of chief executive and executive offices**
19 **Division 5.6 heading**

20 *omit*

21 **16 Definitions for div 5.6**
22 **Section 99**

23 *omit*

17 Sections 100 to 104*substitute***100 Temporary transfer**

- (1) The relevant chief executive for an administrative unit may temporarily transfer an officer from the unit to perform the whole, or part, of the duties of another office in the unit if the prescribed requirements are met.
- (2) A temporary transfer, other than a transfer requiring notification under section 101 (2), takes effect on—
 - (a) the day written notice is given; or
 - (b) if a later day is stated in the written notice of the transfer—on that later day.
- (3) Written notice of a temporary transfer must be expressed to continue in force until—
 - (a) the end of a stated day; or
 - (b) occurrence of a stated event.
- (4) Written notice of the temporary transfer must not be expressed to operate—
 - (a) indefinitely; or
 - (b) until a notice terminating the transfer is given.
- (5) The relevant chief executive may, in writing—
 - (a) revoke the temporary transfer at any time; or
 - (b) vary the temporary transfer at any time.

- 1 (6) The relevant chief executive of an administrative unit may
2 temporarily transfer an officer from another administrative unit to
3 perform the whole, or part, of the duties of an office in the unit if—
4 (a) the prescribed requirements are met; and
5 (b) the chief executive of the other administrative unit gives
6 approval for the transfer.
- 7 (7) The chief executive of the other administrative unit may withhold
8 approval for a temporary transfer under subsection (6) if the transfer
9 would cause substantial difficulties or inefficiencies in the
10 management or functioning of the chief executive's unit.

11 **101 Notification of certain temporary transfers to higher office**

- 12 (1) This section applies to a temporary transfer to an appellable level
13 position.
- 14 (2) A chief executive must provide notification in the gazette of a
15 temporary transfer if—
16 (a) the chief executive temporarily transfers an officer to perform
17 the duties of a higher office to which this section applies; and
18 (b) the transfer is for a period of more than 6 months.

19 **102 Appeal against temporary transfer to higher office**

- 20 (1) An officer may appeal against the temporary transfer of another
21 officer to an appellable level position if—
22 (a) the other officer is transferred to an office that is a higher
23 office for the other officer; and
24 (b) the transfer is to an office that is a higher office for the officer
25 seeking to appeal; and
26 (c) the officer seeking to appeal applied for temporary transfer to
27 the higher office.

- 1 (2) The appeal must be made in accordance with—
- 2 (a) if an industrial instrument applies to the officer and includes a
- 3 procedure for temporary transfer appeal—the temporary
- 4 transfer appeal procedure in the industrial instrument; or
- 5 (b) in any other case—the prescribed temporary transfer appeal
- 6 procedure.

7 **103 Lapsing or discontinuing of appeal**

- 8 (1) An appeal against a temporary transfer under section 102 lapses if—
- 9 (a) the temporary transfer finishes under section 100 (3); or
- 10 (b) the temporary transfer finishes because the person transferred
- 11 stops being an officer; or
- 12 (c) the temporary transfer is revoked under section 100 (5); or
- 13 (d) the appellant stops being an officer; or
- 14 (e) the office that is the subject of the appeal is no longer a higher
- 15 office for the appellant.
- 16 (2) An appeal against a temporary transfer under section 102 must be
- 17 discontinued if—
- 18 (a) the appellant gives written notice that the appeal has been
- 19 withdrawn to the person or body that considers the appeal
- 20 under the temporary transfer appeal procedure mentioned in
- 21 section 102 (2); or
- 22 (b) the chief executive of the administrative unit in which the
- 23 appellant holds office gives written notice that—
- 24 (i) the temporary transfer of the appellant would cause
- 25 substantial difficulties or inefficiencies in the
- 26 management or functioning of the chief executive's unit;
- 27 and

- 1 (ii) if the appeal were successful, the chief executive
2 would—
- 3 (A) withhold approval for the temporary transfer of the
4 appellant; or
- 5 (B) only give approval for the temporary transfer for a
6 period of less than 6 months.
- 7 (3) If an appeal lapses or is discontinued under this section the person
8 or body that considers the appeal under the temporary transfer
9 appeal procedure mentioned in section 102 (2) must give written
10 notice of the lapse or discontinuance to the appellant.

