

# Schedule 1

[s. 3 and 108]

## Entities which are not organisations

Column 1 Item	Column 2 Entity
1	The Governor's Establishment referred to in the <i>Governor's Establishment Act 1992</i>
2	A department of the staff of Parliament referred to in the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i>
3	The electorate office of a member of Parliament
4	Any court or tribunal established or continued under a written law and any judge or officer exercising a judicial function as a member of that court or tribunal
5	The Police Force within the meaning of the <i>Police Act 1892</i>
6	Curtin University of Technology established under the <i>Curtin University of Technology Act 1966</i>
7	Edith Cowan University established under the <i>Edith Cowan University Act 1984</i>
8	Murdoch University established under the <i>Murdoch University Act 1973</i>
9	The University of Notre Dame established under the <i>University of Notre Dame Australia Act 1989</i>
10	The University of Western Australia established under the <i>University of Western Australia Act 1911</i>
11	Gold Corporation and Goldcorp Australia established under the <i>Gold Corporation Act 1987</i> and the Mint within the meaning of that Act
[12	<i>deleted]</i>
13	The R & I Bank of Western Australia Ltd within the meaning of the <i>R &amp; I Holdings Act 1990</i>
14	SGIO Insurance Limited established under the <i>SGIO Privatisation Act 1992</i>
15	Any local government or regional local government or the council of a local government or regional local government
16	Racing and Wagering Western Australia established under the <i>Racing and Wagering Western Australia Act 2003</i>
[17	<i>deleted]</i>
18	Any port authority established under the <i>Port Authorities Act 1999</i>
18	Western Australian Treasury Corporation established by the <i>Western Australian Treasury Corporation Act 1986</i>
19	Water Corporation established by the <i>Water Corporation Act 1995</i>

**Column 1****Item****Column 2****Entity**

- |    |  |
|----|--|
| 20 | Western Australian Greyhound Racing Association established by the <i>Western Australian Greyhound Racing Association Act 1981</i> |
| 21 | Western Power Corporation established by the <i>Electricity Corporation Act 1994</i> .   |

*[Schedule 1 amended by No. 73 of 1990 s. 22(3)(a)(iii); No. 89 of 1994 s. 109; No. 73 of 1995 s. 188; No. 14 of 1996 s. 4; No. 57 of 1997 s. 99(4); No. 5 of 1999 s. 23; No. 58 of 1999 s. 106; No. 24 of 2000 s. 14(13) and 34(2); No. 35 of 2003 s. 23 and 221(3); and in Gazette 16 Sep 1994 p. 4803; 23 Jun 1995 p. 2508; 3 Nov 1995 p. 5204.]*

## Schedule 2

[s. 3 and 108]

### Entities which are SES organisations

Column 1 Item	Column 2 Entity
[1, 2	<i>deleted]</i>
3	Botanic Gardens and Parks Authority, established under the <i>Botanic Gardens and Parks Authority Act 1998</i>
3A	C Y O'Connor College of TAFE, established under the <i>Vocational Education and Training Act 1996</i>
3B	Central TAFE, established under the <i>Vocational Education and Training Act 1996</i>
3C	Central West TAFE, established under the <i>Vocational Education and Training Act 1996</i>
3D	Challenger TAFE, established under the <i>Vocational Education and Training Act 1996</i>
4	Country High School Hostels Authority, established under the <i>Country High School Hostels Authority Act 1960</i>
5	Commissioner of Main Roads, appointed under the <i>Main Roads Act 1930</i>
5A	Curriculum Council, established under the <i>Curriculum Council Act 1997</i>
[5B, 6, 7	<i>deleted]</i>
8	Disability Services Commission, continued under the <i>Disability Services Act 1993</i>
9	East Perth Redevelopment Authority, established under the <i>East Perth Redevelopment Act 1991</i>
[10	<i>deleted]</i>
10AA	Economic Regulation Authority, established under the <i>Economic Regulation Authority Act 2003</i>
10A	Fire and Emergency Services Authority of Western Australia established by the <i>Fire and Emergency Services Authority of Western Australia Act 1998</i>
[11, 12	<i>deleted]</i>
13	Gascoyne Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
[14	<i>deleted]</i>
15	Goldfields-Esperance Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
16	Government Employees Superannuation Board, under the <i>State Superannuation Act 2000</i>
17	Great Southern Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
18	Great Southern TAFE, established under the <i>Vocational Education and Training Act 1996</i>
[18A, 19	<i>deleted]</i>
19A	Insurance Commission of Western Australia, continued under the <i>Insurance Commission of Western Australia Act 1986</i>

