



Western Australia

## **Public Sector Management Act 1994**

Compare between:

[01 Oct 2010, 08-g0-01] and [05 Nov 2010, 08-h0-01]



Western Australia

## **Public Sector Management Act 1994**

**An Act to provide for the administration of the Public Sector of Western Australia and the management of the Public Service and of other public sector employment; to repeal the *Public Service Act 1978*; and to provide for related matters.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Public Sector Management Act 1994*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Terms used**

- (1) In this Act, unless the contrary intention appears —

**agency** means —

- (a) department; or
- (b) SES organisation;

**appoint** includes promote;

**approved**, in relation to a procedure or classification system, means for the time being approved under subsection (2);

**breach of discipline** means breach of discipline referred to in section 80;

**chief employee** means —

- (a) chief employee of a non-SES organisation;
- (b) chief employee of an agency who is not a member of the Senior Executive Service; or
- (c) person deemed to be a chief employee under regulations referred to in section 4;

**chief executive officer** means —

- (a) person holding office under Division 2 of Part 3 as the chief executive officer of an agency; or
- (b) person deemed to be a chief executive officer under regulations referred to in section 4;

**classification system** means system relating either to an office, post or position or to an employee that provides a basis for the remuneration of employees by identifying the level which correctly reflects the functions and responsibilities of the office, post or position or of the employee;

**code of conduct** means code of conduct developed under section 21(1);

**code of ethics** means code of ethics established under section 21(1);

**Commissioner** means person for the time being holding the office of Commissioner for Public Sector Standards created by section 16(1);

**compensation**, in relation to an employee, does not include any payment made —

- (a) under section 56(5)(b) or 72(2)(b);
- (b) in lieu of notice under regulations referred to in section 94 in respect of an employee who is made redundant; or
- (c) in lieu of an accrued or accruing entitlement to leave;

**department** means department established under section 35;

**document** includes tape, disc or other device or medium on which information is recorded or stored electronically, mechanically, photographically or otherwise;

**employee** means person employed in the Public Sector by or under an employing authority;

**employing authority** has the meaning given by section 5;

**executive officer** means chief executive officer or senior executive officer;

**function** has the meaning given by section 5 of the *Interpretation Act 1984*;

**Industrial Commission** has the meaning given to “Commission” by the *Industrial Relations Act 1979*;

**Minister** means Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor;

**ministerial office** means one or more ministerial officers appointed to assist a particular political office holder;

**ministerial officer** means person appointed under section 68 as a ministerial officer;

**non-SES organisation** means entity which consists of —

- (a) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body or office, post or position that is established or continued for a public purpose under a written law; and
- (b) persons employed by or for the purposes of that body or holder under that written law or another written law,

and which neither is nor includes —

- (c) an SES organisation; or
- (d) an entity specified in column 2 of Schedule 1;

**organisation** means non-SES organisation or SES organisation;

**performance agreement** means agreement referred to in section 47(1) or clause 13(5) of Schedule 5;

**permanent officer** means person appointed under section 64(1)(a) for an indefinite period;

**political office holder** means —

- (a) Minister of the Crown;
- (b) Parliamentary Secretary of the Cabinet;
- (c) Parliamentary Secretary holding office under section 44A of the *Constitution Acts Amendment Act 1899*;
- (d) Government Whip;
- (e) Leader of the Opposition in the Legislative Council;

- (f) Leader of the Opposition in the Legislative Assembly;  
or
- (g) person, if any, who, not being a Minister of the Crown, is the leader of a party in the Legislative Assembly of at least 5 members, other than a party led by the Premier or by the Leader of the Opposition referred to in paragraph (f);

**Public Sector** means all —

- (a) the agencies;
- (b) the ministerial offices; and
- (c) the non-SES organisations;

**public sector body** means agency, ministerial office or non-SES organisation;

**public sector standard** means public sector standard established under section 21(1);

**Public Service** means Public Service as constituted under section 34;

**public service notices** means notices in writing issued by or under the authority of the Minister for the purposes of this Act;

**public service officer** means executive officer, permanent officer or term officer employed in the Public Service under Part 3;

**remuneration** has the meaning given by the *Salaries and Allowances Act 1975*;

**repealed Act** means *Public Service Act 1978*;

**respondent** means person —

- (a) suspected within the meaning of section 81(1) of having committed; or
- (b) found to have committed,  
a breach of discipline;

**responsible authority**, in relation to a department or organisation, means —

- (a) board, committee or other body for the time being administering the department or organisation; or
- (b) if there is no board, committee or other body referred to in paragraph (a), Minister of the Crown responsible for the department or organisation,

or, when used otherwise than in relation to a department or organisation, means responsible authority of any department or organisation;

**senior executive officer** means member of the Senior Executive Service other than a chief executive officer;

**Senior Executive Service** means Senior Executive Service as constituted under section 43;

**SES organisation** means entity which consists of —

- (a) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body or office, post or position —
  - (i) established or continued for a public purpose under a written law; and
  - (ii) specified in column 2 of Schedule 2;and
- (b) persons employed by or for the purposes of that body or holder under that written law or another written law;

**special disciplinary inquiry** means special disciplinary inquiry directed to be held under section 86;

**special inquirer** means person or persons directed under section 11 to hold a special inquiry;

**special inquiry** means special inquiry directed to be held under section 11;

**substandard performance** means performance which is substandard within the meaning of section 79;



**term officer** means person appointed under section 64(1)(b) for a term not exceeding 5 years;

**this Act** includes subsidiary legislation in force under this Act.

- (2) The Minister may in writing —
- (a) approve, subject to such conditions as he or she thinks fit to impose, any procedure or classification system for the purposes of the definition of “approved” in subsection (1); and
  - (b) amend or repeal an approval given under this subsection.
- (3) For the purposes of the definition of “responsible authority” in subsection (1), a department —
- (a) which is established to support an organisation; and
  - (b) which is not prescribed as an independent department for the purposes of this subsection,

is to be taken to be a part of the organisation referred to in paragraph (a).

- (4) A reference in this Act to the Minister of the Crown responsible for a public sector body of a particular kind is a reference to the Minister of the Crown to whom the administration of the public sector body of that kind is for the time being committed by the Governor.
- (5) A reference in this Act —
- (a) to a person being employed by an employing authority; or
  - (b) in relation to a person, to an employing authority as being his or her employing authority,

shall, if the person was appointed under this Act for and on behalf of the Crown, be construed as a reference to the person being so employed for and on behalf of the Crown or as a reference, in relation to the person, to the employing authority

as being his or her employing authority for and on behalf of the Crown, as the case requires.

**4. Persons deemed to be chief executive officers or chief employees**

- (1) The Commissioner is deemed to be the chief executive officer of the department principally assisting the Commissioner in the performance of his or her functions.
- (2) The Auditor General is deemed to be the chief executive officer of the department known as the Office of the Auditor General.
- (3) The Commissioner of Police is deemed to be the chief executive officer of the department known as the Police Department<sup>2</sup>.
- (4) The Electoral Commissioner is deemed to be the chief executive officer of the department known as the Western Australian Electoral Commission.
- (5) Regulations made under section 108 may provide that the holder of such office, post or position under a written law as is specified by them is deemed to be the chief executive officer or chief employee of such department or organisation as is so specified.
- (6) Despite this section, Parts 3, 5 and 6 do not apply to or in relation to a person who is the Commissioner, the Auditor General, the Commissioner of Police or the Electoral Commissioner or the holder of an office, post or position deemed under regulations referred to in subsection (5) to be a chief executive officer or chief employee, except insofar as those Parts confer powers or impose duties on chief executive officers or chief employees, as the case requires, in their capacity as employing authorities.

**5. Employing authorities defined**

(1) For the purposes of this Act, but subject to this section —

*employing authority* means, in relation to —

- (a) a chief executive officer (other than a chief executive officer referred to in section 4), the Minister;
- (b) a chief employee (other than a chief employee referred to in section 4), the person or board, committee or other body specified by a written law as being the employer of the chief employee;
- (c) a department or organisation or an employee (other than a chief executive officer or chief employee) employed in a department or organisation —
  - (i) subject to subparagraph (iii), if a chief executive officer or chief employee is the accountable authority of the department or organisation, the chief executive officer or chief employee;
  - (ii) subject to subparagraph (iii), if a board, committee or other body established under a written law is the accountable authority of the department or organisation, that board, committee or other body; or
  - (iii) if a written law confers on a person or board, committee or other body the power to appoint or employ staff, the person or board, committee or other body;

or

(d) a ministerial office or a ministerial officer, the Minister, or, when used otherwise than in relation to a public sector body or a chief executive officer, chief employee, employee or ministerial officer, means employing authority of any public sector body, chief executive officer, chief employee, employee or ministerial officer.

- (2) For the purposes of this section —
- (a) a department —
    - (i) which is established to support an organisation (other than an organisation which is a Minister of the Crown); and
    - (ii) which is not prescribed as an independent department for the purposes of this paragraph, is to be taken to be a part of the organisation referred to in subparagraph (i); and
  - (b) **accountable authority** has the meaning given by section 3 of the *Financial Management Act 2006*.
- (3) Despite anything in paragraph (c) of the definition of “employing authority” in subsection (1), regulations made under section 108 may provide that the holder of an office, post or position, or a board, committee or other body, created or established under a written law is the employing authority of a department or organisation or of an employee (other than a chief executive officer) employed in a department or organisation.

*[Section 5 amended by No. 77 of 2006 s. 6 and 7.]*

## **6. Application**

- (1) This Act binds the Crown in right of the State.
- (2) Except to the extent to which a provision of this Act specifies otherwise, the *Industrial Relations Act 1979* applies to and in relation to matters dealt with by this Act.

## **Part 2 — Administration of Public Sector**

### **Division 1 — General principles**

#### **7. General principles of public administration and management**

The principles of public administration and management to be observed in and in relation to the Public Sector are that —

- (a) the Public Sector is to be administered in a manner which emphasises the importance of service to the community;
- (b) the Public Sector is to be so structured and organised as to achieve and maintain operational responsiveness and flexibility, thus enabling it to adapt quickly and effectively to changes in government policies and priorities;
- (c) public sector bodies are to be so structured and administered as to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay;
- (d) administrative responsibilities are to be clearly defined and authority is to be delegated sufficiently to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities;
- (e) public sector bodies should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in view;
- (f) resources are to be deployed so as to ensure their most efficient and effective use;
- (g) proper standards of financial management and accounting are to be maintained at all times; and

- (h) proper standards are to be maintained at all times in the creation, management, maintenance and retention of records.

**8. General principles of human resource management**

- (1) The principles of human resource management that are to be observed in and in relation to the Public Sector are that —
  - (a) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;
  - (b) no power with regard to human resource management is to be exercised on the basis of nepotism or patronage;
  - (c) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;
  - (d) there is to be no unlawful discrimination against employees or persons seeking employment in the Public Sector on a ground referred to in the *Equal Opportunity Act 1984* or any other ground; and
  - (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*.
- (2) In matters relating to —
  - (a) the selection, appointment, transfer, secondment, classification, remuneration, redeployment, redundancy or termination of employment of an individual employee; or
  - (b) the classification of a particular office, post or position,in its department or organisation, an employing authority is not subject to any direction given, whether under any written law or otherwise, by the Minister of the Crown responsible for the department or organisation, but shall, subject to this Act, act independently.

*[Section 8 amended by No. 30 of 1995 s. 48.]*

**9. General principles of official conduct**

The principles of conduct that are to be observed by all public sector bodies and employees are that they —

- (a) are to comply with the provisions of —
  - (i) this Act and any other Act governing their conduct;
  - (ii) public sector standards and codes of ethics; and
  - (iii) any code of conduct applicable to the public sector body or employee concerned;
- (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and
- (c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.

**Division 2 — Functions, etc. of Minister**

**10. Functions of Minister, and ancillary powers**

- (1) The functions of the Minister are —
  - (a) to promote the overall effectiveness and efficiency of the Public Sector, having regard to the principles set out in section 7;
  - (b) to advise other Ministers of the Crown on —
    - (i) structural changes;
    - (ii) programmes for management improvement; and
    - (iii) policies, practices and procedures relating to any aspect of management,which, in the opinion of the Minister, should be implemented in order to improve the effectiveness and efficiency of the whole or any part of the Public Sector;

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- (c) to cause to be carried out planning for the future management and operation of the whole or any part of the Public Sector;
  - (d) to arrange for reviews to be conducted, on the initiative of the Minister or at the request of another Minister of the Crown, in respect of the functions, management or operations of one or more public sector bodies; and
  - (e) to perform such other functions as are conferred or imposed on the Minister by this Act.
- (2) The Minister has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Minister.
- (3) A review may be conducted under subsection (1)(d) in respect of —
- (a) the functions, management or operations of one public sector body;
  - (b) a part only of the functions, management or operations of one public sector body; or
  - (c) the functions, management or operations of more than one public sector body in related matters.
- (4) For the purpose of the performance of his or her functions under subsection (1)(d), the Minister, or an employee authorised in writing by the Minister, may —
- (a) enter the premises of any public sector body;
  - (b) require the production of and examine any book, document or writing in the custody of any employee of a public sector body; and
  - (c) require any employee of a public sector body to answer questions,

and an employee referred to in paragraph (b) or (c) shall comply with a requirement made under that paragraph.