11 **104 Temporary transfer if appeal successful**

- 12 (1) This section applies if the person or body that considers an appeal
13 under the temporary transfer appeal procedure mentioned in
14 section 102 (2) decides that the appellant would be more efficient in
15 performing the duties of the office than the person transferred to the
16 office under section 100.
- 17 (2) The person or body must provide written notice of the decision to—
- 18 (a) the appellant; and
19 (b) the person transferred under section 100; and
20 (c) the relevant chief executive.
- 21 (3) If the relevant chief executive receives a notice under subsection (2)
22 the relevant chief executive must—
- 23 (a) revoke the temporary transfer of the person transferred under
24 section 100; and
25 (b) temporarily transfer the appellant to the position.
- 26 (4) A temporary transfer under this section—
27 (a) takes effect when it is made; and

1 (b) must be expressed to continue in force for the same period for
2 which the revoked temporary transfer would have operated;
3 and

4 (c) is not subject to appeal.

5 **18 Section 105, division 5.7 heading and section 106**

6 *substitute*

7 **Division 5.7 Temporary employment**

8 **105 Meaning of *office*—div 5.7**

9 In this division:

10 *office* means an office other than—

- 11 (a) an office of chief executive; or
12 (b) an executive office.

13 **106 Power to engage temporary employee**

14 (1) The relevant chief executive for an administrative unit may engage a
15 person for temporary employment in the unit if satisfied that—

16 (a) there is no officer available in the service with the expertise,
17 skills or qualifications required for the duties to be performed;
18 or

19 (b) assistance of a temporary nature is required for the
20 performance of urgent or specialised work in the unit and it is
21 not practical in the circumstances to use the services of an
22 existing officer to do the work.

23 (2) Temporary employment under this division must comply with any
24 prescribed requirements.

1 **19 Sections 107 and 108**

2 *substitute*

3 **107 Temporary employment—fixed term less than 12 months**

- 4 (1) The relevant chief executive for an administrative unit may engage a
5 person in temporary employment to perform duties in the unit for a
6 fixed term of less than 12 months.
- 7 (2) A person engaged under this section may be re-engaged with no
8 break in his or her service subject to the following:
- 9 (a) the total period of engagement must be less than 12 months;
- 10 (b) the relevant chief executive must have complied with the
11 prescribed requirements for merit selection in temporary
12 employment.

13 **108 Temporary employment—fixed term not more than**
14 **5 years**

- 15 (1) The relevant chief executive for an administrative unit may engage a
16 person in temporary employment to perform duties in the unit for a
17 fixed term of not more than 5 years.
- 18 (2) The chief executive must not engage a person under this section
19 unless the principal union has been consulted about the need for the
20 temporary employment.
- 21 (3) A person engaged under this section may be reengaged with no
22 break in his or her service subject to the following:
- 23 (a) the total period of engagement must not be more than 5 years;
- 24 (b) in the initial engagement of the person the relevant chief
25 executive must have complied with—
- 26 (i) the merit principle in section 65; and

- 1 (ii) the prescribed requirements for merit selection in
2 temporary employment.