<b>Column 1 Item</b>	<b>Column 2 Entity</b>
[20	<i>deleted]</i>
21	Kimberley TAFE, established under the <i>Vocational Education and Training Act 1996</i>
[22	<i>deleted]</i>
23	Kimberley Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
[24, 25	<i>deleted]</i>
26	Lotteries Commission, continued under the <i>Lotteries Commission Act 1990</i>
27	Metropolitan Cemeteries Board, established under the <i>Cemeteries Act 1986</i>
[28	<i>deleted]</i>
[28A	<i>deleted]</i>
28B	Midland Redevelopment Authority established under the <i>Midland Redevelopment Act 1999</i>
29	Mid West Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
30	Minerals and Energy Research Institute of Western Australia established under the <i>Minerals and Energy Research Act 1987</i>
[31	<i>deleted]</i>
32	Peel Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
[33, 34	<i>deleted]</i>
35	Perth Theatre Trust, established under the <i>Perth Theatre Trust Act 1979</i>
36	Pilbara Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
37	Pilbara TAFE established under the <i>Vocational Education and Training Act 1996</i>
[37, 37A	<i>deleted]</i>
37B	Professional Standards Council established under the <i>Professional Standards Act 1997</i>
38	Public Transport Authority of Western Australia, established by the <i>Public Transport Authority Act 2003</i>
39	Rottneest Island Authority, established under the <i>Rottneest Island Authority Act 1987</i>
[40	<i>deleted]</i>
41	Rural Business Development Corporation, preserved and continued by the <i>Rural Business Development Corporation Act 2000</i>
[42, 43	<i>deleted]</i>
44	Small Business Development Corporation, established under the <i>Small Business Development Corporation Act 1983</i>
[44A	<i>deleted]</i>
[44B	<i>deleted]</i>
45	South West Development Commission, established under the <i>Regional Development Commissions Act 1993</i>

<b>Column 1 Item</b>	<b>Column 2 Entity</b>
46	South West Regional College of TAFE, established under the <i>Vocational Education and Training Act 1996</i>
47	State Housing Commission, continued under the <i>Housing Act 1980</i>
47A	State Supply Commission established under the <i>State Supply Commission Act 1991</i>
47B	Subiaco Redevelopment Authority, established under the <i>Subiaco Redevelopment Act 1994</i>
47C	Swan TAFE established under the <i>Vocational Education and Training Act 1996</i>
48	The Agriculture Protection Board of Western Australia, constituted under the <i>Agriculture Protection Board Act 1950</i>
49	The Board of the Art Gallery of Western Australia, referred to in the <i>Art Gallery Act 1959</i>
50	The Library Board of Western Australia, constituted under the <i>Library Board of Western Australia Act 1951</i>
[51-53]	<i>deleted</i>
54	The Western Australian Museum, constituted under the <i>Museum Act 1969</i>
[55]	<i>deleted</i>
56	Water and Rivers Commission established by the <i>Water and Rivers Commission Act 1995</i>
57	West Coast TAFE, established under the <i>Vocational Education and Training Act 1996</i>
[57A]	<i>deleted</i>
58	Western Australian Alcohol and Drug Authority, established under the <i>Alcohol and Drug Authority Act 1974</i>
[59, 60]	<i>deleted</i>
61	Western Australian Land Authority, established under the <i>Western Australian Land Authority Act 1992</i>
[62]	<i>deleted</i>
63	Western Australian Tourism Commission, established under the <i>Western Australian Tourism Commission Act 1983</i>
64	Wheatbelt Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
65	Workers' Compensation and Rehabilitation Commission, continued under the <i>Workers' Compensation and Rehabilitation Act 1981</i>
66	Zoological Parks Authority, established under the <i>Zoological Parks Authority Act 2001</i> .

*[Schedule 2 amended by No. 89 of 1994 s. 109; No. 97 of 1994 s. 16; No. 103 of 1994 s. 18; No. 73 of 1995 s. 188; No. 35 of 1996 s. 29; No. 42 of 1996 s. 71(1); No. 45 of 1996 s. 38; No. 17 of 1997 s. 35; No. 22 of 1997 s. 58; No. 42 of 1998 s. 38; No. 53 of 1998 s. 56; No. 5 of 1999 s. 21; No. 38 of 1999 s. 75; No. 25 of 2000 s. 20 and 34; No. 43 of 2000 s. 59(b); No. 72 of 2000 s. 44; No. 24 of 2001 s. 47; No. 31 of 2003 s. 207(2); No. 67 of 2003 s. 62; and in Gazette 9 Dec 1994 p. 6716; 23 Dec 1994 p. 7122; 7 Feb 1995 p. 423; 30 May 1995 p. 2148-9; 20 Aug 1996 p. 4068; 28 Feb 1997 p. 1334; 24 Mar 1998 p. 1620-1;*