- (5) The powers conferred by subsection (4) are exercisable in relation to a public sector body only after consultation with the employing authority of the public sector body and the Minister of the Crown —
- (a) who is responsible for the public sector body; or
  - (b) to whom the administration of the Act under which the public sector body is established or continued is for the time being committed by the Governor.
- (6) Despite subsection (4), an employee of a public sector body has the same privileges in relation to —
- (a) the production of a book, document or writing;
  - (b) the furnishing of any information; or
  - (c) the answering of questions,
- under this section as a witness has in the Supreme Court.
- (7) Nothing in this section takes away from —
- (a) any enactment that imposes a prohibition or restriction on —
    - (i) the availability of any information; or
    - (ii) the production or examination of any book, document or writing;
- or
- (b) any privilege or immunity existing by custom or convention and relating to the production of books, documents, writings or information of previous Governments of the State.

**11. Minister may direct holding of special inquiry**

- (1) The Minister may, in writing, direct a suitably qualified person or suitably qualified persons to hold a special inquiry into a matter relating to the Public Sector, and the person or persons shall comply with that direction.

- (2) A direction shall not be given under subsection (1) to the Commissioner.

**12. Powers of persons conducting special inquiries**

- (1) A special inquirer or a person authorised in writing by him or her may for the purposes of the special inquiry concerned —
- (a) enter the premises of any public sector body;
  - (b) by notice in writing require a person to produce to him or her any book, document or writing that is in the possession or under the control of the person; and
  - (c) inspect any book, document or writing produced to him or her and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents.
- (2) The provisions of Schedule 3 apply to and in relation to a special inquirer.

**13. Procedure and evidence at special inquiries**

- (1) An individual, public sector body or other body may be represented at a special inquiry by a legal practitioner or other agent.
- (2) A special inquirer shall act independently in relation to the performance of his or her functions.
- (3) A special inquirer shall act on any matter in issue at the special inquiry concerned according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and is not bound by the rules of evidence, but may be informed on any such matter in such manner as the special inquirer considers appropriate.
- (4) A special inquirer may, in respect of a matter not dealt with by this Act, give directions concerning the procedure to be followed at or in connection with the special inquiry concerned,

and a person participating in that special inquiry shall comply with any such direction.

- (5) A special inquirer does not have power to make an award of costs.

**14. Reports of special inquiries**

A special inquirer shall —

- (a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the special inquiry concerned; and
- (b) immediately after preparing a report under this section, provide the Minister with a copy of the report.

**15. Delegatory power of Minister**

The Minister may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a person any of the powers or duties of the Minister under this Act or under any other Act, other than —

- (a) this power of delegation; or
- (b) the power of direction conferred on the Minister by section 11(1).

**Division 3 — Commissioner for Public Sector Standards**

**16. Commissioner for Public Sector Standards**

- (1) An office of Commissioner for Public Sector Standards is created.
- (2) The office created by subsection (1) is not an office in the Public Service.

**17. Appointment etc. of Commissioner**

- (1) The Commissioner shall be appointed by the Governor on the recommendation of the Minister, and shall hold office in accordance with this Division.
- (2) Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.
- (3) Subject to this Division, a person appointed as the Commissioner shall hold office for a term of 5 years, and is eligible for reappointment.

**18. Vacation of, or suspension from, office of Commissioner**

- (1) The Commissioner may at any time, by written notice addressed to the Governor, resign from office, and, on receipt of that resignation by the Governor, the Commissioner vacates office as Commissioner.
- (2) The Commissioner, if he or she is nominated for election for the Parliament of the Commonwealth, or of any State or Territory, vacates office as Commissioner.
- (3) The Commissioner may, at any time, be removed or suspended from office by the Governor on addresses from both Houses of Parliament.
- (4) Notwithstanding subsection (3), if the Governor is satisfied that the Commissioner —
  - (a) is incapable of properly performing the functions of his or her office; or
  - (b) has shown himself or herself incompetent properly to perform, or has neglected to perform, the functions of his or her office; or
  - (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (d) has been guilty of misconduct,

the Governor may suspend him or her from office.

- (5) When the Commissioner has been suspended from office under subsection (4), the Commissioner shall be restored to office unless —
- (a) a statement of the grounds of that suspension is laid before each House of Parliament during the first 7 sitting days of that House following that suspension; and
  - (b) each House of Parliament, during the session in which the statement referred to in paragraph (a) is laid before it and within 30 sitting days of that statement being so laid, passes an address praying for the removal of the Commissioner from office.
- (6) The Commissioner shall not, except so far as he or she is authorised so to do by resolutions of both Houses of Parliament —
- (a) hold any office or place referred to in Part 1 or 2 of Schedule V to the *Constitution Acts Amendment Act 1899* (other than the office of Commissioner) or be a member of any commission, council, board, committee, authority, trust or other body referred to in Part 3 of that Schedule; or
  - (b) engage in any occupation for reward outside the functions of the office of Commissioner.
- (7) Without limiting the generality of subsection (4)(d), the Commissioner shall be regarded for the purposes of subsection (4)(d) as being guilty of misconduct if he or she contravenes subsection (6).

*[Section 18 amended by No. 18 of 2009 s. 71.]*

## **19. Remuneration etc. of Commissioner**

- (1) Subject to the *Salaries and Allowances Act 1975*, the Commissioner is entitled to be paid such remuneration as is determined by the Governor.

- (1a) Remuneration paid to the Commissioner under subsection (1) shall be charged to the Consolidated Account and this subsection appropriates the Consolidated Account accordingly.
- (2) The rate of remuneration of the Commissioner shall not be reduced during a term of office of the Commissioner without his or her consent.
- (3) Subject to this Division —
  - (a) the Commissioner is entitled to such leave of absence as the Governor determines; and
  - (b) the Governor may determine other terms and conditions of service, if any, that apply to the Commissioner.

*[Section 19 amended by No. 49 of 1996 s. 58; No. 77 of 2006 s. 4.]*

**20. Supplementary provisions relating to Commissioner**

- (1) If the Commissioner was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*<sup>3</sup> immediately before being appointed to be the Commissioner, he or she may continue to be a contributor under that Act after that appointment.

*[(2) deleted]*

- (3) If a person held an office in a department or organisation immediately before being appointed to the office of Commissioner, the person retains existing and accruing entitlements in respect of leave of absence as if service in the office of Commissioner were a continuation of service in the department or organisation.
- (4) A person who held an office for an indefinite period in a department or organisation immediately before being appointed to the office of Commissioner is entitled to employment in a department or organisation at a level of classification determined by the Governor if —

- (a) his or her term of office as Commissioner expires by effluxion of time and he or she is not reappointed to the office of Commissioner; and
  - (b) on the expiry referred to in paragraph (a) he or she is eligible for employment in a department or organisation.
- (5) The level of classification determined under subsection (4) shall not be lower than the level that the person held immediately before being appointed to the office of Commissioner.
- (6) A person who ceases to hold the office of Commissioner and is employed in a department or organisation retains existing and accruing entitlements in respect of leave of absence as if service in the department or organisation were a continuation of service in that office.

*[Section 20 amended by No. 57 of 1997 s. 99(1).]*

## **21. Functions of Commissioner**

- (1) The functions of the Commissioner are, having regard to the principles set out in sections 7, 8 and 9 —
- (a) to establish public sector standards setting out minimum standards of merit, equity and probity to be complied with in the Public Sector in —
    - (i) the recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment of employees; and
    - (ii) such other human resource management activities relating to employees as are prescribed, and monitor compliance with those public sector standards;
  - (b) to establish codes of ethics setting out minimum standards of conduct and integrity to be complied with by public sector bodies and employees, and monitor compliance with those codes;

- (c) to assist public sector bodies to develop, amend or repeal codes of conduct —
  - (i) setting out minimum standards of conduct and integrity to be complied with by themselves and their employees; and
  - (ii) consistent with codes of ethics established under paragraph (b),  
and monitor compliance with those codes;
- (d) to assist public sector bodies and employees to comply with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection;
- (e) to monitor compliance by public sector bodies and employees with the principles set out in sections 8(1)(a), (b) and (c) and 9;
- (f) subject to regulations referred to in section 98, to establish procedures of the kind referred to in section 97(1)(a);
- (g) to report from time to time to the Minister of the Crown responsible for a public sector body on the compliance or non-compliance by the public sector body and its employees with the principles set out in sections 8(1)(a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection;
- (h) to report from time to time to each House of Parliament on —
  - (i) the compliance or non-compliance by any particular public sector body or public sector bodies and its or their employees with the principles set out in sections 8(1)(a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or



- developed, as the case requires, under this subsection; and
- (ii) any other matter arising in connection with the functions of the Commissioner;
  - (i) to report annually to each House of Parliament on the compliance or non-compliance by public sector bodies and employees with the principles set out in sections 8(1)(a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection; and
  - (j) to perform such other functions as are conferred or imposed on the Commissioner by this Act.
- (2) The Commissioner may amend or repeal any public sector standard or code of ethics.
  - (3) In establishing, amending or repealing any public sector standards, the Commissioner shall take into account the impact which those public sector standards may have on the efficiency and effectiveness of the Public Sector, and shall endeavour to minimise any adverse impact.
  - (4) The Commissioner shall, before establishing, amending or repealing a public sector standard or code of ethics, consult such persons as he or she considers desirable and practicable to consult.
  - (5) Each public sector standard and code of ethics shall be published in the *Gazette*.
  - (6) A public sector standard or code of ethics comes into operation on the day on which it is published in the *Gazette* or on such later day as is specified in the public sector standard or code of ethics.
  - (7) Section 42 of the *Interpretation Act 1984* applies to and in relation to a public sector standard or code of ethics as if it were regulations within the meaning of that section.

- (8) Subsections (5) to (7) also apply to an amendment or repeal of a public sector standard or code of ethics.
- (9) Subject to subsection (10), a public sector standard or code of ethics has in relation to other Acts and subsidiary legislation made under them the force of law as if enacted as part of this Act, but may be amended or repealed by regulations made under section 108.
- (10) Nothing in subsection (9) prevents a court from inquiring into, and deciding, whether or not a public sector standard or code of ethics or any of its provisions —
- (a) has been validly established;
  - (b) is inconsistent with a provision of this Act; or
  - (c) is unrelated to the power conferred by this Act to establish public sector standards or codes of ethics, as the case requires,
- as if the public sector standard or code of ethics or that provision were regulations within the meaning of the *Interpretation Act 1984*.
- (11) To the extent that —
- (a) a public sector standard is inconsistent with a code of ethics or a code of conduct, the public sector standard prevails; or
  - (b) a code of ethics is inconsistent with a code of conduct, the code of ethics prevails.

**22. Commissioner to act independently**

The Commissioner shall act independently in relation to the performance of his or her functions.

**23. Power of delegation of Commissioner**

The Commissioner may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a person —

- (a) any of the powers or duties of the Commissioner under this Act, other than this power of delegation; or
- (b) all or any of the powers and duties referred to in paragraph (a) for a period of not more than 30 days to enable the person to act for that period in the office of the Commissioner while the Commissioner is on leave of absence, or is unable to perform the functions of the office of Commissioner, or is absent from the State.

**24. Powers of investigation of Commissioner**

- (1) The Commissioner may, for the purpose of performing his or her functions, investigate the activities of any public sector body and for that purpose the Commissioner, or a person authorised by the Commissioner in writing, has all the powers conferred on a special inquirer by this Act and the provisions of sections 12 and 13 and Schedule 3 apply to and in relation to —
  - (a) the Commissioner or that person as if he or she were a special inquirer; and
  - (b) that investigation as if it were a special inquiry.
- (2) Section 14 applies to and in relation to a person authorised within the meaning of subsection (1) as if references in that section to a special inquirer, the Minister or the special inquiry concerned were references to that person, the Commissioner or the investigation concerned, respectively.

**25. General powers of Commissioner**

- (1) The Commissioner may by order published in the *Gazette* —

- (a) exempt the whole or any part of any public sector body from compliance with the whole or any part of any public sector standard or code of ethics; and
  - (b) repeal or amend any exemption made under this subsection.
- (2) The Commissioner may do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Commissioner.