3 **20 Section 112**

4 *substitute*

5 **112 Termination of temporary employment**

- 6 (1) Subject to section 112A, unless terminated earlier under this section
7 a person's temporary employment terminates at the end of the fixed
8 term for which the person is engaged.
- 9 (2) The relevant chief executive for an administrative unit may
10 terminate the employment of—
- 11 (a) a person engaged in the unit as a casual employee—at any time
12 before the end of the employment; and
- 13 (b) a person otherwise engaged in the unit as a temporary
14 employee—on the provision of reasonable written notice.
- 15 (3) A person engaged as a temporary employee in an administrative unit
16 may terminate his or her employment by providing the relevant
17 chief executive with 2 weeks notice of the termination.
- 18 (4) If the chief executive and the person engaged as a temporary
19 employee agree that 2 weeks notice is not required, the temporary
20 employment may be terminated at the agreed time.

21 **112A Temporary employee on maternity leave**

- 22 (1) The temporary employment of a woman who is absent on maternity
23 leave must not be terminated.
- 24 (2) A woman who returns to temporary employment with a government
25 agency after being absent on maternity leave must be given
26 preference over anyone else (other than another woman to whom
27 this subsection applies) for employment in work for which she is
28 qualified.

- 1 (3) In this section:
2 *maternity leave* means a period of authorised absence from duty
3 required or permitted in relation to the birth of a baby.

4 **21 Sections 115, 115A and 116**

5 *omit*

6 **22 New section 118A**

7 *insert*

8 **118A Quashing etc of conviction**

- 9 (1) This section applies if—
10 (a) a person who is a member of the service has been convicted of
11 an offence; and
12 (b) disciplinary action is taken against the person in accordance
13 with the misconduct procedures applying to a public employee;
14 and
15 (c) after the disciplinary action—
16 (i) the person's conviction is quashed, nullified or set aside;
17 or
18 (ii) the person receives a pardon or is released from prison as
19 a result of an inquiry into the conviction.
20 (2) The person may apply to the relevant chief executive for—
21 (a) if the disciplinary action involved termination of employment
22 from the service—reappointment to the service; or
23 (b) if the disciplinary action involved other actions—
24 reconsideration of those actions.
25 (3) The relevant chief executive—
26 (a) must consider the application; and

- 1 (b) may do 1 or more of the following:
- 2 (i) reappoint the person to an appropriate office;
- 3 (ii) transfer the person to an appropriate office;
- 4 (iii) promote the person;
- 5 (iv) take other action to address the disciplinary action;
- 6 (v) refuse the application.
- 7 (4) The chief executive must give the applicant written notice of a
- 8 decision made under subsection (3) and reasons for the decision.
- 9 (5) A person who is given notice under subsection (4) may apply to the
- 10 commissioner for a reconsideration of the decision.
- 11 (6) A person who is reappointed under this section is taken to have—
- 12 (a) continuity of service as prescribed; and
- 13 (b) recognition of prior service as prescribed.
- 14 (7) In this section:
- 15 *appropriate office* means an office that—
- 16 (a) was occupied by the person immediately before the
- 17 disciplinary action was taken; or
- 18 (b) is, in the reasonable belief of the relevant chief executive or
- 19 commissioner, equivalent to the office occupied by the person
- 20 immediately before the disciplinary action was taken.

1 **23 New section 122**

2 *in division 5.8 insert*

3 **122 Termination of employment**

4 (1) This section applies if under the misconduct procedures that apply
5 to a public employee, the public employee has engaged in
6 misconduct.

7 (2) The relevant chief executive may terminate the employment of the
8 public employee.

9 (3) A decision to terminate employment for misconduct is not an
10 appellable decision or a reviewable decision.

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

13 **24 Part 6 heading**

14 *substitute*

15 **Part 6 Retirement and redeployment of**
16 **officers**

17 **25 Section 139**

18 *substitute*

19 **139 Definitions—pt 6**

20 In this part:

21 *essential qualification*, in relation to an officer, means a
22 qualification that the officer must have—

23 (a) to lawfully perform his or her duties; or

1 (b) as a prerequisite to a function that is a necessary part of the
2 officers' employment.

3 *Note* **Function** includes authority, duty and power (see Legislation Act, dict,
4 pt 1).