*17 Jul 1998 p. 3798; 24 Nov 1998 p. 6326; 14 May 1999 p. 1933; 24 Sep 1999 p. 4668; 11 Feb 2000 p. 504; 9 May 2000 p. 2236; 11 Aug 2000 p. 4697; 15 Sep 2000 p. 5388; 19 Dec 2000 p. 7298; 29 Dec 2000 p. 7987; 9 Feb 2001 p. 775; 26 Nov 2004 p. 5315-16.]*

## Schedule 3

[s. 12(2), 24(1) and 87(1)]

### Provisions applicable to and in relation to special inquirers

#### 1. Power to summon witnesses and documents

A special inquirer may cause a summons in writing under his or her hand to be served on a person requiring the person to attend the special inquiry concerned, at a time and place named in that summons, and then and there to give evidence and to produce any books, documents or writings in his or her control or custody which the person is required by that summons to produce.

#### 2. Duty of witnesses to continue in attendance

A person who has been served with a summons under clause 1 shall, unless excused by the special inquirer, attend as required by the summons and report himself or herself to the special inquirer from day to day until released from further attendance by the special inquirer.

#### 3. Power to examine on oath or affirmation

- (1) A special inquirer may administer an oath to any person appearing as a witness before the special inquirer, whether the witness has been served with a summons under clause 1 or appears without having been so served, and may examine the witness on oath.
- (2) If a witness to be examined before a special inquirer conscientiously objects to taking an oath, the witness may make an affirmation that he or she so objects and that he or she will state the truth, the whole truth and nothing but the truth to all questions that may be asked of him or her.
- (3) An affirmation made under subclause (2) is of the same force and effect and entails the same liabilities as an oath.
- (4) A person who, without reasonable excuse, refuses or fails —
  - (a) to be sworn or make an affirmation; or
  - (b) to answer a question,when required to do so by a special inquirer commits an offence and is liable to a penalty of \$1 000.
- (5) In subclause (4), subject to subclause (6) —

**“reasonable excuse”** means, in respect of a refusal or failure, such excuse as would excuse a refusal or failure of a similar nature by a witness, or person summoned as a witness, before the Supreme Court.
- (6) Notwithstanding clause 6, a person is not excused from answering any question when required to do so by a special inquirer on the ground that the answer to the question might incriminate or tend to

incriminate the person or render the person liable to a penalty, but that answer is not admissible in evidence against the person who gives it in any proceedings, whether civil or criminal, in any court.

**4. Penalties for non-attendance, non-production of documents, etc.**

- (1) A person who, having been served with a summons under clause 1, does not without reasonable excuse —
  - (a) attend as required by the summons and clause 2; or
  - (b) produce any books, documents or writings in his or her control or custody which he or she was required by the summons to produce,

commits an offence and is liable to a penalty of \$1 000.

- (2) It is a defence to a prosecution for an offence under subclause (1) for, without reasonable excuse, not producing any books, documents or writings if the defendant proves that the books, documents or writings were not relevant to the special inquiry.

- (3) In this clause, subject to subclause (4) —

**“reasonable excuse”** means, in respect of an act or omission, such excuse as would excuse an act or omission of a similar nature by a witness, or person summoned as a witness, before the Supreme Court.

- (4) Notwithstanding clause 6, a person is not excused from producing any books, documents or writings as required by a summons served under clause 1 on the ground that the production of the books, documents or writings might incriminate or tend to incriminate the person or render the person liable to a penalty.

**5. Hindering or misleading special inquirers**

- (1) A person who hinders or obstructs a special inquirer in the exercise of any power conferred on him or her by this Act commits an offence and is liable to a penalty of \$1 000.
- (2) A person who makes a statement or gives an answer which the person knows to be false or misleading in a material particular to a special inquirer acting in the exercise of any power conferred on him or her by this Act commits an offence and is liable to a penalty of \$1 000.

**6. Protection to special inquirers and witnesses**

- (1) A special inquirer has in the performance of his or her functions as a special inquirer the same protection and immunity as a Judge has in the performance of his or her functions as a Judge.
- (2) A witness summoned to attend or appearing before a special inquirer has the same protection and is, in addition to the penalties provided by clauses 3(4), 4(1) and 5, subject to the same liabilities in any civil or



criminal proceeding as a witness in any case tried in the Supreme Court.