**26. Declaration by Commissioner**

The Commissioner, before entering upon the duties or exercising the powers vested in the Commissioner by this Act, shall make and subscribe before the Governor in Executive Council a declaration in the form of the form set out in Schedule 4.

**27. Staff of Commissioner**

There shall be appointed such public service officers as are necessary to enable the Commissioner to perform his or her functions.

**28. Acting Commissioner for Public Sector Standards**

- (1) The Governor may, on the recommendation of the Minister, appoint a person to act in the office of the Commissioner whenever —
- (a) the Commissioner is on leave of absence, or is unable to perform the functions of the office of Commissioner, or is absent from the State, for a period which is likely to exceed 30 days and in respect of which a delegation is not in force under section 23(b);
  - (b) the Commissioner has been suspended from office under section 18(3) or (4); or
  - (c) the office of Commissioner is vacant.

- (2) Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.
- (3) A person appointed to act under subsection (1) is, while that appointment subsists, to be known as the Acting Commissioner for Public Sector Standards.
- (4) An acting appointment subsists until —
- (a) the relevant leave of absence, inability, absence, suspension or vacancy ceases;
  - (b) the term of that appointment expires; or
  - (c) the expiry of 12 months from the day of that appointment,
- whichever is soonest.
- (5) If an acting appointment ends under subsection (4)(b), it can be renewed under subsection (1) but not so as to extend beyond 12 months from the day of the original acting appointment.
- (6) While a person is acting in the office of the Commissioner under this section —
- (a) he or she shall perform the functions of the Commissioner, and any act or thing done by him or her in that performance has the like effect as if it were done by the Commissioner;
  - (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Commissioner shall be regarded as effectually done if done to, by reference to or in relation to the person so acting; and
  - (c) references to the Commissioner in sections 18 to 27 include references to the person so acting.

**Division 4 — Chief executive officers and chief employees**

**29. Functions of chief executive officers and chief employees, and ancillary powers**

- (1) Subject to this Act and to any other written law relating to his or her department or organisation, the functions of a chief executive officer or chief employee are to manage that department or organisation, and in particular —
- (a) to provide leadership, strategic direction and a focus on results for that department or organisation;
  - (b) to provide policy advice to the responsible authority of that department or organisation;
  - (c) to plan for and undertake financial, information and other management in relation to that department or organisation and to monitor the administrative and financial performance of that department or organisation;
  - (d) to ensure the appropriate deployment and redeployment of resources within that department or organisation;
  - (e) to ensure the proper organisation of that department or organisation, including the devising of organisational structures and arrangements;
  - (f) to ensure the appropriate division of responsibilities between, and the assignment of functions to, the employees employed in that department or organisation;
  - (g) to manage and direct employees employed in that department or organisation and, without limiting the generality of this paragraph, to be responsible for the recruitment, selection, appointment and deployment of those employees;
  - (h) to classify, and determine the remuneration of, employees in that department or organisation and their offices, posts or positions, and to vary any such classification or remuneration, in accordance with —

- (i) the requirements of any binding award, order or industrial agreement under the *Industrial Relations Act 1979* employer-employee agreement under Part VID of the *Industrial Relations Act 1979*; and
  - (ii) such classification systems and procedures, if any, as are approved in respect of those employees or any class of those employees;
- (i) to evaluate the performances of employees employed in that department or organisation;
  - (j) subject to the *Equal Opportunity Act 1984*, to devise and implement initiatives to ensure that employees in that department or organisation have equal opportunities in relation to their employment in accordance with the principles of merit and equity;
  - (k) to establish and implement necessary management training programmes and staff training, education and development programmes;
  - (l) subject to Part 7 and the *Industrial Relations Act 1979*, to resolve or redress the grievances of employees in that department or organisation;
  - (m) subject to the *Occupational Safety and Health Act 1984*, to implement any health and safety standards and programmes adopted with respect to employment in the Public Sector;
  - (n) subject to the *State Records Act 2000*, to ensure that the department or organisation keeps proper records; and
  - (o) to perform such other functions as are conferred or imposed on the chief executive officer or chief employee under this Act or any other Act.
- (2) A chief executive officer or chief employee has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

*[Section 29 amended by No. 30 of 1995 s. 48; No. 53 of 2000 s. 21; No. 20 of 2002 s. 25(2); amended in Gazette 15 Aug 2003 p. 3690.]*

**30. Performance of functions of chief executive officers and chief employees**

In performing the functions of a chief executive officer or chief employee of a department or organisation, that chief executive officer or chief employee shall —

- (a) endeavour to attain performance objectives agreed with the responsible authority of the department or organisation;
- (b) comply with public sector standards, codes of ethics and any relevant code of conduct;
- (c) comply with the principles set out in sections 7, 8 and 9; and
- (d) comply with any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or employer-employee agreement under Part VID of the *Industrial Relations Act 1979*.

*[Section 30 amended by No. 20 of 2002 s. 25(3); amended in Gazette 15 Aug 2003 p. 3690.]*

**31. Extent of compliance with public sector standards etc. to be reported**

- (1) A chief executive officer or chief employee shall cause to be included in the annual report submitted by the accountable authority of the relevant department or organisation under Part 5 of the *Financial Management Act 2006* a report, prepared in accordance with guidelines, if any, issued by the Commissioner, on the extent to which public sector standards, codes of ethics and any relevant code of conduct have been complied with in relation to the relevant department or organisation.



- (2) The chief executive officer or chief employee of an organisation which is not a statutory authority within the meaning of the *Financial Management Act 2006* shall, before 31 August in each year or such earlier date in that year as the Commissioner may determine by order published in the *Gazette*, cause to be prepared and submitted to the Commissioner a report, prepared in accordance with guidelines, if any, issued by the Commissioner, on the extent to which public sector standards, codes of ethics and any relevant code of conduct have been complied with in relation to that organisation.
- (3) If the whole or any part of a department or organisation is exempted under section 25(1) from compliance with the whole or any part of any public sector standard or code of ethics, subsections (1) and (2) do not apply to or in relation to any thing to which that exemption relates.
- (4) The Commissioner shall include in the relevant annual report referred to in section 21(1)(i) each report submitted to him or her under subsection (2).

*[Section 31 amended by No. 5 of 2005 s. 43; No. 77 of 2006 s. 17.]*

**32. Chief executive officers and chief employees to comply with certain directions or instructions**

- (1) In performing his or her functions, a chief executive officer or chief employee shall, subject to —
  - (a) section 8(2);
  - (b) any public sector standard or code of ethics; and
  - (c) any other written law relating to his or her department or organisation,

comply with any lawful directions or instructions given to him or her from time to time by the responsible authority of his or her department or organisation.

- (2) For the purposes of subsection (1), to the extent that there is any conflict between —
- (a) section 8(2) or any public sector standard or code of ethics (in this subsection referred to as *the paragraph (a) provision*); and
  - (b) any other written law relating to the relevant department or organisation,

the paragraph (a) provision prevails.

**33. Delegatory powers of chief executive officers and chief employees**

Subject to any other written law, a chief executive officer or chief employee may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to an employee in his or her department or organisation any of his or her powers or duties under this Act, other than this power of delegation.

## Part 3 — Public Service

### Division 1 — General

#### 34. Constitution of Public Service

The Public Service is constituted by —

- (a) departments;
- (b) SES organisations, insofar as any posts in them, or persons employed in them, or both, belong to the Senior Executive Service; and
- (c) persons employed under this Part, whether in departments or in the Senior Executive Service in SES organisations, or otherwise.

#### 35. Departments

- (1) The Governor may, on the recommendation of the Minister —
  - (a) establish and designate departments;
  - (b) amalgamate or divide existing departments and designate the resulting department or departments;
  - (c) abolish departments; and
  - (d) alter the designations of existing departments.
- (2) Notice of any act by the Governor under subsection (1) is to be published in the *Gazette*.
- (3) An omission to publish a notice under subsection (2) does not invalidate the act of the Governor.

*[Section 35 amended by No. 24 of 2000 s. 34(1).]*

#### 36. Certain powers relating to departments and organisations

- (1) Subject to subsection (2), the employing authority of a department or organisation may, in relation to the department or organisation —
  - (a) determine organisational structures and arrangements;

- (b) create, transfer or abolish offices; and
  - (c) in accordance with approved procedures classify, or alter the classification of, offices other than offices included in the Special Division of the Public Service under section 38.
- (2) Subject to subsection (3), subsection (1) does not apply to the employing authority of an organisation unless the written law under which the organisation is established or continued authorises or requires the appointment or employment of public service officers for the purposes of the organisation.
- (3) Nothing in subsection (2) prevents the employing authority of an organisation from exercising the powers conferred by subsection (1) in relation to the offices of executive officers within the organisation.
- (4) When departments are established in lieu of existing departments or organisations or by the amalgamation or division of existing departments or organisations, the Minister may effect the disposition of offices and public service officers and such other consequential changes as appear necessary to give effect to the change in departments or organisations.

**37. Absorbed personnel — right of appeal**

*[(1) deleted]*

- (2) If, in respect of an appointment as a public service officer of a person who was employed in an organisation immediately before the organisation became a part of the Public Service, the relevant employing authority determines that the remuneration payable to the public service officer shall be at a rate less than was payable to him or her as an employee of the organisation immediately prior to it becoming a part of the Public Service, the public service officer may, in the manner prescribed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, appeal to the Industrial Commission constituted by a Public Service Arbitrator appointed under that Division against any

provision of that determination, and, notwithstanding any provision of that Act, the Public Service Arbitrator has jurisdiction to hear and determine that appeal.

*[Section 37 amended by No. 1 of 1995 s. 35.]*

**38. Determinations for purposes of section 6(1)(d) of the *Salaries and Allowances Act 1975***

For the purposes of section 6(1)(d) of the *Salaries and Allowances Act 1975*, the Governor may, on the recommendation of the Minister, determine that an office in the Public Service is an office included in the Special Division of the Public Service.

**39. Retirement of public service officers on grounds of ill health**

- (1) A public service officer may retire, or an employing authority may call on a public service officer to retire, from the Public Service on the grounds of ill health.
- (2) A public service officer who is called on to retire from the Public Service under subsection (1) shall forthwith so retire.

**40. Service of notices etc. when address of public service officer unknown**

- (1) If the address for the time being of a public service officer is unknown to his or her employing authority, all notices, orders or communications to or for the public service officer shall be posted to the last known address of the public service officer and a notice of the act of that posting shall be published in public service notices.
- (2) Compliance with subsection (1) shall be deemed a sufficient service of any notice, order or communication on the public service officer concerned.

**41. Exercise of certain powers when public service officer is appointed by Governor**

In the case of a public service officer in a department or organisation who is appointed by the Governor —

- (a) the powers conferred on an employing authority by this Part (other than the power to terminate the employment in the Public Service of the public service officer) may be exercised for and on behalf of the Governor —
  - (i) in the case of a public service officer who is a chief executive officer, by the Minister; or
  - (ii) in the case of a public service officer who is not a chief executive officer, by the employing authority of the department or organisation;

and

- (b) the power to terminate the employment in the Public Service of that public service officer (not being a chief executive officer) may be exercised by the Governor on the recommendation of the Minister of the Crown responsible for the department or organisation.

**Division 2 — Senior Executive Service**

**42. Purposes of Senior Executive Service**

- (1) The purposes of the Senior Executive Service are —
  - (a) to provide for a group of executive officers who are capable of —
    - (i) furnishing high level policy advice and undertaking managerial responsibilities in agencies; and
    - (ii) being deployed within agencies, and between agencies, so as best to promote the efficiency of the Public Sector;

and

- (b) to promote the efficiency of individual agencies.
- (2) The Minister may in writing give to the employing authorities of agencies such directions for the management of the Senior Executive Service as are necessary or desirable for the implementation of the purposes referred to in subsection (1), and an employing authority to which any such direction is given shall comply with that direction.

**43. Constitution of Senior Executive Service**

- (1) Subject to this section, the Senior Executive Service consists of—
  - (a) each public service officer employed in a department whose salary;
  - (b) each office in a department, or post in an SES organisation, the salary attached to which; and
  - (c) each person employed in an SES organisation whose salary, exceeds such level as is prescribed for the purposes of this subsection and who, or the holder of which, as the case requires, becomes or remains a member of the Senior Executive Service by virtue of—
    - (d) section 110(2);
    - (e) an appointment under section 45 or 53; or
    - (f) a reappointment under section 46.
- (2) The Senior Executive Service—
  - (a) excludes such public service officer, holder of an office, office, post, holder of a post, or person, referred to in subsection (1) as is the subject of a declaration in force under subsection (3); but
  - (b) includes such public service officer, holder of an office, office, post, holder of a post, or person, not referred to in subsection (1) as is the subject of a declaration in force under subsection (4).