5 **excess officer** includes—

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

9 (b) an officer whose services cannot be effectively used because
10 of—

11 (i) technological or other changes in the work methods of
12 the administrative unit; or

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

15 (c) an officer who is not willing to perform duties at a relocated
16 locality where the commissioner has decided the duties usually
17 performed by the officer are to be performed.

18 **not qualified to perform duties**—an officer is **not qualified to**
19 **perform duties** if—

20 (a) the officer does not hold an essential qualification; or

21 (b) the officer is not eligible to hold an essential qualification; or

22 (c) an essential qualification has been suspended, cancelled or
23 otherwise withdrawn from the officer by a court, person or
24 body that is competent to do so.

25 **officer** does not include—

26 (a) an officer whose appointment to the service on probation has
27 not been confirmed; or

28 (b) a chief executive; or

1 (c) an executive.

2 ***underperformance***, by an officer, includes failure by the officer to
3 perform the duties of an office to the standard reasonably required.

4 **26 Sections 143 and 144**

5 *substitute*

6 **143 Redeploy or retire officer from service**

7 (1) This section applies to an officer if the relevant chief executive for
8 the office is satisfied that the officer—

9 (a) is unable to perform duties appropriate to the officer's
10 classification because of physical or mental incapacity; or

11 (b) is not qualified to perform the officer's duties; or

12 (c) is an excess officer.

13 (2) The relevant chief executive must take reasonable steps to identify a
14 vacant position in the chief executive's administrative unit that the
15 officer is capable of performing and qualified to fill.

16 (3) If the chief executive identifies a position under subsection (2) the
17 chief executive must—

18 (a) offer the position to the officer; and

19 (b) if the officer consents to be redeployed—redeploy the officer
20 to the position.

21 (4) The relevant chief executive must refer the matter to the
22 commissioner if—

23 (a) the chief executive does not identify a position under
24 subsection (2); or

25 (b) an officer is offered a position under subsection (3) and does
26 not consent to be redeployed.

-
- 1 (5) If a matter is referred under subsection (4) the commissioner must
2 take reasonable steps to identify a vacant position in the service that
3 the officer is capable of performing and qualified to fill.
- 4 (6) If the commissioner identifies a position under subsection (5) the
5 commissioner must—
- 6 (a) offer the position to the officer; and
- 7 (b) if the officer consents to be redeployed—redeploy the officer
8 to the position.
- 9 (7) The commissioner must refer the matter back to the relevant chief
10 executive if—
- 11 (a) the commissioner does not identify a position under
12 subsection (5); or
- 13 (b) an officer is offered a position under subsection (6) and does
14 not consent to be redeployed.
- 15 (8) On receiving a referral under subsection (7) the relevant chief
16 executive may give the officer written notice of—
- 17 (a) the relevant chief executive's intention to—
- 18 (i) reduce the officer's classification; or
- 19 (ii) retire the officer from the service; and
- 20 (b) the proposed date of effect of the reduction or retirement.
- 21 (9) A decision to give a notice under subsection (8) is an appellable
22 decision.

- 1 **144 Date of effect of redeployment or retirement**
- 2 (1) If the officer agrees with the action proposed under section 143 (8)
- 3 the date of effect of the action is—
- 4 (a) for an officer unable to perform duties appropriate to the
- 5 officer’s classification because of physical or mental
- 6 incapacity—a day agreed in writing between the officer and
- 7 the relevant chief executive; or
- 8 (b) for an officer not qualified to perform duties or an excess
- 9 officer—a day not earlier than the day the notice was given
- 10 under section 143 (8) that is agreed in writing between the
- 11 officer and the relevant chief executive.
- 12 (2) If the officer does not agree with the action proposed under
- 13 section 143 (8) the date of effect of the action is—
- 14 (a) for an officer unable to perform duties appropriate to the
- 15 officer’s classification because of physical or mental
- 16 incapacity—
- 17 (i) if an industrial instrument applies to the officer and states
- 18 a retention period for the circumstances—the day after
- 19 the end of the retention period; or
- 20 (ii) if paragraph (i) does not apply—the latest of the
- 21 following:
- 22 (A) the day stated in the notice given under
- 23 section 143 (8);
- 24 (B) the day 1 month after the day the notice under
- 25 section 143 (8) was given to the officer;
- 26 (C) if the officer appeals, but then withdraws the
- 27 appeal—the day the appeal is withdrawn;
- 28 (D) if the officer appeals and the appeal upholds the
- 29 giving of the notice—the day the appeal is decided;
- 30 and