**Schedule 4**

[s. 26]

**Form of declaration**

I, ....., do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, Her Heirs and successors, according to law, in the office of Commissioner for Public Sector Standards, and that I will, according to the best of my skill and ability, faithfully, impartially and truly execute that office and perform its duties.

.....  
*(Signature of declarant)*

.....  
*(Date)*

## Schedule 5

[s. 108 and 110(2)]

### General transitional provisions

#### 1. References to Commissioner and Assistant Commissioner in Schedule 5

In this Schedule, a reference to —

- (a) the Commissioner is a reference to the Commissioner; or
- (b) the Assistant Commissioner is a reference to the Assistant Commissioner,

within the meaning of the repealed Act.

#### 2. Public service notices

- (1) Any public service notices having effect under the repealed Act immediately before the commencement of this clause continue in effect, with such modifications as are necessary, after that commencement as if they were public service notices having effect under this Act until repealed by public service notices so having effect.
- (2) The repeal under subclause (1) of any public service notices shall be accompanied on the day of that repeal by a notification of that repeal made by the Minister in public service notices.

#### 3. Public Service Commissioner and Assistant Public Service Commissioner

- (1) Until the expiry date of his or her contract of service in force immediately before the commencement of this clause, the Commissioner or the Assistant Commissioner is entitled to employment in the Public Service at the same level of classification as he or she held under that contract of service.
- (2) If the Commissioner or the Assistant Commissioner, immediately before his or her appointment under section 6(1) or 6(3), as the case requires, of the repealed Act, held an office in the Public Service under and subject to the repealed Act, he or she is entitled to employment in the Public Service, at a level of classification determined by the Governor, on and from the expiry date referred to in subclause (1).
- (3) The level of classification determined under subclause (2) shall not be lower than the level that the person concerned held immediately before being appointed to the office of Commissioner or Assistant Commissioner, as the case may be.
- (4) A person who has an entitlement under subclause (2) to employment may elect in writing to take compensation under section 59 instead of exercising that entitlement.
- (5) On an election under subclause (4) taking effect, the person concerned —

- (a) ceases to have the entitlement under subclause (2); and
- (b) becomes entitled to compensation in accordance with section 59 as if he or she were a person to whom that section applied.

#### **4. General savings**

Subject to this Act —

- (a) an office created under section 14(3) of the repealed Act and in existence immediately before the commencement of this clause continues in existence after that commencement as if created under this Act;
- (b) any classification of offices or work in existence under section 14(3) of the repealed Act immediately before the commencement of this clause continues in existence after that commencement as if done under this Act;
- (c) any officer appointed and holding office under section 14(3) of the repealed Act immediately before the commencement of this clause continues to hold office after that commencement as if employed under Part 3 as a public service officer; and
- (d) any determination under section 14(3) of the repealed Act of remuneration —
  - (i) applicable to particular offices or classes of office; or
  - (ii) for officers, and of the conditions under which that remuneration is payable,

which was in force immediately before the commencement of this clause continues in force after that commencement as if made under this Act in respect of the relevant offices or classes of office, or public service officers, as the case requires.

#### **5. Administrative instructions**

- (1) Administrative instructions which were in operation under section 19 of the repealed Act immediately before the commencement of this clause continue in operation, with such modifications as are necessary, after that commencement until repealed by —
  - (a) a public sector standard or code of ethics established under this Act;
  - (b) approved procedures under this Act; or
  - (c) regulations made under section 108.
- (2) The repeal under subclause (1) of any administrative instructions shall be accompanied on the day of that repeal by a notification of that repeal made by the Minister in public service notices.

## **6. Departments and sub-departments**

- (1) A department in existence under section 21 of the repealed Act immediately before the commencement of this clause continues in existence, subject to this Act, as a department under this Act.
- (2) A sub-department in existence under section 22 of the repealed Act immediately before the commencement of this clause is abolished and, after that commencement, its officers and offices within the meaning of the repealed Act continue, subject to this Act, within the department of which that sub-department formed a part.

## **7. Absorbed personnel**

- (1) If section 25 of the repealed Act applied to an appointment or right of appeal referred to in that section immediately before the commencement of this clause, section 37 applies after that commencement to —
  - (a) that appointment as if that appointment were an appointment to which section 37(1); or
  - (b) that right of appeal as if that right of appeal were a right of appeal to which section 37(2),

of this Act applies.