- (3) The Minister may from time to time by notice published in public service notices —
- (a) declare that a public service officer, holder of an office, office, post, holder of a post, or person, referred to in subsection (1) is excluded from the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration; or
  - (b) repeal or amend a declaration made under this subsection.
- (4) The Minister may from time to time by notice published in public service notices —
- (a) declare that a public service officer, holder of an office, office, post, holder of a post, or person, not referred to in subsection (1) is included in the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration; or
  - (b) repeal or amend a declaration made under this subsection.
- (5) If a declaration is made under subsection (3) or repealed under subsection (4) in respect of —
- (a) a public service officer employed in a department who was, immediately before the day specified in that declaration or the day of that repeal, a member of the Senior Executive Service, that public service officer; or
  - (b) an office in a department, the holder of that office immediately before the day specified in that declaration or the day of that repeal,

continues to be employed in the department on the same terms and conditions as those to which he or she was entitled as a member of the Senior Executive Service until, subject to this Act, he or she retires or his or her employment in the Public



Service is otherwise terminated, or his or her terms and conditions of service are varied, under this Act.

- (6) If a declaration is made under subsection (3) or repealed under subsection (4) in respect of —
- (a) a person employed in an SES organisation who was, immediately before the day specified in that declaration or the day of that repeal, a member of the Senior Executive Service, that person; or
  - (b) a post in an SES organisation, the person who was the holder of that post immediately before the day specified in that declaration or the day of that repeal,

continues to be employed in the SES organisation on the same terms and conditions as those to which he or she was entitled as a member of the Senior Executive Service until, subject to the written law under which the SES organisation was established or continued, he or she retires or his or her employment in the Public Service is otherwise terminated, or his or her terms and conditions of service are varied, under that written law.

- (7) A public service officer or person to whom a declaration made under subsection (3) or (4) relates may be identified in that declaration by name or by any other means of identification.
- (8) The Minister shall, before making a declaration referred to in subsection (3) or (4), consult the employing authority of the agency in which the public service officer, holder of an office, office, post, holder of a post, or person, to whom or which the proposed declaration relates is employed or is located, as the case requires.
- (9) When, under this Division, a person is appointed to, reappointed to, transferred to, or directed to act in, an office or post which is included in the Senior Executive Service and which is created under another written law, the person shall be regarded as having also been appointed to, reappointed to, transferred to, or directed to act in, that office or post under that written law.

- (10) When an executive officer is employed in an SES organisation, the executive officer has all the functions and protection which he or she would have if he or she —
- (a) were not an executive officer; and
  - (b) were employed under the written law under which the SES organisation is established or continued.

**44. Chief executive officers and chief employees in agencies**

- (1) Subject to subsection (2), each agency shall have a chief executive officer.
- (2) An agency which does not have a chief executive officer because of a declaration made under section 43(3) shall have a chief employee.
- (3) The Minister may —
- (a) subject to any other written law relating to the agency concerned, create an office of chief executive officer for an agency; and
  - (b) determine the level of classification of an office created under this subsection, other than an office included in the Special Division of the Public Service under section 38.

**45. Appointment of chief executive officers**

- (1) Each chief executive officer shall be appointed for such term not exceeding 5 years as is specified in the instrument of his or her appointment by the Governor for and on behalf of the Crown on the recommendation of the Minister under this section, but this section does not apply to the reappointment of a person to his or her office of chief executive officer.
- (2) Subject to this Act, the employment of a chief executive officer is to be governed by a contract of employment referred to in section 56.

- (3) When there is a vacancy or impending vacancy in the office of a chief executive officer, the Minister shall, unless that vacancy or impending vacancy is to be filled by transferring a chief executive officer to that office under section 50, or temporarily by directing an employee to act in that office under section 51 —
- (a) inform the Commissioner of that vacancy or impending vacancy; and
  - (b) request the Commissioner to act under this section to enable the filling of that vacancy or impending vacancy.
- (4) The Commissioner shall, on receiving a request made under subsection (3), invite —
- (a) the Minister;
  - (b) if the Minister is not the responsible authority of the agency concerned, that responsible authority; and
  - (c) if the responsible authority of the agency concerned is not the Minister of the Crown responsible for that agency, that Minister of the Crown,
- to inform the Commissioner of any matters that they wish the Commissioner to take into account in nominating a person or persons suitable for appointment to the office referred to in subsection (3).
- (5) The Commissioner shall notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for the relevant office.
- (6) The Commissioner shall cause applicants for the relevant office to be examined, but nothing in this section requires the examination of all those applicants.
- (7) The Commissioner may seek advice from such sources as the Commissioner considers relevant and may invite such other persons as the Commissioner thinks fit to assist him or her to

decide on the person or persons suitable for appointment to the relevant office, and any person so invited may take part in the examination of applicants or in the deliberations of the Commissioner on the matter or in both.

- (8) The Commissioner shall, if he or she decides on a person or persons suitable for appointment to the relevant office, nominate that person or those persons and forward to the Minister the name or names of the person or persons nominated, together with full particulars of the qualifications of that person or those persons.
- (9) After consulting the Minister of the Crown responsible for the agency in which the office of chief executive officer to which the nomination relates is located, the Minister shall decide whether or not the person, or one of the persons, nominated by the Commissioner is to be accepted.
- (10) If the person, or one of the persons, nominated by the Commissioner is accepted, the Minister shall recommend to the Governor that the person accepted be appointed.
- (11) If the person, or both or all of the persons, nominated by the Commissioner is or are rejected, the Minister may request the nomination of another person by the Commissioner and shall deal with any further nomination in accordance with subsections (9) and (10).
- (12) If the Commissioner does not nominate any person suitable for appointment to the relevant office or a nomination or further nomination by the Commissioner is rejected, the Minister —
  - (a) may recommend to the Governor that —
    - (i) in the absence of a nomination by the Commissioner, a named person; or
    - (ii) a named person other than a person nominated by the Commissioner,as the case requires, be appointed to the relevant office; and

- (b) shall cause notice of the making of that recommendation, together with the reasons for recommending the named person, to be published in the *Gazette* as soon as practicable.
- (13) In deciding on a person to be nominated or recommended for appointment as a chief executive officer, the Commissioner or the Minister, as the case requires, shall have regard to the need for the appointment of a person who —
- (a) is able to discharge the specific responsibilities placed on the chief executive officer;
  - (b) will imbue the employees of his or her agency with a spirit of service to the community;
  - (c) will promote effectiveness and efficiency in his or her agency;
  - (d) will be a responsible manager of his or her agency; and
  - (e) will maintain appropriate standards of conduct and integrity among the employees of his or her agency.

**46. Reappointment of chief executive officers**

- (1) If the Minister proposes not to recommend to the Governor that a person (in this section referred to as *the incumbent*) be reappointed to his or her office of chief executive officer, the Minister shall comply with section 48 in respect of the incumbent.
- (2) If the Minister —
  - (a) recommends to the Governor that the incumbent be reappointed to the relevant office, the Governor shall so reappoint the incumbent for and on behalf of the Crown for such term not exceeding 5 years as is specified in the instrument of his or her reappointment; or
  - (b) does not recommend to the Governor that the incumbent be reappointed to the relevant office, the vacancy or

impending vacancy in the office of the incumbent shall be filled in accordance with section 45.

- (3) Subject to this Act, the employment of a chief executive officer reappointed under this section shall be governed by a contract of employment referred to in section 56.

**47. Performance agreements etc. of chief executive officers**

- (1) Subject to subsection (2), a chief executive officer shall on his or her appointment under section 45, 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.
- (2) A performance agreement entered into between a chief executive officer and a responsible authority does not take effect until —
- (a) the Minister, if the Minister is not the responsible authority; and
  - (b) the Minister of the Crown responsible for the agency concerned, if that Minister is not the responsible authority,

has or have in writing approved that performance agreement and a note of that approval has been endorsed on that performance agreement, and replaces any previous performance agreement entered into between the chief executive officer and the responsible authority.

- (3) A performance agreement is not legally enforceable.
- (4) The responsible authority of the agency of a chief executive officer is responsible for assessing in accordance with approved procedures, on or shortly before the end of each period referred to in subsection (1), the extent to which the chief executive

officer meets the performance criteria set out in his or her current performance agreement.

**48. Procedure before expiry of contract of employment, or removal from office, of chief executive officer**

(1) If —

- (a) the contract of employment of a chief executive officer is about to expire and the chief executive officer has notified the Minister that he or she wishes to be reappointed, but the Minister proposes not to recommend that reappointment; or
- (b) the Minister proposes to recommend the removal from office under section 49 of a chief executive officer,

the Minister shall —

- (c) if the Minister of the Crown responsible for the agency of the chief executive officer is not the responsible authority of that agency, consult that Minister of the Crown; and
- (d) obtain from —
  - (i) the responsible authority of the agency of the chief executive officer an assessment of the extent to which the chief executive officer meets the performance criteria set out in his or her current performance agreement, together with a recommendation whether or not the chief executive officer should be reappointed or removed from office, as the case requires; and
  - (ii) the Commissioner advice concerning the appropriateness or otherwise of the recommendation referred to in subparagraph (i), having regard to the manner in which the assessment referred to in that subparagraph was undertaken, to the relationship between that

recommendation and that assessment and to such other factors as appear relevant.

- (2) Having complied with subsection (1), the Minister shall —
- (a) consider the assessment and recommendation, and the advice, obtained under subsection (1)(d) before not recommending the reappointment of the chief executive officer concerned or recommending his or her removal from office, as the case requires; and
  - (b) if, contrary to the advice of the Commissioner, the Minister does not recommend the reappointment, or recommends the removal from office, of the chief executive officer concerned, forthwith cause to be published in the *Gazette* the fact that the Minister has not recommended that reappointment or has recommended that removal.
- (3) If the contract of employment of a chief executive officer who has notified the Minister that he or she wishes to be reappointed expires without —
- (a) that chief executive officer having been reappointed; and
  - (b) the Minister having complied with the requirements of subsections (1) and (2) in respect of that chief executive officer,

that contract of employment continues in force as if it had not expired until the Minister complies with the requirements of subsections (1) and (2) in respect of that chief executive officer and that chief executive officer is notified in writing of his or her reappointment or that chief executive officer receives payment under section 56(5)(b).

**49. Removal of chief executive officer from office**

The Governor may, on the recommendation of the Minister made under section 48, at any time remove a chief executive officer from office.



**50. Transfer of chief executive officers**

- (1) The Governor may at any time on the recommendation of the Minister transfer a chief executive officer from —
- (a) his or her office of chief executive officer to —
    - (i) another office of chief executive officer that is vacant and that is at the same level of classification as, or at a lower level of classification than, the first-mentioned office; or
    - (ii) the performance of other functions in the Senior Executive Service;

or

  - (b) the performance of other functions in the Senior Executive Service to an office of chief executive officer that is vacant and that is at the same level of classification as, or at a lower level of classification than, the office from which the chief executive officer was transferred to the performance of those functions.
- (2) Before making a recommendation referred to in subsection (1), the Minister shall consult —
- (a) if the Minister is not the responsible authority of the agency in which the office of the chief executive officer to whom the proposed recommendation relates is located, that responsible authority;
  - (b) if the Minister is not the responsible authority of the agency of destination, that responsible authority;
  - (c) if neither the Minister nor a responsible authority referred to in paragraph (a) or (b) is the Minister of the Crown responsible for the relevant agency, that Minister of the Crown; and
  - (d) the chief executive officer to whom the proposed recommendation relates.

- (3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a chief executive officer who is transferred under subsection (1) retains for the remainder of the term of his or her contract of employment a level of classification equal to the highest level of classification of any office previously occupied by him or her during that term.
- (4) The transfer of a chief executive officer under this section does not affect the term of his or her contract of employment.
- (5) In subsection (2)(b) —  
*the agency of destination* means the agency —
  - (a) to an office; or
  - (b) to the performance of other functions in the Senior Executive Service,in which the chief executive officer to whom the proposed recommendation relates is proposed to be transferred.

**51. Acting chief executive officers**

- (1) Subject to this section, the Minister may —
  - (a) if an office of chief executive officer is vacant, or a chief executive officer is absent from duty or for any reason unable to perform his or her functions, direct an employee to act for such period not exceeding 12 months as is specified in that direction in the office of chief executive officer during that vacancy, absence or inability, as the case requires; and
  - (b) at any time cancel a direction given under this subsection.
- (2) The Minister may, in a direction given under subsection (1), state that anything done by the employee to whom that direction is given during the period commencing on the occurrence of the relevant vacancy, or on the beginning of the relevant absence or inability, and ending on the giving of that direction, which thing

would have been valid had it been done by the chief executive officer referred to in that subsection, is valid as if it had been done by that chief executive officer, and any such statement has effect according to its tenor.