- 1 (b) for an officer not qualified to perform duties—the latest of the
2 following:
- 3 (i) the day stated in the notice given under section 143 (8);
- 4 (ii) the day 1 month after the day the notice under
5 section 143 (8) was given to the officer;
- 6 (iii) if the officer appeals, but then withdraws the appeal—the
7 day the appeal is withdrawn;
- 8 (iv) if the officer appeals and the appeal upholds the giving of
9 the notice—the day the appeal is decided; and
- 10 (c) for an excess officer—
- 11 (i) if an industrial instrument applies to the officer and states
12 a retention period for the circumstances—the day after
13 the end of the retention period; or
- 14 (ii) if paragraph (i) does not apply—the latest of the
15 following:
- 16 (A) the day stated in the notice given under
17 section 143 (8);
- 18 (B) the day 1 month after the day the notice under
19 section 143 (8) was given to the officer;
- 20 (C) if the officer appeals, but then withdraws the
21 appeal—the day the appeal is withdrawn;
- 22 (D) if the officer appeals and the appeal upholds the
23 giving of the notice—the day the appeal is decided.

1 **27 Section 147**

2 *substitute*

3 **147 Underperformance**

4 The procedures that apply to underperformance by an officer are—

5 (a) if an industrial instrument applies to the officer and includes
6 procedures for underperformance—the underperformance
7 procedures in the industrial instrument; or

8 (b) in any other case—the prescribed underperformance
9 procedures.

10 **28 Long service leave**
11 **Part 7**

12 *omit*

13 **29 Maternity leave**
14 **Part 8**

15 *omit*

16 **30 Discipline**
17 **Part 9**

18 *omit*

31 Section 222*substitute***222 Reappointment of officers taken to have retired under s 221**

- (1) A person who is taken to have retired under section 221 may apply to the relevant chief executive, in writing, for reappointment to the service.
- (2) If the chief executive is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the chief executive must reappoint the applicant to the service to fill—
- (a) the office occupied by the applicant immediately before the applicant is taken to have retired; or
 - (b) if that office is not available—an equivalent office, or an office as nearly as possible equivalent, to that office; or
 - (c) with the written consent of the applicant—another office.
- (3) If the chief executive is not satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent the chief executive must refuse the application.
- (4) If the chief executive refuses an application the chief executive must give the applicant written notice of the refusal and the reasons for the refusal.
- (5) A person who is given notice under subsection (4) may apply to the commissioner for a reconsideration of the decision.
- (6) A person who is reappointed under this section is taken to have—
- (a) continuity of service as prescribed; and
 - (b) recognition of prior service as prescribed.

1 **32 Part 11**

2 *substitute*

3 **Part 11 Review and appeal**

4 **223 Definitions—pt 11**

5 In this part:

6 *appellable decision*—means a decision mentioned in schedule 2,
7 column 3 under a provision of this Act mentioned in column 2 in
8 relation to the decision.

9 *officer*—means an officer or employee in an administrative unit or
10 territory instrumentality, but does not include a chief executive or an
11 executive.

12 *reviewable decision*—means a decision mentioned in schedule 1,
13 column 3 under a provision of this Act mentioned in column 2 in
14 relation to the decision.