- (2) Without limiting the generality of subclause (1), any proceedings in respect of a right of appeal to which section 25 of the repealed Act applied which were pending immediately before the commencement of this clause may be heard and determined as if they were proceedings in respect of a right of appeal to which section 37(2) applies.

## **8. Inefficiency**

- (1) If proceedings under section 26 of the repealed Act (including any appeal referred to in subsection (5) of that section) have not been —
  - (a) completed under that section; or
  - (b) abandoned,

before the commencement of this clause, the repealed Act continues to apply to and in relation to those proceedings as if this Act had not been enacted until those proceedings are completed or abandoned.

- (2) An increment of remuneration which was being withheld under section 26(3)(a) of the repealed Act immediately before the commencement of this clause shall, subject to the outcome of any appeal referred to in section 26(5) of the repealed Act, continue to be withheld for the remainder of the period for which it would, but for the repeal of the repealed Act, have been withheld.
- (3) For the purposes of this clause, a reference in section 26 of the repealed Act to the Commissioner shall be construed as a reference to the employing authority of the public service officer concerned.

- (4) This Act applies to the result of proceedings completed under this clause as if that result had occurred under section 79.

**9. Section 30 appointments and engagements**

Subject to this Act, an appointment or engagement made under section 30 of the repealed Act and subsisting immediately before the commencement of this clause continues in force, after that commencement, as if —

- (a) in the case of the appointment of an officer —
- (i) on a full-time or part-time basis, that appointment had been made under section 64; or
  - (ii) on a casual basis, that appointment had been made under section 100(2);
- or
- (b) that engagement had been made under section 100(1).

**10. Section 30A appointments**

- (1) If an appointment of a person made under section 30A of the repealed Act subsists immediately before the commencement of this clause —
- (a) the appointment continues in force; and
  - (b) the person has the same right of reappointment or appointment,
- after that commencement, as if section 30A of the repealed Act were still in force.
- (2) For the purposes of subclause (1), a reference in section 30A of the repealed Act to the Commissioner is a reference to the employing authority of the person concerned.

*[11. Repealed]*

**12. Temporary officers and section 32 applications**

- (1) A person who was, immediately before the commencement of this clause, a temporary officer within the meaning of the repealed Act is a term officer whose term of appointment expires 3 months after that commencement.
- (2) If an application made under section 32 of the repealed Act has not been —
- (a) determined under that section; or
  - (b) abandoned,

before the commencement of this clause, that section continues to apply to and in relation to that application as if this Act had not been enacted and references in that section to the Commissioner were

references to the relevant employing authority within the meaning of this Act.

- (3) If an application referred to in subclause (2) is granted, the applicant becomes, subject to the outcome of any appeal referred to in section 32(2) of the repealed Act, by virtue of that grant a permanent officer within the meaning of this Act.

### **13. Senior Executive Service**

- (1) After the commencement of this clause, the Senior Executive Service referred to in section 35 of the repealed Act continues in existence under Division 2 of Part 3.
- (2) A declaration in force under section 35(3) or (5) of the repealed Act immediately before the commencement of this clause continues in force after that commencement as if it were a declaration in force under section 43(3) or (4) and may be repealed or amended accordingly.
- (3) A person who was, immediately before the commencement of this clause —
  - (a) serving in a department, sub-department or organisation within the meaning of the repealed Act; and
  - (b) employed by the Commissioner by virtue of section 35(8) of the repealed Act,

is, after that commencement, an executive officer employed by the relevant employing authority under this Act, and references to the Commissioner in any current contract of employment between that person and the Commissioner shall for that purpose be construed as references to that employing authority.

- (4) A person who becomes by virtue of subclause (3) an executive officer retains, despite any provision of this Act but subject to Part 6 and regulations referred to in section 94, his or her terms and conditions of service as if the repealed Act had not been repealed, and sections 52, 56 and 57 do not apply to him or her, until the person is —
  - (a) in the case of a chief executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
  - (b) in the case of a senior executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office, or to the performance of other functions, in the Senior Executive Service,

and enters into a contract of employment under Division 2 of Part 3.