- (3) If the Minister is not the responsible authority of the agency concerned, the Minister shall, before giving a direction under subsection (1), consult —
  - (a) that responsible authority; and
  - (b) if that responsible authority is not the Minister of the Crown responsible for that agency, that Minister of the Crown.
- (4) An employee directed under subsection (1) to act in an office —
  - (a) shall comply with that direction; and
  - (b) has, whilst he or she is so acting, all the functions and obligations attaching to the office.

**52. Industrial arbitration or legal proceedings not available for chief executive officers**

- (1) In this section, a reference to the employment of a chief executive officer is a reference to —
  - (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive officer;
  - (b) the removal, retirement, termination of employment or other cessation of office of a chief executive officer;
  - (c) any disciplinary proceedings or action taken under Part 5 against a chief executive officer; or
  - (d) the remuneration or terms and conditions of employment of a chief executive officer.
- (2) The employment of a chief executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.

- (3) Subsection (2) applies whether or not any person has been appointed to a vacant office of chief executive officer.
- (4) An award, order or industrial agreement under the *Industrial Relations Act 1979*, whether made or registered, as the case requires, before or after the commencement of this section, does not have effect insofar as it relates to the employment of a chief executive officer.
- (5) Subsection (4) does not prevent a contract of employment of a chief executive officer from applying any provision of an award, order or industrial agreement under the *Industrial Relations Act 1979* to the employment of the chief executive officer.
- (6) An appeal does not lie under the *Industrial Relations Act 1979* in relation to the employment of a chief executive officer.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief lie in respect of —
  - (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive officer;
  - (b) the reappointment of, or failure to reappoint, a chief executive officer; or
  - (c) the entitlement or non-entitlement of a person to be so appointed or reappointed.
- (8) Nothing in this section prevents a person from raising with the Commissioner a complaint concerning the employment of a chief executive officer.

**53. Appointment of senior executive officers**

- (1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or employer-employee agreement under Part VID of the *Industrial Relations Act 1979*, an employing authority of an agency may in accordance with approved procedures appoint for and on behalf

of the Crown for such term not exceeding 5 years as is specified in the relevant instrument of appointment a public service officer or other person to the Senior Executive Service otherwise than as a chief executive officer.

- (2) A public service officer or other person appointed under subsection (1) shall be so appointed as a senior executive officer, and that appointment is to be governed by a contract of employment referred to in section 56.
- (3) An appointment under subsection (1) shall be to such level of classification as is determined by the employing authority —
  - (a) in accordance with approved procedures; and
  - (b) as being appropriate to the functions to be performed by the person or public service officer so appointed.
- (4) On the expiry of his or her term of office, a senior executive officer is eligible for reappointment under subsection (1) as a senior executive officer on the basis of terms and conditions agreed between him or her and the employing authority.
- (5) An employing authority shall in accordance with approved procedures appoint a senior executive officer to fill a vacancy in an office, or to the performance of other functions, in the Senior Executive Service for such term not exceeding 5 years as is specified in the instrument of his or her appointment.
- (6) A person shall be appointed under subsection (5) at the same time as his or her appointment under subsection (1).

*[Section 53 amended by No. 20 of 2002 s. 25(4); amended in Gazette 15 Aug 2003 p. 3690.]*

**54. Transfer of senior executive officers**

- (1) The employing authority of an agency may at any time transfer a senior executive officer of the agency from his or her office of senior executive officer, or the performance of any functions in the Senior Executive Service, to —

- (a) another office of senior executive officer that is vacant; or
  - (b) the performance of other functions in the Senior Executive Service.
- (2) An employing authority shall, before transferring a senior executive officer under subsection (1) from its agency to another agency —
  - (a) obtain the consent of the employing authority of the agency to which the senior executive officer is proposed to be transferred; and
  - (b) consult the senior executive officer proposed to be transferred.
- (3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a senior executive officer may only be transferred under subsection (1) at the level of classification which he or she had immediately before that transfer.
- (4) If the office to which a senior executive officer is transferred under subsection (1)(a) is an office, or the functions to the performance of which a senior executive officer is transferred under subsection (1)(b) are functions, in a different agency, the employing authority of that agency becomes the employing authority of the senior executive officer.
- (5) On the transfer of a senior executive officer under subsection (1), the employing authority of the agency to which that transfer takes place is substituted for the employing authority of the agency from which that transfer takes place as a party to the contract of employment of the senior executive officer.
- (6) The transfer of a senior executive officer under subsection (1) does not affect the term of his or her contract of employment.

**55. Performance assessments of senior executive officers**

- (1) The performance of his or her functions by a senior executive officer shall be assessed at intervals of not more than one year by the employing authority of his or her agency.
- (2) In assessing under subsection (1) the performance of a senior executive officer, the employing authority concerned shall have regard to any performance criteria specified in the contract of employment of the senior executive officer and to any other relevant matter.

**56. Employment of executive officers to be governed by their contracts of employment**

- (1) Subject to this Act, the employment of an executive officer shall be governed by a contract of employment between the executive officer and his or her employing authority.
- (2) A contract of employment referred to in subsection (1) shall —
  - (a) be in writing;
  - (b) be signed by or on behalf of the parties to that contract; and
  - (c) expire on the day on which the term of appointment of the executive officer concerned expires or is terminated.
- (3) Subject to sections 48 and 49, a contract of employment of an executive officer may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination —
  - (a) given to him or her by his or her employing authority, or payment in lieu of that period of notice by that employing authority to the executive officer of an amount not exceeding such amount as is prescribed; or
  - (b) given to his or her employing authority by the executive officer or such shorter period of notice as is agreed between the executive officer and his or her employing authority.

- (4) A contract of employment referred to in this section (in this subsection referred to as *the original contract*) may be varied at any time by a further contract in writing entered into, and signed by, the parties to the original contract, but the term of the original contract cannot be extended to a total period of more than 5 years after the day on which the original contract came into force.
- (5) If the employing authority of an executive officer does not propose to reappoint, or to recommend the reappointment of, the executive officer, that employing authority shall —
- (a) notify the executive officer of that fact not less than 4 weeks before the expiry of his or her contract of employment; or
  - (b) pay the executive officer in lieu of that period of notice an amount —
    - (i) not exceeding such maximum amount as is prescribed; and
    - (ii) not less than such minimum amount as is prescribed for each day by which that period of notice falls short of 4 weeks.
- (6) The employing authority of an executive officer acts for and on behalf of the Crown in any contract of employment between that employing authority and the executive officer.

**57. Matters to be dealt with by contracts of employment**

- (1) The matters to be dealt with in a contract of employment between an executive officer and his or her employing authority include —
- (a) the functions of the office of the executive officer, including the meeting of performance criteria;
  - (b) the remuneration to be accorded the executive officer in accordance with any relevant determination of the



Tribunal or such other arrangements as are prescribed;  
and

- (c) any election by the executive officer to retain a right of return within the meaning of section 58.

- (2) In this section —

***Tribunal*** means Salaries and Allowances Tribunal established by the *Salaries and Allowances Act 1975*.

**58. Right of return for certain executive officers**

- (1) An executive officer may elect to retain a right of return if, for a continuous period of not less than 6 months ending immediately before his or her first appointment as an executive officer, the executive officer —
  - (a) was employed for an indefinite period in a department or organisation; or
  - (b) held a statutory office or a series of statutory offices on a full-time basis and, before holding the statutory office or any of those statutory offices, was employed for an indefinite period in a department or organisation.
- (2) An election referred to in subsection (1) —
  - (a) may be made in the first contract of employment entered into by the executive officer, but, unless made in that contract, cannot be made in any subsequent contract of employment for the same or another office in the Senior Executive Service;
  - (b) is revoked if that election is not again made by the executive officer in a subsequent contract of employment;
  - (c) may be revoked by the executive officer by notice in writing delivered to his or her employing authority; and
  - (d) if revoked, cannot be made again.

- (3) An executive officer who has elected to retain a right of return is entitled to employment in a department or organisation at the same level of classification as he or she held immediately before ceasing to be employed for an indefinite period within the meaning of subsection (1)(a) or (b), as the case requires, if he or she —
- (a) ceases to be an executive officer otherwise than by reason of a declaration made under section 43(3) or repealed under section 43(4); and
  - (b) in the case of —
    - (i) a chief executive officer, is not reappointed to the same or another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
    - (ii) a senior executive officer, is not reappointed to the same or another office of senior executive officer or to the performance of other functions in the Senior Executive Service.
- (4) A person is not entitled to a right of return if his or her employment in the Public Sector was terminated, or he or she was dismissed, under this Act for substandard performance or breach of discipline.
- (5) This section does not prevent the application of the provisions of this Act relating to the management of the redeployment and redundancy of employees to a person who is employed in a department or organisation under a right of return.
- (6) Nothing in this section affects the entitlement of any executive officer under another written law to employment in a department or organisation in accordance with that written law.
- (7) In this section —  
**right of return** means entitlement of an executive officer to employment in a department or organisation in accordance with this section;

*statutory office* means office, post or position that is established under an Act by which the right to appoint to that office, post or position is vested in the Governor or a Minister of the Crown.

**59. Compensation etc. if executive officer has no right of return**

- (1) This section applies to a person —
  - (a) who ceases to be an executive officer, otherwise than by reason of —
    - (i) a declaration made under section 43(3) or repealed under section 43(4); or
    - (ii) termination of employment in the Public Sector, or dismissal, under this Act for substandard performance or breach of discipline,  
before his or her contract of employment expires by effluxion of time; and
  - (b) who does not have a right of return within the meaning of section 58.
- (2) A person to whom this section applies is entitled to such compensation, if any, as the Minister determines by reference to the remuneration to which that person is entitled for a particular period ending immediately before the day referred to in subsection (3).
- (3) The maximum compensation payable to a person under this section 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 the person ceased to be an executive officer in the manner specified in subsection (1)(a).
- (4) A person to whom compensation is paid under this section 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.

- (5) If a person who is required to comply with subsection (4) does not do so, the amount unrefunded may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owed by that person to the Crown.

**60. Election to take compensation**

- (1) An executive officer who has an entitlement under section 58(3) to employment may elect in writing to take compensation under section 59 instead of exercising that entitlement.
- (2) On an election under subsection (1) taking effect, the executive officer concerned —
- (a) ceases to have the entitlement under section 58(3); and
  - (b) becomes entitled to compensation under section 59.

**61. Secondment of executive officers**

An employing authority may, if it considers it to be in the public interest to do so and the executive officer concerned consents, enter into an arrangement in writing with the employing authority of a department or organisation or with an employer outside the Public Sector for the secondment of an executive officer of an agency to perform functions or services for, or duties in the service of, the employing authority of the department or organisation or that employer during such period as is specified in that arrangement.

**62. Cessation of membership of Senior Executive Service**

If a person appointed or reappointed as an executive officer subsequently holds an office, post or position outside the Senior

Executive Service, that person ceases to be a member of the Senior Executive Service unless a declaration is made under section 43(4) in respect of that person.

**63. Vacation of office of executive officer**

- (1) The office of an executive officer becomes vacant if —
  - (a) the executive officer dies;
  - (b) in the case of a chief executive officer, he or she is removed from office under section 49;
  - (c) his or her contract of employment is terminated under section 56(3);
  - (d) the executive officer completes a term of office and is not reappointed;
  - (e) the executive officer is dismissed, or retires from office, under this Act;
  - (f) the employment of the executive officer in the Public Sector is terminated under section 79(3);
  - (g) the executive officer resigns his or her office in writing addressed —
    - (i) in the case of a chief executive officer, to the Governor; or
    - (ii) in the case of a senior executive officer, to the employing authority of his or her agency, and the Governor, acting on the recommendation of the Minister, or that employing authority, as the case requires, accepts that resignation; or
  - (h) the executive officer is appointed or transferred under this Part to another office.
- (2) The vacation of an office under subsection (1)(a), (b), (d), (e), (f) or (g) terminates the contract of employment of the executive officer concerned.

**Division 3 — Public service officers other than executive officers**

**64. Appointment of public service officers other than executive officers**

- (1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or employer-employee agreement under Part VID of the *Industrial Relations Act 1979*, the employing authority of a department or organisation may in accordance with approved procedures appoint for and on behalf of the Crown a person as a public service officer (otherwise than as an executive officer) on a full-time or part-time basis —
  - (a) for an indefinite period as a permanent officer; or
  - (b) for such term not exceeding 5 years as is specified in the instrument of his or her appointment.
- (2) An appointment under subsection (1) shall be to such level of classification and remuneration as is determined by the relevant employing authority —
  - (a) in accordance with approved procedures; and
  - (b) as being appropriate to the functions to be performed by the person so appointed.
- (3) The employing authority of a department or organisation shall —
  - (a) in accordance with approved procedures; and
  - (b) at the time of the appointment of a person under subsection (1) or, if that employing authority considers it impracticable to make the appointment concerned at that time, at a later time,

appoint the person to fill a vacancy in an office, post or position in the department or organisation.