15 **224 Reviewable decision—notice and review**

- 16 (1) A person who makes a reviewable decision must give written notice
17 of the decision to an officer mentioned in schedule 1, column 4 in
18 relation to the decision.
- 19 (2) An officer mentioned in schedule 1, column 4 in relation to a
20 decision may apply for review of the decision.

21 **225 Appellable decision—notice and appeal**

- 22 (1) A person who makes an appellable decision must give written notice
23 of the decision to an officer mentioned in schedule 2, column 4 in
24 relation to the decision.
- 25 (2) An officer mentioned in schedule 2, column 4 in relation to a
26 decision may appeal the decision.

33 **New section 249**

insert

249 **Imprisonment**

- (1) This section applies if an officer in the service is—
- (a) in custody awaiting trial for an offence; or
 - (b) in prison following conviction for an offence.
- (2) The officer is taken to be on leave of absence without pay for the period of custody or imprisonment unless—
- (a) the employment of the officer is terminated for misconduct; or
 - (b) the relevant chief executive is satisfied that the officer is experiencing hardship and is to be paid the whole or part of the officers' salary for a stated time.
- (3) If the officers' employment is not terminated for misconduct—
- (a) a period of service before the custody or imprisonment must be regarded as continuous with a period of service after the custody or imprisonment; and
 - (b) the period of custody or imprisonment is not to be regarded as service under this Act or any other Act, unless the commissioner decides otherwise.
- (4) If, immediately before a period of custody or imprisonment, an officer was suspended from duty—the suspension is taken to be removed from the start of the period of custody or imprisonment.
- (5) An officer must not be suspended from duty during a period of custody or imprisonment.

- 1 (6) In this section:
2 *suspended from duty* means suspended under an industrial
3 agreement that applies to the officer and includes a procedure for
4 suspension.

5 **34 New section 250A**

6 *insert*

7 **250A Deduction of monetary penalty**

- 8 (1) This section applies if a person who pays the salary of an officer or
9 employee is notified of any of the following:
10 (a) a monetary penalty has been imposed on an officer or
11 employee under the misconduct procedures that apply to a
12 public employee;
13 (b) an order for the payment of an amount of money by an officer
14 or employee has been made under the misconduct procedures
15 that apply to a public employee;
16 (c) a direction for the deduction of an amount of money by an
17 officer or employee has been made under the misconduct
18 procedures that apply to a public employee.
19 (2) The person who pays the salary of an officer or employee must
20 deduct an amount of salary from the officer or employee unless the
21 person is satisfied that the amount has been paid.
22 (3) A deduction under this section may be made in instalments.
23 (4) A deduction under this section must not be more than $\frac{1}{4}$ of the
24 salary payable to the officer or employee for a pay period.

35 Management standards
Section 251 (5), definition of *specified defence service*

substitute

specified defence service—

(a) means—

(i) continuous full-time service in a part of forces that are Emergency Forces or Reserves under the *Defence Act 1903* (Cwlth); or

(ii) service in a part of those forces for a period determined under regulations made under the *Defence Act 1903* (Cwlth), the *Naval Defence Act 1910* (Cwlth) or the *Air Force Act 1923* (Cwlth); but

(b) does not include service rendered because of a voluntary undertaking and not required under the legislation mentioned in paragraph (a).

36 Schedule 1

substitute

Schedule 1 Reviewable decisions

(see s 224)

column 1 item	column 2 section	column 3 decision	column 4 officer
1	86	promotion to reviewable level office	officer who applied for promotion
2	87 (5)	promotion not in accordance with certain recommendations of joint selection committee	officer who applied for promotion