- (4a) A contract referred to in subclause (3) in respect of a person who immediately before the commencement of this clause was a chief

executive officer, or of a person referred to in subclause (14b), may be varied at any time by a further contract in writing entered into, and signed by, the person and the person's employing authority but —

- (a) the term of the original contract cannot be extended; and
  - (b) any variance of the remuneration to be accorded to the person must be in accordance with the arrangements prescribed for the purposes of section 57(1)(b).
- (5) A person who becomes by virtue of subclause (3) a chief executive officer shall, within 12 months after the commencement of this clause and as soon as practicable after the commencement of each financial year afterwards, enter in accordance with approved procedures into an agreement with the responsible authority of his or her agency concerning the performance criteria to be met by the chief executive officer during the period to which that agreement relates, and section 47(2), (3) and (4) applies with any necessary modifications to and in relation to that person.
- (6) When the term of office of a person who becomes by virtue of subclause (3) an executive officer expires or is terminated and that person is neither reappointed nor appointed as referred to in subclause (4)(a) or (b), whichever is applicable, that person is entitled to employment in a department or organisation at the same level of classification as he or she held immediately before the expiry or termination of that term of office.
- (7) When the term of office of a person who becomes by virtue of subclause (3) an executive officer, and who enters into a contract of employment as referred to in subclause (4), expires or is terminated and that person —
- (a) in the case of a chief executive officer, is neither reappointed to the same office of chief executive officer nor appointed to another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
  - (b) in the case of a senior executive officer, is neither reappointed to the same office of senior executive officer nor appointed to another office of senior executive officer or to the performance of other functions in the Senior Executive Service,

that person is entitled to employment in a department or organisation at the same level of classification as he or she held immediately before entering into that contract of employment.

- (8) A person who has an entitlement under subclause (6) or (7) to employment may elect in writing to take compensation under section 59 instead of exercising that entitlement.



- (9) On an election under subclause (8) taking effect, the person concerned —
- (a) ceases to have the entitlement under subclause (6) or (7); and
  - (b) becomes entitled to compensation under section 59 as if he or she were a person to whom that section applied.
- (10) A person is not entitled to employment in a department or organisation under subclause (6) or (7) if —
- (a) his or her employment in the Public Sector was terminated under this Act for substandard performance or he or she was dismissed under this Act for breach of discipline;
  - (b) he or she held, immediately before the commencement of this clause, an appointment under section 41(1)(b) or 42C(2)(b) of the repealed Act; or
  - (c) he or she, being the holder of an office referred to in section 6(1)(d) or (e) of the *Salaries and Allowances Act 1975* —
    - (i) does not elect to retain a right of return under section 58; or
    - (ii) revokes an election under section 58(2)(c).
- (11) A person —
- (a) who held, immediately before the commencement of this clause, an appointment under section 41(1)(b) or 42C(2)(b) of the repealed Act; and
  - (b) whose contract of employment is, after the commencement of this clause, terminated otherwise than by the effluxion of time,
- is entitled to such compensation, if any, as the Minister determines.
- (12) A person is not entitled to compensation under subclause (11) if his or her employment in the Public Sector was terminated under this Act for substandard performance or he or she was dismissed under this Act for breach of discipline.
- (13) The maximum compensation payable to a person under subclause (11) is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before the day on which his or her contract of employment was terminated.
- (14) A person to whom compensation is paid under subclause (11) and who is subsequently —
- (a) employed in a department or organisation; or
  - (b) engaged by an employing authority under a contract for services, whether under section 100(1) or another written law,

before the expiry of such period commencing on the payment of the compensation as is prescribed in relation to the amount of the compensation shall forthwith refund to the Treasurer of the State an amount that bears to the amount of the compensation the same proportion as the unexpired portion of that period bears to that period, and section 59(5) applies with any necessary modifications to and in relation to that person.

- (14a) If the process of appointing or reappointing a chief executive officer under Division 2, Part III of the repealed Act has been commenced but not completed or discontinued before the commencement of this clause, that Division continues to apply to that process as if this Act had not been enacted.
- (14b) Subclause (3) applies to a person who is appointed under a process referred to in subclause (14a) if, on being appointed, the person becomes an employee of the Commissioner by virtue of section 35(8) of the repealed Act.
- (14c) Subclause (5) applies to a person who is appointed under a process referred to in subclause (14a).
- (14d) For the purposes of subclause (14a), the Commissioner is taken to continue in office under the repealed Act until the process referred to in that subclause has been completed under Division 2 of Part III of the repealed Act or discontinued.
- (15) If proceedings under section 42A of the repealed Act have not been —
  - (a) completed under that section; or
  - (b) abandoned,

before the commencement of this clause, the repealed Act continues to apply to and in relation to those proceedings as if this Act had not been enacted until those proceedings are completed or abandoned.