- (4) Subject to subsection (5), a person appointed under subsection (1)(b) cannot apply for an appointment under subsection (1)(a) unless the relevant vacancy has first been advertised in public service notices or in a daily newspaper circulating throughout the State.
- (5) Subsection (4) does not apply to a person —
- (a) appointed under subsection (1)(b); and
  - (b) having, or occupying an office, post or position having, the lowest level of classification at which persons of the same prescribed class as that person are at the relevant time recruited into the Public Service.
- (6) The employing authority of an organisation shall not make an appointment under subsection (1) unless the written law under which the organisation is established or continued authorises or requires the appointment or employment of public service officers for the purposes of that organisation.
- (7) Nothing in this section prevents a public service officer who holds an office, post or position in one department or organisation from being appointed, whether by way of promotion or otherwise, to an office, post or position in another department or organisation.

*[Section 64 amended by No. 20 of 2002 s. 25(5); No. 74 of 2003 s. 97(2); amended in Gazette 15 Aug 2003 p. 3690.]*

**65. Transfer of public service officers other than executive officers within and between departments and organisations**

- (1) If an employing authority considers it to be in the interests of its department or organisation to do so, that employing authority may transfer at the same level of classification a public service officer other than an executive officer from one office, post or position in that department or organisation to another such office, post or position —

- (a) for which that public service officer possesses the requisite qualifications; and
  - (b) the functions assigned to which are appropriate to that level of classification.
- (2) If an employing authority of a department or organisation considers it to be in the interests of the Public Service to do so, that employing authority may, with the approval of the employing authority of another department or organisation and after consulting the public service officer concerned, transfer at the same level of classification a public service officer (other than an executive officer) from an office, post or position in the first-mentioned department or organisation to an office, post or position in the other department or organisation —
  - (a) for which latter office, post or position that public service officer possesses the requisite qualifications; and
  - (b) the functions assigned to which latter office, post or position are appropriate to that level of classification.
- (3) On the transfer of a public service officer under subsection (2), the employing authority of the department or organisation to which that transfer takes place —
  - (a) becomes the employing authority of the public service officer; and
  - (b) is substituted for the employing authority of the department or organisation from which that transfer takes place as a party to any contract of employment of the public service officer.

**66. Secondment of public service officers other than executive officers from departments or organisations**

An employing authority of a department or organisation (in this section referred to as *the seconding authority*) may, if it considers it to be in the public interest to do so and the public service officer concerned consents, enter into an arrangement in writing with another such employing authority or with an



employer outside the Public Sector for the secondment of a public service officer (other than an executive officer) in the department or organisation of the seconding authority to perform functions or services for, or duties in the service of, the other department or organisation or that employer during such period as is specified in that arrangement.

**67. Vacation of office of public service officer other than executive officer**

The office of a public service officer (other than an executive officer) becomes vacant if —

- (a) that public service officer dies;
- (b) in the case of a term officer, the term officer completes a term of office and is not reappointed;
- (c) that public service officer is dismissed, or retires from office, under this Act;
- (d) the employment of that public service officer in the Public Sector is terminated under section 79(3);
- (e) that public service officer resigns his or her office in writing addressed to his or her employing authority and that employing authority accepts that resignation; or
- (f) that public service officer is appointed or transferred under this Part to another office, post or position.

## **Part 4 — Assistance for political office holders**

### **Division 1 — Ministerial officers**

#### **68. Employment of ministerial officers**

- (1) The Minister may appoint any person as a ministerial officer to assist —
- (a) the Minister; or
  - (b) another political office holder,

and section 8(1) does not apply to or in relation to such an appointment.

- (2) Subject to this Act, the employment of a ministerial officer shall be governed by a contract of employment between the ministerial officer and the Minister.

- (3) Subject to this Part, a contract of employment referred to in subsection (2) shall —

- (a) be in writing;
- (b) be signed by or on behalf of the parties to that contract; and
- (c) specify the day on which the employment expires.

#### **69. Functions of ministerial officers**

A ministerial officer shall perform, under the supervision of the political office holder specified in the contract of employment of the ministerial officer, such functions as are —

- (a) specified in that contract; or
- (b) from time to time specified by the Minister or that other political office holder, as the case requires.

**70. Terms and conditions of employment**

- (1) The terms and conditions of employment of a ministerial officer, other than terms and conditions relating to —
- (a) the functions of the ministerial officer; or
  - (b) any matter for which express provision is made by section 72,

shall be determined by the Minister on the recommendation of the chief executive officer of the department principally assisting the Minister in the administration of this Act.

- (2) The terms and conditions of employment of a ministerial officer that are determined by the Minister under subsection (1) shall be specified in the relevant contract of employment.
- (3) Without limiting subsection (1), but subject to subsections (4) and (5), a ministerial officer whose employment is terminated by section 72(1)(a) or by the Minister under section 72(2) before the day specified in the relevant contract of employment as the day on which that employment expires is entitled to such compensation, if any, as the Minister determines.
- (4) The maximum compensation payable to a person under subsection (3) is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before his or her employment is terminated.
- (5) If the employment of a ministerial officer is terminated in the manner specified in subsection (3) but is deemed to have continued, or to continue, until a later day by virtue of a direction made under section 72(5), the ministerial officer is not entitled to compensation under subsection (3).
- (6) A person to whom compensation is paid under this section and who is subsequently —
- (a) employed in a public sector body; 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.

- (7) If a person who is required to comply with subsection (6) does not do so, the amount unrefunded may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owed by that person to the Crown.

**71. Variation of contract of employment**

A contract of employment of a ministerial officer may be varied at any time by a further contract in writing entered into, and signed by, the parties to the original contract of employment.

**72. Termination of employment**

- (1) Subject to Part 5 and subsections (2) and (4), the employment of a ministerial officer terminates —
  - (a) if the political office holder for whose assistance the ministerial officer was employed ceases to hold office as such;
  - (b) on the day fixed for the return of the writ for the general election for the Legislative Assembly next following the first day of that employment; or
  - (c) on the day specified in the relevant contract of employment as the day on which that employment expires,

whichever is soonest.

- (2) Subject to subsection (3), the Minister may at any time, by —
- (a) notice in writing given to a ministerial officer not less than 4 weeks before the termination concerned; or
  - (b) payment to a ministerial officer in lieu of the period of notice referred to in paragraph (a) of an amount not exceeding such amount of the salary of the ministerial officer as is prescribed,
- terminate the employment of the ministerial officer.
- (3) The Minister shall not terminate under subsection (2) the employment of a ministerial officer employed to assist another political office holder unless the Minister has first consulted the other political office holder.
- (4) A ministerial officer may at any time terminate his or her employment by notice in writing given to the Minister not less than 4 weeks, or such shorter period as is agreed between the ministerial officer and the Minister, before that termination.
- (5) If the employment of a person as a ministerial officer is terminated by subsection (1)(a), the Minister may by writing direct that the employment of the person shall be deemed —
- (a) not to have been so terminated; and
  - (b) subject to subsection (6), to have continued, or to continue, until a day specified in that direction.
- (6) A direction under subsection (5) has effect according to its terms until the termination of the relevant employment under Part 5 or subsection (1), (2) or (4).

*[Section 72 amended by No. 36 of 2000 s. 24.]*

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

Notwithstanding anything in any other Act, a person who —

- (a) immediately before his or her employment as a ministerial officer, was not employed in a department or organisation; or

- (b) is engaged under a contract for services under section 100(1) to assist a political office holder,

is not, while he or she remains employed as a ministerial officer or so engaged under a contract for services, eligible to apply for, or to be appointed to, any office, post or position in any department or organisation.

**74. Relationship between ministerial officers etc. and employees employed in departments or organisations**

- (1) A Minister of the Crown shall —
  - (a) as soon as practicable after this section commences; or
  - (b) if he or she becomes a Minister of the Crown after this section commences, as soon as practicable after becoming a Minister of the Crown,

make arrangements in writing in relation to each department or organisation for which the Minister of the Crown is responsible setting out the manner in which, and the circumstances in which, dealings are to be had, and communications are to be made, between ministerial officers assisting the Minister of the Crown and the employees in that department or organisation.

- (2) Notwithstanding anything in subsection (1), a ministerial officer shall not, otherwise than with the agreement of the employing authority of the department or organisation concerned, direct an employee of that department or organisation in relation to the manner in which that employee is to perform the functions of his or her office, post or position in that department or organisation.
- (3) In this section —
  - ministerial officer* includes —
    - (a) person occupying a special office created under section 36 as read with section 75(1); and
    - (b) person engaged under a contract for services under section 100(1) to assist a political office holder.

**Division 2 — Assistance by permanent officers and seconded employees**

**75. Permanent officers and seconded employees occupying special offices**

- (1) The chief executive officer of the department principally assisting the Minister in the administration of this Act may, for the purpose of assisting a political office holder, create under section 36 one or more special offices within that department.
- (2) A special office created under subsection (1) may be occupied by —
  - (a) a person who —
    - (i) is appointed to fill a vacancy in that office under section 64(3); or
    - (ii) is transferred to that office under section 65(1) or (2),  
and whose salary does not exceed such level as is prescribed for the purposes of this paragraph; or
  - (b) an employee in a department or organisation who is seconded to occupy that office.
- (3) An employee referred to in subsection (2)(b) —
  - (a) whose salary has exceeded the level referred to in subsection (2)(a); and
  - (b) who has occupied a special office created under subsection (1),

continuously for at least 2 years is entitled to have his or her level of classification reviewed by such person or persons as are appointed by the Minister.

## **Part 5 — Substandard performance and disciplinary matters**

### **Division 1 — General**

#### **76. Application and effect of Part 5**

- (1) Subject to subsection (3), this Part applies to and in relation to —
  - (a) all public service officers and ministerial officers; and
  - (b) such other employees, or members of such other class of employees, as are or is prescribed for the purposes of this section.
- (2) To the extent that this Part is inconsistent with any enactment which applies to —
  - (a) an employee; or
  - (b) a member of a class of employees,prescribed under subsection (1)(b), this Part prevails.
- (3) If the employing authority of an employee who is not a public service officer suspects that that employee has disobeyed or disregarded a direction which is by virtue of section 94(4) a lawful order for the purposes of section 80(a), that employee shall be taken for the purposes of this Part to be a public service officer, and proceedings may be taken accordingly under this Part against that employee for the suspected breach of discipline arising out of that disobedience or disregard.

#### **77. Exercise of certain powers when employee is appointed by Governor**

In the case of an employee in a department or organisation who is appointed by the Governor —

- (a) the powers conferred on an employing authority by this Part (other than the power to terminate the employment



in the Public Sector of the employee) may be exercised for and on behalf of the Governor —

- (i) in the case of an employee who is a chief executive officer, by the Minister; or
- (ii) in the case of an employee who is not a chief executive officer, by the employing authority of the department or organisation;

and

- (b) the power to terminate the employment in the Public Sector of that employee (not being a chief executive officer) may be exercised by the Governor on the recommendation of the Minister of the Crown responsible for the department or organisation.

**78. Rights of appeal and reference**

- (1) Subject to subsection (3) and to section 52, an employee who —
  - (a) is a Government officer within the meaning of section 80C of the *Industrial Relations Act 1979*; and
  - (b) is aggrieved by a decision made in the exercise of a power under section 79(3)(b) or (c) or (4), 82, 86(3)(b), (8)(a), (9)(b)(ii) or (10)(a), 87(3)(a), 88(1)(b)(ii) or 92(1),

may appeal against that decision to the Industrial Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, and that Public Service Appeal Board has jurisdiction to hear and determine that appeal under and subject to that Division.

- (2) Despite section 29 of the *Industrial Relations Act 1979*, but subject to subsection (3), an employee who —
  - (a) is not a Government officer within the meaning of section 80C of that Act; and

- (b) is aggrieved by a decision referred to in subsection (1)(b),

may refer the decision mentioned in paragraph (b) to the Industrial Commission as if that decision were an industrial matter mentioned in section 29(b) of that Act, and that Act applies to and in relation to that decision accordingly.

- (3) Despite section 29 of the *Industrial Relations Act 1979*, but subject to section 52, an employee —
- (a) against whom proceedings have been taken under this Part for a suspected breach of discipline arising out of alleged disobedience to, or disregard of, a direction which is by virtue of section 94(4) a lawful order for the purposes of section 80(a); and
- (b) who is aggrieved by a decision made in the exercise of a power under section 82, 86(3)(a), (8)(a), (9)(b)(i) or (10)(a), 87(3)(a) or 88(1)(b)(i),

may refer the decision referred to in paragraph (b) to the Industrial Commission as if that decision were an industrial matter mentioned in section 29(b) of that Act, and that Act applies to and in relation to that decision accordingly.