37 Schedule 2*substitute***Schedule 2 Appellable decisions**

(see s 225)

column 1 item	column 2 section	column 3 decision	column 4 officer
1	84	promotion of officer to vacant office	officer who applied for promotion
2	85	promotion of officer to vacant office	excess officer who applied for transfer
3	87 (5)	promotion not in accordance with certain recommendations of joint selection committee	officer who applied for promotion
4	98	promotion or transfer of officer to training office	<ul style="list-style-type: none"> • officer who applied for promotion • unattached officer who applied for promotion
5	102	temporary transfer to higher office duties	officer who applied for temporary transfer to higher office duties
6	143 (8)	notice to reduce classification or retire from the service	officer given notice

38 Dictionary, new definition of *Aboriginal person or Torres Strait Islander**insert****Aboriginal person or Torres Strait Islander*** means a person who—

- (a) is a descendent of an Aboriginal person or Torres Strait Islander; and
- (b) identifies as an Aboriginal person or Torres Strait Islander; and

- 1 (c) is accepted as an Aboriginal person or Torres Strait Islander by
2 an Aboriginal or Torres Strait Islander community.

3 **39 Dictionary, definition of *action***

4 *omit*

5 **40 Dictionary, new definition of *appeal***

6 *insert*

7 *appeal* means—

- 8 (a) if an industrial instrument applies to the employee or officer
9 and includes an appeal process—appeal in accordance with the
10 appeal process in the industrial instrument; or
11 (b) in any other case—appeal in accordance with the prescribed
12 appeal process.

13 **41 Dictionary, new definitions of *appellable decision* and
14 *appellable level position***

15 *insert*

16 *appellable decision*—see section 223.

17 *appellable level position* means—

- 18 (a) for division 5.5 (Promotion of officers)—see section 82; and
19 (b) for division 5.6 (Transfer of officers)—see section 91.

20 **42 Dictionary, definitions of *appellable promotion* and
21 *approving authority***

22 *omit*

23 **43 Dictionary, definition of *authorised person***

24 *omit*

1 **44 Dictionary, definitions of *category A officer* and *category***
2 ***B officer***

3 *omit*

4 **45 Dictionary, definition of *chief executive***

5 *substitute*

6 *chief executive* means a person employed under section 28 (Chief
7 executives—engagement) or section 30 (Chief executives—
8 temporary contracts) to perform the duties of an office of chief
9 executive.

10 **46 Dictionary, definition of *Commonwealth Long Service***
11 ***Leave Act***

12 *omit*

13 **47 Dictionary, definition of *confinement***

14 *omit*

15 **48 Dictionary, definition of *decision***

16 *omit*

17 **49 Dictionary, definition of *detached officer***

18 *omit*

19 **50 Dictionary, definition of *director***

20 *omit*

21 **51 Dictionary, definition of *disciplinary appeal committee***

22 *omit*

- 1 **52 Dictionary, definition of *employee*, paragraphs (b) and (c)**
2 *omit*
- 3 **53 Dictionary, definition of *employment***
4 *omit*
- 5 **54 Dictionary, new definition of *essential qualification***
6 *insert*
7 *essential qualification*, for part 6 (Retirement and redeployment of
8 officers)—see section 139.
- 9 **55 Dictionary, definition of *excess officer***
10 *substitute*
11 *excess officer*, for part 6 (Retirement and redeployment of
12 officers)—see section 139.
- 13 **56 Dictionary, definition of *industrial award***
14 *omit*
- 15 **57 Dictionary, new definition of *industrial instrument***
16 *insert*
17 *industrial instrument* means an instrument—
18 (a) made under, or recognised by, a workplace law as defined by
19 the *Fair Work Act 2009* (Cwlth); and
20 (b) concerning the relationship between employers and employees.
- 21 **58 Dictionary, definition of *internal appeal officer***
22 *omit*

1 **59 Dictionary, new definition of *joint selection committee***

2 *insert*

3 *joint selection committee* means—

4 (a) for division 5.5 (Promotion of officers)—see section 82; and

5 (b) for division 5.6 (Transfer of officers)—see section 91.