- (16) An increment of remuneration that was being withheld under section 42A(1)(a) of the repealed Act immediately before the commencement of this clause shall continue to be withheld for the remainder of the period for which it would, but for the repeal of the repealed Act, have been withheld.
- (17) For the purposes of subclauses (15) and (16), a reference in section 42A of the repealed Act to the Commissioner shall be construed as a reference to the employing authority of the executive officer concerned.

- (18) An officer directed to act under section 42B of the repealed Act for a particular period and acting under that direction immediately before the commencement of this clause shall be regarded —
- (a) in the case of an officer directed to act in the office of a chief executive officer, as directed under section 51(1) to act in the office; or
  - (b) in the case of an officer directed to act in the office of a senior officer within the meaning of the repealed Act, as directed under section 107(1) to perform the functions under this Act,
- of the corresponding executive officer for the remainder of that period.
- (19) On the commencement of this clause, the powers conferred by section 42E of the repealed Act are to be exercised by the relevant employing authority in accordance with such arrangements as are prescribed for the purposes of section 57(1)(b).
- (20) This clause does not prevent the application of the provisions of this Act relating to the management of redeployment and redundancy of employees to a person who is entitled to employment in a department or organisation under this clause.
- (21) Section 43(9) and (10) apply to a person referred to in subclause (3) as if those subsections had been in operation when the person became employed by virtue of section 35(8) of the repealed Act.

**14. Senior officers**

A person who, immediately before the commencement of this clause, occupied a senior office designated or referred to in section 39 of the repealed Act is, after that commencement, a senior executive officer within the meaning of this Act at the same level of classification as applied to him or her immediately before that commencement.

**15. Proceedings on charges**

- (1) If proceedings under Part IV of the repealed Act (including any appeal referred to in section 47 of the repealed Act) have not been —
- (a) completed under that Part; or
  - (b) abandoned,

before the commencement of this clause, the repealed Act continues to apply to and in relation to those proceedings as if this Act had not been enacted until those proceedings are completed or abandoned.

- (2) For the purposes of this clause, the Commissioner and each officer involved in proceedings to which subclause (1) applies are taken to continue in office under the repealed Act until those proceedings are completed under Part IV of the repealed Act or abandoned.

- (2a) For the purposes of conducting proceedings under subclause (1), the Commissioner may continue to exercise all his functions under the repealed Act, including his power of delegation under section 12 of the repealed Act.
- (3) This Act applies to the result of proceedings completed under subclause (1) as if that result had occurred under Part 5.

**16. Long service leave and recreation leave**

- (1) An officer within the meaning of the repealed Act to whom had accrued, immediately before the commencement of this clause, an entitlement to —
  - (a) a particular period of long service leave; or
  - (b) a particular period of recreation leave,or both, retains his or her entitlement to that period or those periods as a public service officer within the meaning of this Act.
- (2) If an officer referred to in subclause (1) had not, immediately before the commencement of this clause, completed the period of service required for the accrual of an entitlement referred to in that subclause, that incomplete period of service shall, after that commencement, be taken into account for the purpose of ascertaining the date of accrual of that entitlement.

**17. Intergovernmental arrangements**

An arrangement in force under section 59A of the repealed Act immediately before the commencement of this clause continues in force after that commencement as if that section had not been repealed, and may be amended or terminated in accordance with its provisions.

**18. Regulations**

- (1) Section 38 of the *Interpretation Act 1984* applies to regulations in force under section 60 of the repealed Act immediately before the commencement of this clause.
- (2) Without limiting subclause (1), regulations made for a particular purpose under the repealed Act have effect for a similar purpose under this Act.

**19. Employment of public service officers other than executive officers**

A person who is taken by virtue of this Schedule to be a public service officer other than an executive officer is taken to be employed by the employing authority of the department or organisation in which that person is serving and, if that person was immediately before the commencement of this clause a party to a current contract of employment entered into with the Commissioner under the repealed Act, that contract continues in existence subject to this Act and

references in that contract to the Commissioner shall be construed as references to the relevant employing authority.

**20. Public Service Award 1992**

References to the Commissioner in the award —

- (a) made by the Industrial Commission under the *Industrial Relations Act 1979*; and
- (b) known as the Public Service Award 1992,

shall be construed as references to the employing authority of the appropriate department or organisation.

**21. Schedule 5 supplementary to *Interpretation Act 1984***

This Schedule is in addition to, and does not derogate from the application to this Act of, the *Interpretation Act 1984*.