- (4) In exercising its jurisdiction under subsection (3) in relation to a decision consisting of a lawful order referred to in section 94(4), the Industrial Commission shall confine itself to determining whether or not that decision has been, or is capable of having been, complied with.

### **Division 2 — Substandard performance**

#### **79. Employees whose performance is substandard**

- (1) For the purposes of this section, the performance of an employee is substandard if and only if the employee does not, in the performance of the functions that he or she is required to perform, attain or sustain a standard that a person may

reasonably be expected to attain or sustain in the performance of those functions.

- (2) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not the performance of an employee is substandard, regard —
- (a) shall be had —
    - (i) to any written selection criteria or job specifications applicable to;
    - (ii) to any duty statement describing; and
    - (iii) to any written work standards or instructions relating to the manner of performance of, the functions the employee is required to perform; and
  - (b) may be had —
    - (i) to any written selection criteria or job specifications applicable to;
    - (ii) to any duty statement describing; and
    - (iii) to any written work standards or instructions relating to the manner of performance of, functions similar to those functions.
- (3) Subject to subsections (4), (5) and (6), an employing authority may, in respect of one of its employees whose performance is in the opinion of the employing authority substandard for the purposes of this section —
- (a) withhold for such period as the employing authority thinks fit an increment of remuneration otherwise payable to that employee;
  - (b) reduce the level of classification of that employee; or
  - (c) terminate the employment in the Public Sector of that employee.

- (4) The Governor may, on the recommendation of the Minister of the Crown responsible for the relevant public sector body, terminate the employment in the Public Sector of an employee —
- (a) who was appointed to his or her employment by the Governor; and
  - (b) whose performance is in the opinion of his or her employing authority substandard for the purposes of this section.
- (5) If an employee does not admit to his or her employing authority that his or her performance is substandard for the purposes of this section, that employing authority shall, before forming the opinion that the performance of the employee is substandard for those purposes, cause an investigation to be held into whether or not the performance of the employee is substandard.
- (6) If an employee to whose performance this section is applied is a chief executive officer —
- (a) the reference in subsection (4) to the Minister of the Crown responsible for the relevant public sector body shall be taken to be a reference to the Minister; and
  - (b) an investigation held under subsection (5) into whether or not the performance of the chief executive officer is substandard shall take the form of an assessment referred to in section 48(1)(d), and for that purpose section 48(1)(d) and (2) applies to and in relation to the chief executive officer as if references to non-recommendation of reappointment or to removal from office were references to termination of the employment in the Public Sector of the chief executive officer under subsection (4).

### **Division 3 — Disciplinary matters**

#### **80. Breaches of discipline**

An employee who —

- (a) disobeys or disregards a lawful order;
- (b) contravenes —
  - (i) any provision of this Act applicable to that employee; or
  - (ii) any public sector standard or code of ethics;
- (c) commits an act of misconduct;
- (d) is negligent or careless in the performance of his or her functions; or
- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

commits a breach of discipline.

*[Section 80 amended by No. 29 of 2003 s. 28.]*

#### **81. Procedure when breach of discipline suspected**

- (1) An employing authority may, when it suspects that a person has committed a breach of discipline whilst serving as an employee in its public sector body and has given the person such notice in writing of the nature of the suspected breach of discipline as is prescribed, give the person a reasonable opportunity to submit an explanation to the employing authority.
- (2) After having given the respondent the reasonable opportunity referred to in subsection (1), the employing authority may —
  - (a) if it is not the Minister, investigate or direct another person to investigate; or
  - (b) if it is the Minister, direct another person to investigate,the suspected breach of discipline in accordance with prescribed procedures.

- (3) A person to whom a direction is given under subsection (2) shall comply with that direction.
- (4) A direction shall not be given under subsection (2) to the Commissioner.

**82. Suspension without pay**

- (1) If an investigation is initiated under section 81, the employing authority may at any time before proceedings against the respondent are terminated within the meaning of subsection (2) suspend the respondent, if still its employee, without pay.
- (2) When proceedings against a respondent for a suspected breach of discipline are terminated by —
  - (a) the taking of action under section 83 or 84 that is not cancelled under section 85, or the taking of action under section 86(3), 88(1) or 89; or
  - (b) a finding that no breach of discipline was committed by the respondent,

the employing authority shall terminate any suspension of the respondent without pay under subsection (1) and, if no breach of discipline has been found to have been committed by the respondent, restore to the respondent the pay of which the respondent has been deprived during the period of that suspension.

- (3) An employing authority may, in relation to an employee who has been suspended without pay under subsection (1), on its own initiative or on the application of that employee restore pay to that employee for such period as the employing authority thinks fit.

**83. Powers of employing authority other than Minister after investigation of alleged breach of discipline**

- (1) If, following the investigation of an alleged breach of discipline under section 81, an employing authority which is not the

Minister finds, whether as a result of its own investigation or that of a person directed under section 81(2)(a), that —

- (a) a minor breach of discipline was committed by the respondent, that employing authority may in accordance with prescribed procedures —
    - (i) reprimand the respondent;
    - (ii) impose on the respondent a fine not exceeding an amount equal to the amount of remuneration received by the respondent in respect of the last day during which he or she was at work as an employee before the day on which that finding was made; or
    - (iii) both reprimand, and impose the fine referred to in subparagraph (ii) on, the respondent;
  - (b) a serious breach of discipline appears to have been committed by the respondent, that employing authority shall cause the respondent to be charged in accordance with prescribed procedures with having committed that alleged breach of discipline; or
  - (c) no breach of discipline was committed by the respondent, notify the respondent of that finding and that no further action will be taken in the matter.
- (2) For the purposes of this section, a breach of discipline committed as a result of disobedience to, or disregard of, a lawful order referred to in section 94(4) is a serious breach of discipline.

**84. Powers of Minister as employing authority after investigation of alleged breach of discipline**

- (1) If, following the investigation of an alleged breach of discipline under section 81, a person directed under section 81(2)(b) to investigate that breach of discipline finds that —
  - (a) a minor breach of discipline was committed by the respondent, that person shall submit that finding to the

- Minister and recommend to the Minister that the Minister act in relation to the respondent in the manner referred to in section 83(1)(a)(i), (ii) or (iii);
- (b) a serious breach of discipline appears to have been committed by the respondent, that person shall submit that finding to the Minister and recommend to the Minister that the Minister act in relation to the respondent in the manner referred to in section 83(1)(b) as if the Minister were the relevant employing authority referred to in that section; or
  - (c) no breach of discipline was committed by the respondent, that person shall submit that finding to the Minister and recommend to the Minister that the Minister notify the respondent of that finding and that no further action will be taken in the matter.
- (2) On receiving a finding and recommendation made under subsection (1), the Minister shall —
- (a) accept that finding; and
  - (b) in the case of a recommendation made under —
    - (i) subsection (1)(a), may accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that subsection; or
    - (ii) subsection (1)(b) or (c), shall accept that recommendation and act accordingly in relation to the respondent.
- (3) For the purposes of subsection (1), a breach of discipline committed as a result of disobedience to, or disregard of, a lawful order referred to in section 94(4) is a serious breach of discipline.



**85. Procedure if respondent objects to certain findings or actions**

If a respondent objects by notice in writing addressed to an employing authority —

- (a) to any finding by the employing authority under section 83 or 84 that he or she committed a minor breach of discipline; or
- (b) to any action taken by the employing authority in relation to him or her under section 83(1)(a) or 84(2)(b)(i),

within 7 days after being notified in writing of that finding or action, as the case requires, that finding or action is cancelled by virtue of this section and the respondent may be charged in accordance with the prescribed procedures with having committed the alleged breach of discipline.

**86. Procedure when charge of breach of discipline brought**

- (1) A charge under section 83(1)(b), 84(2)(b)(ii) or 85 shall —
  - (a) be in writing;
  - (b) contain the prescribed details of the alleged breach of discipline; and
  - (c) require the respondent to indicate within such period of not less than 7 days as is specified in the charge whether or not he or she admits or denies the charge.
- (2) A respondent charged under section 83(1)(b), 84(2)(b)(ii) or 85 shall admit or deny the charge within the relevant period referred to in subsection (1)(c).
- (3) Subject to section 89, if a respondent admits a charge under subsection (2) and the employing authority finds the charge to be proved, the employing authority —
  - (a) shall, if the charge is a charge of committing a breach of discipline consisting of disobedience to, or disregard of,

a lawful order referred to in section 94(4), dismiss the respondent; or

- (b) may —
- (i) reprimand the respondent;
  - (ii) transfer the respondent to another public sector body with the consent of the employing authority of that public sector body or, if the respondent is an employee other than a chief executive officer or chief employee, transfer him or her to another office, post or position in the public sector body in which he or she is currently employed;
  - (iii) impose on the respondent a fine not exceeding an amount equal to the amount of remuneration received by the respondent in respect of the period of 5 days during which he or she was at work as an employee immediately before the day on which the finding of a breach of discipline was made;
  - (iv) reduce the monetary remuneration of the respondent;
  - (v) reduce the level of classification of the respondent; or
  - (vi) dismiss the respondent,

or, except when the respondent is dismissed under subparagraph (vi), take action under any 2 or more of the subparagraphs of this paragraph.

- (4) If a respondent denies a charge under subsection (2) and the employing authority is not the Minister, the employing authority may —
- (a) hold, or direct a person to hold, a disciplinary inquiry into the charge in accordance with prescribed procedures; or

- (b) if it considers that a special disciplinary inquiry should be held into the charge, request the Minister to direct that a special disciplinary inquiry be held into the charge by a person named in that direction.
- (5) A directed person shall, subject to subsections (6) and (7), comply with the relevant direction given under subsection (4)(a).
- (6) If, at any time after the commencement of a disciplinary inquiry held under subsection (4)(a), the employing authority or directed person considers that a special disciplinary inquiry should be held into the charge, the employing authority may request the Minister to direct that —
  - (a) a special disciplinary inquiry be held into the charge by a person named in that direction; or
  - (b) the disciplinary inquiry be converted into a special disciplinary inquiry and that the person holding the disciplinary inquiry hold the resulting special disciplinary inquiry.
- (7) If the Minister complies with a request made under subsection (4)(b) or (6) and makes a direction referred to in —
  - (a) subsection (4)(b), the person named in that direction shall comply with that direction;
  - (b) subsection (6)(a), the person named in that direction shall comply with that direction and the relevant disciplinary inquiry being held under subsection (4)(a) is terminated; or
  - (c) subsection (6)(b), the disciplinary inquiry concerned is converted into a special disciplinary inquiry and the person holding that disciplinary inquiry shall hold the resulting special disciplinary inquiry.

- (8) If a directed person finds at the conclusion of a disciplinary inquiry that —
- (a) a breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it act in relation to the respondent under subsection (3) as if the respondent had admitted the charge under subsection (2); or
  - (b) no breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it notify the respondent of that finding and that no further action will be taken in the matter.
- (9) On receiving a finding and recommendation under subsection (8), the employing authority shall —
- (a) accept the finding; and
  - (b) in the case of a recommendation made under —
    - (i) subsection (8)(a) in relation to a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94(4), dismiss the respondent;
    - (ii) subsection (8)(a) in relation to a charge other than a charge referred to in subparagraph (i), accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that subsection; or
    - (iii) subsection (8)(b), accept that recommendation and act accordingly in relation to the respondent.

- (10) If an employing authority finds at the conclusion of a disciplinary inquiry held by itself that —
- (a) a breach of discipline was committed by the respondent, the employing authority shall act under subsection (3) as if the respondent had admitted the charge under subsection (2); or
  - (b) no breach of discipline was committed by the respondent, the employing authority shall notify the respondent of that finding and that no further action will be taken in the matter.
- (11) If a respondent denies a charge under subsection (2) and the employing authority is the Minister, the Minister shall direct a person to hold a special disciplinary inquiry into the charge and the person shall comply with that direction.
- (12) A direction shall not be given under this section to the Commissioner.
- (13) In this section —
- directed person* means person directed under subsection (4)(a) to hold a disciplinary inquiry into the charge concerned;
- disciplinary inquiry* means disciplinary inquiry held or directed to be held under subsection (4)(a).

**87. Special disciplinary inquiries**

- (1) The provisions of sections 12 and 13 apply to and in relation to a person holding a special disciplinary inquiry as if references in those sections and Schedule 3 to a special inquirer and to a special inquiry were references to that person and to the special disciplinary inquiry, respectively.
- (2) Without limiting the generality of subsection (1), a person holding a special disciplinary inquiry may have regard to any information elicited, or findings made, in another special disciplinary inquiry, in a special inquiry or in an investigation held under section 24.