6 **60 Dictionary, definitions of *leave* and *leave officer***

7 *omit*

8 **61 Dictionary, definition of *long service leave***

9 *omit*

10 **62 Dictionary, definition of *maternity leave***

11 *omit*

12 **63 Dictionary, definitions of *Merit Protection Act* and *merit***
13 ***protection agency***

14 *omit*

15 **64 Dictionary, definition of *misconduct***

16 *substitute*

17 *misconduct*, by an officer, means—

18 (a) a failure of the officer to fulfil his or her duty as an officer; or

19 (b) a failure to comply with section 9.

1 **65 Dictionary, new definition of *not qualified to perform***
2 ***duties***

3 *insert*

4 *not qualified to perform duties*, for part 6 (Retirement and
5 redeployment of officers)—see section 139.

6 **66 Dictionary, definition of *office*, paragraphs (c) and (d)**

7 *substitute*

8 (c) for division 5.5 (Promotion of officers)—see section 82; and

9 (d) for division 5.6 (Transfer of officers)—see section 91; and

10 (e) for division 5.7 (Temporary employment)—see section 105.

11 **67 Dictionary, definition of *officer***

12 *substitute*

13 *officer*—

14 (a) means a person who is—

15 (i) an officer because of the *Public Sector Management*
16 *(Consequential and Transitional Provisions) Act 1994*; or

17 (ii) appointed as an officer under division 5.3 (Appointment
18 of officers) or division 5.8 (Miscellaneous); and

19 (b) for part 3 (Management of the service)—see section 17; and

20 (c) for part 6 (Retirement and redeployment of officers)—see
21 section 139; and

22 (d) for part 11 (Review and appeal)—see section 223.

23 **68 Dictionary, definition of *original office***

24 *omit*

- 1 **69 Dictionary, new definition of *principal union***
- 2 *insert*
- 3 *principal union*, for an office, means the relevant union with the
4 largest number of members in the service occupying positions at the
5 same classification level as the office.
- 6 **70 Dictionary, definition of *proceeding***
- 7 *omit*
- 8 **71 Dictionary, definition of *promotion appeal committee***
- 9 *omit*
- 10 **72 Dictionary, definition of *public office***
- 11 *omit*
- 12 **73 Dictionary, definition of *redundancy***
- 13 *omit*
- 14 **74 Dictionary, new definition of *relevant union***
- 15 *insert*
- 16 *relevant union*, for an office, means an employee organisation—
- 17 (a) registered under the *Fair Work (Registered Organisations)*
18 *Act 2009* (Cwlth); and
- 19 (b) entitled to represent the industrial interests of 1 or more people
20 working in the administrative unit in which the office exists;
21 and
- 22 (c) covered by an industrial agreement that applies to 1 or more
23 people working in the administrative unit in which the office
24 exists.

- 1 **75 Dictionary, definition of *relevant staff organisation***
2 *omit*
- 3 **76 Dictionary, definition of *review***
4 *substitute*
5 *review*, for part 5, part 11 and schedule 1, means—
6 (a) if an industrial agreement applies to the employee or officer
7 and includes a review process—review in accordance with the
8 review process in the industrial agreement; or
9 (b) in any other case—review in accordance with the prescribed
10 review process.
- 11 **77 Dictionary, new definition of *reviewable decision***
12 *insert*
13 *reviewable decision*—see section 223.
- 14 **78 Dictionary, definition of *salary***
15 *omit*
- 16 **79 Dictionary, definition of *study bank***
17 *omit*
- 18 **80 Dictionary, definition of *unauthorised absence***
19 *omit*
- 20 **81 Dictionary, new definition of *underperformance***
21 *insert*
22 *underperformance*, for part 6 (Retirement and redeployment of
23 officers)—see section 139.

- 1 **82 Tobacco Act 1927, sections 42F (3) and 42G (3)**
2 *omit*
3 , part 9 (Discipline)
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2010.
- 2 **Notification**
Notified under the Legislation Act on 2010.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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