*[Schedule 5 amended by No. 1 of 1995 s. 35 and Gazette 16 Sep 1994 p. 4804; 9 Dec 1994 p. 6715; 2 May 1995 p. 1691; 27 Sep 1996 p. 4827; 19 Nov 1999 p. 5795.]*

## Schedule 6

[s. 108 and 111]

### Transitional provisions relating to ministerial staff

#### 1. Ministerial staff

(1) A person who was, immediately before the commencement of this clause —

- (a) employed, whether by way of appointment under section 74 of the *Constitution Act 1889* or section 30(1)(a) of the repealed Act or of contract of service, to assist a political office holder within the meaning of this Act; and
- (b) assisting that political office holder,

continues after that commencement to be employed within the meaning of paragraph (a), but is taken to be an employee, and to have the Minister as his or her employing authority, for the purposes of this Act, and section 74 applies to and in relation to that person as if he or she were a ministerial officer.

(2) A person who was, immediately before the commencement of this clause —

- (a) a permanent officer within the meaning of the repealed Act serving in the department known as the Ministry of the Premier and Cabinet; and
- (b) assisting a political office holder within the meaning of this Act,

is taken to be the occupier of a special office created under section 36 as read with section 75(1) for the purpose of assisting the political office holder referred to in paragraph (b).

(3) A person who was, immediately before the commencement of this clause —

- (a) an officer within the meaning of the repealed Act or an employee of any State trading concern, State instrumentality, State agency or public statutory body, corporate or unincorporate, which was established or continued under a written law;
- (b) seconded to assist a political office holder within the meaning of this Act; and
- (c) assisting the political office holder referred to in paragraph (b),

is taken to be an employee referred to in section 75(2)(b).

(4) A person who was, immediately before the commencement of this clause, engaged under a contract for services to assist a political office

holder within the meaning of this Act is taken to be engaged under a contract for services under section 100(1) to assist that political office holder.

## **2. Remuneration and terms and conditions of ministerial staff**

(1) A person referred to in clause 1 is taken to retain the remuneration and terms and conditions (including eligibility to apply for an office, post or position in a department or organisation) with and under which he or she assisted the relevant political office holder within the meaning of this Act immediately before the commencement of this clause.

(1a) A person who —

- (a) after the commencement of this clause is employed as a ministerial officer or engaged under a contract for services under section 100(1) to assist a political office holder; and
- (b) immediately before being so employed or engaged was a person referred to in clause 1,

retains the eligibility that person had immediately before the commencement of this clause to apply for an office, post or position in a department or organisation.

(2) Without limiting subclause (1), but subject to subclause (3), a person referred to in clause 1(1) who was, immediately before the commencement of this clause, employed by way of a contract of service is entitled, if that contract is terminated before the day specified in that contract as the day on which that contract expires, to such compensation, if any, as the Minister determines.

(3) The maximum compensation payable to a person under subclause (2) is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before the day referred to in subclause (2).

(4) Without limiting subclause (1), a person referred to in clause 1(2) whose salary has exceeded the level referred to in section 75(2)(a) continuously for at least 2 years is entitled to have his or her level of classification reviewed by such person or persons as is or are appointed by the Minister within the meaning of this Act.

(5) Any period —

- (a) which ended immediately before the commencement of this clause; and
- (b) during which the salary of a person referred to in clause 1(2) continuously exceeded the level referred to in section 75(2)(a),

is to be taken into account for the purpose of ascertaining any entitlement under subclause (4) of the person referred to in paragraph (b).

- (6) Without limiting subclause (1), any period —
- (a) which ended immediately before the commencement of this clause; and
  - (b) during which the salary of a person referred to in clause 1(3) continuously exceeded the level referred to in section 75(2)(a),

is to be taken into account for the purpose of ascertaining any entitlement of the person referred to in paragraph (b) under section 75(3).

**3. Restriction on subsequent employment in departments or organisations**

- (1) A person referred to in clause 1(4) is not, while he or she is taken to remain engaged under a contract for services under section 100(1), eligible to apply for, or to be appointed to, any office, post or position in a department or organisation, unless that office, post or position is advertised in a daily newspaper circulating throughout the State.
- (2) A person referred to in clause 2(1a) and engaged under a contract for services under section 100(1) is not, while that person remains so engaged, eligible to apply for, or to be appointed to, any office, post or position in a department or organisation, unless that office, post or position is advertised in a daily newspaper circulating throughout the State.

**4. Schedule 6 supplementary to *Interpretation Act 1984***

This Schedule is in addition to, and does not derogate from the application to this Act of, the *Interpretation Act 1984*.

*[Schedule 6 amended by No. 57 of 1997 s. 99(5) and Gazette 5 Jul 1996 p. 3251-2.]*