- (3) If a person holding a special disciplinary inquiry finds at the conclusion of the special disciplinary inquiry that —
- (a) a breach of discipline was committed by the respondent, that person shall submit that finding to the employing authority and recommend to the employing authority that it act in relation to the respondent under section 86(3) as if the respondent had admitted the charge under section 86(2); or
  - (b) no breach of discipline was committed by the respondent, that person shall submit that finding to the employing authority and recommend to the employing authority that it notify the respondent of that finding and that no further action will be taken in the matter.

**88. Procedure on receipt of finding and recommendation from special disciplinary inquiry**

- (1) On receiving a finding and recommendation made under section 87(3), the employing authority shall, subject to section 89 —
- (a) accept that finding; and
  - (b) in the case of a recommendation made under —
    - (i) section 87(3)(a) in relation to a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94(4), dismiss the respondent;
    - (ii) section 87(3)(a) in relation to a charge other than a charge referred to in subparagraph (i), accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that section; or

(iii) section 87(3)(b), accept that recommendation and act accordingly in relation to the respondent.

(2) The Minister shall, if he or she, whilst acting in his or her capacity as an employing authority, declines under subsection (1)(b)(ii) to accept a recommendation and takes other action in relation to the respondent, cause notice of that fact and of the taking of that other action to be published in the *Gazette* as soon as practicable.

**89. Dismissal of chief executive officer on disciplinary grounds**

(1) If —

(a) a respondent who is a chief executive officer —

(i) admits a charge under section 86(2); or

(ii) is the subject of a recommendation made under section 87(3)(a);

and

(b) the relevant charge is a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94(4),

the Minister shall, in his or her capacity as the employing authority of the respondent, recommend to the Governor that the respondent be dismissed and the Governor shall dismiss the respondent.

(2) If —

(a) a respondent who is a chief executive officer —

(i) admits a charge under section 86(2); or

(ii) is the subject of a recommendation made under section 87(3)(a);

and

(b) the relevant charge is a charge other than a charge referred to in subsection (1)(b); and

- (c) the Minister, in his or her capacity as the employing authority of the respondent, considers that the respondent ought to be dismissed,

the Minister shall recommend to the Governor that the respondent be dismissed and the Governor may dismiss the respondent.

**90. Employing authority to notify respondents of outcomes of disciplinary proceedings against them**

The employing authority of a respondent shall notify the respondent —

- (a) whether or not the respondent has been found under this Division to have committed any breach of discipline alleged against him or her; and
- (b) if such a finding has been made against the respondent, what action has been taken under this Division in relation to the respondent,

within the prescribed period after the making of that finding or the taking of that action, as the case requires.

**91. Payment of fines**

When a fine is imposed on a respondent under this Division, the respondent shall forthwith pay the amount of the fine to the Treasurer of the State and, if the respondent does not do so, that amount may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the Crown.

**92. Powers of employing authorities in respect of certain offences committed by employees**

- (1) Notwithstanding the provisions of *The Criminal Code*, if an employee during his or her period of service is convicted —
  - (a) on indictment or otherwise, of an indictable offence; or



- (b) of such other offence as is prescribed or of an offence of such class of offence as is prescribed,

the employing authority of the employee may, in addition to any action or penalty ordered by a court in respect of that offence, take action in relation to the employee under either or both of subparagraphs (i) and (ii), or under subparagraph (vi), of section 86(3)(b) as if the employee had been a respondent and had admitted a charge under section 86(2).

- (2) An employing authority —

- (a) which takes action in relation to an employee under subsection (1) shall make a record, and notify the employee, of that action and of its reasons for having taken that action; or
- (b) which, although empowered by subsection (1) to take action in relation to an employee, decides not to take any such action, shall make a record, and notify the employee, of that decision and of its reasons for having made that decision,

within the prescribed period after the taking of that action or the making of that decision, as the case requires.

## **Part 6 — Redeployment and redundancy of employees**

### **93. Administration of Part 6**

- (1) The employing authority of an affected department or organisation may, with the approval of the Minister, exercise such powers and perform such duties as are conferred or imposed on such an employing authority by any regulations referred to in section 94(2).
- (2) An approval given by the Minister under subsection (1) shall not be made subject to any conditions, qualifications, limitations or exceptions.
- (3) In subsection (1) —  
***affected department or organisation*** means department or organisation the whole or any part of —
  - (a) the undertaking of which is, or is to be, sold or otherwise disposed of to; or
  - (b) the production or provision of goods or services or both by which is, or is to be, replaced by the production or provision of goods or services or both by,  
  
a person outside the Public Sector.
- (4) As soon as practicable after regulations referred to in section 94(3) are made, and whenever required by subsection (5)(d) thereafter, the Minister shall in writing delegate to the person specified in the instrument of delegation (not being a person who is another Minister of the Crown or the Commissioner) the exercise and performance of all powers and duties conferred or imposed on the Minister by those regulations.
- (5) Section 59 of the *Interpretation Act 1984* applies to subsection (4) as if that subsection conferred on the Minister a

power of delegation instead of imposing on the Minister a duty of delegation, but a delegation under that subsection —

- (a) precludes the Minister from exercising or performing a power or duty delegated under that subsection;
  - (b) shall not be made subject to any conditions, qualifications, limitations or exceptions;
  - (c) shall not be amended; and
  - (d) shall not be revoked unless, forthwith on that revocation, the exercise and performance of the powers and duties referred to in that subsection are delegated under that subsection to another person.
- (6) A person to whom the exercise and performance of powers and duties have been delegated under subsection (4) —
- (a) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by that person, delegate to another person (not being a person who is a Minister of the Crown or the Commissioner) the exercise or performance of any of those powers or duties, other than this power of delegation; and
  - (b) shall not exercise the power conferred by regulations referred to in section 94(3)(c)(ii) without the prior approval of the Minister.

**94. Regulations concerning redeployment and redundancy**

- (1) The Governor may under section 108 make regulations prescribing arrangements for —
- (a) redeployment and retraining; and
  - (b) redundancy,

for employees who are surplus to the requirements of any department or organisation, or whose offices, posts or positions have been abolished, and specifying which parts of the Public Sector must comply with those regulations.

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- (2) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —
- (a) the situation in which the whole or any part of —
    - (i) the undertaking of a department or organisation is, or is to be, sold or otherwise disposed of to; or
    - (ii) the production or provision of goods or services or both by a department or organisation is, or is to be, replaced by the production or provision of goods or services or both by,  
a person outside the Public Sector, and an employee of the department or organisation is offered a suitable office, post or position by that person;
  - (b) an employee referred to in paragraph (a) who —
    - (i) refuses the offer of a suitable office, post or position, to be directed by his or her employing authority to accept that offer; or
    - (ii) hinders or obstructs the process by which an employee is selected for the making of an offer of a suitable office, post or position, to be directed by his or her employing authority to refrain from that hindrance or obstruction;
  - (c) the terms and conditions (including remuneration) which are to apply to an employee who accepts an offer referred to in paragraph (a); and
  - (d) the terms and conditions (including remuneration) which are to apply to an employee who is dismissed under section 86(3)(a) or (9)(b)(i), 88(1)(b)(i) or 89(1).
- (3) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —
- (a) the registration of an employee (in this subsection called a **registered employee**) who is surplus to the requirements of a department or organisation, or whose office, post or position has been abolished, and who cannot be transferred within the department or organisation;

- (b) the maximum period for which a registered employee may be registered;
  - (c) the circumstances in which the Minister may direct —
    - (i) a registered employee to accept redeployment between one department or organisation and another; and
    - (ii) the employing authority of a department or organisation to accept a registered employee directed under regulations made under this paragraph to accept redeployment to the department or organisation, and that employing authority shall comply with that direction;
  - (d) the retraining of a registered employee and for the terms and conditions (including remuneration) which are to apply to the registered employee;
  - (e) the terms and conditions (including remuneration) which are to apply to a registered employee who, with the prior approval of the Minister, accepts voluntary severance by resigning his or her office, post or position;
  - (f) the terms and conditions (including remuneration) which are to apply to a registered employee who accepts an offer of a suitable office, post or position inside or outside the Public Sector, and those which are to apply to a registered employee who does not; and
  - (g) the manner in which employing authorities are to notify the Minister of vacancies in offices, posts or positions within their departments or organisations, and the procedure to be followed before those vacancies can be filled.
- (4) A direction referred to in subsection (2)(b) or (3)(c)(i) is, if that direction is —
- (a) given to the employee concerned in accordance with the relevant regulations referred to in this section; and

- (b) upheld by the Industrial Commission on a reference under section 95(3), or the period referred to in that section has expired without that direction having been so referred,

a lawful order for the purposes of section 80(a), but nothing in this subsection limits the meaning of “lawful order” in section 80(a).

- (5) Regulations referred to in subsection (1) cannot provide for an employee to be required to comply with a direction referred to in subsection (2)(b)(i) or (3)(c)(i) unless the employee is offered suitable employment within or outside the Public Sector.
- (6) For the purposes of this section, ***suitable office, post or position*** or ***suitable employment*** means office, post or position or employment, as the case requires —
  - (a) which is suitable having regard to the respective responsibilities attached to it and to the office, post or position or employment occupied or held by the employee at the time when the relevant offer is made and to the experience, qualifications and competence of the employee;
  - (b) which does not require the employee to change his or her place of residence; and
  - (c) which satisfies such other criteria as are prescribed.

*[Section 94 amended by No. 57 of 1997 s. 99(2).]*

**95. Status of Part 6 etc. and references by aggrieved employees**

- (1) Subject to subsection (2), to the extent that there is an inconsistency between —
  - (a) this Part or regulations referred to in section 94 or both; and
  - (b) any other provision of this Act other than section 7, 8 or 9, or an award or order under the *Industrial*

*Relations Act 1979* (including a General Order made under section 50 of that Act),

this Part or those regulations or both, as the case requires, prevails or prevail.

- (2) To the extent that there is an inconsistency between section 101 and this Part or regulations referred to in section 94 or both, section 101 prevails.
- (3) Despite section 29 of the *Industrial Relations Act 1979*, an employee who is aggrieved by a decision made under regulations referred to in section 94 (other than a decision which is a lawful order by virtue of section 94(4)) may refer that decision within such period after the making of that decision as is prescribed to the Industrial Commission as if that decision were an industrial matter mentioned in section 29(1)(b) of that Act, and, subject to subsection (4), that Act applies to and in relation to that decision accordingly.
- (4) In exercising its jurisdiction in relation to a decision referred to in subsection (3), the Industrial Commission shall confine itself to determining whether or not regulations referred to in section 94 have been fairly and properly applied to or in relation to the employee by whom that decision was referred.

*[Section 95 amended by No. 74 of 2003 s. 97(3).]*

**Part 7 — Procedures for seeking relief in respect of breach of public sector standards**

**96. Application of Part 7**

This Part does not apply to or in relation to procedures for employees and other persons to obtain relief in respect of the breaching of public sector standards established in respect of substandard performance or disciplinary matters.

**97. Functions of Commissioner concerning relief in respect of breach of public sector standards**

- (1) The functions of the Commissioner under this Part are —
  - (a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards;
  - (b) to appoint persons for the purpose of implementing procedures referred to in paragraph (a); and
  - (c) to monitor the operation of procedures referred to in paragraph (a).
- (2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Commissioner set out in subsection (1).

**98. Regulations relating to relief in respect of breach of public sector standards**

The Governor may under section 108 make regulations —

- (a) prescribing procedures referred to in section 97(1)(a) and specifying those employees and persons, if any, who



are not eligible to seek relief in accordance with those procedures;

- (b) conferring powers on persons referred to in section 97(1)(b); and
- (c) for the remuneration, and the terms and conditions of appointment, of persons referred to in paragraph (b) who are not employees.

## **Part 8 — Miscellaneous**

### **99. Matters that cannot be the subject of industrial agreements or employer-employee agreements**

- (1) There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act 1979* —
- (a) any matters dealt with by a public sector standard or code of ethics, except —
    - (i) rates of remuneration;
    - (ii) leave;
    - (iii) hours of duty; and
    - (iv) such other matters as are prescribed for the purposes of this subparagraph;
  - (b) any matters dealt with by a provision of this Act relating to —
    - (i) employment tenure in the Public Service; or
    - (ii) approved classification systems or procedures in the Public Sector;and
  - (c) such other matters concerning the management or structure of the Public Sector as are prescribed for the purposes of this paragraph.
- (2) A matter referred to in subsection (1) cannot be varied or affected by an employer-employee agreement made under Part VID of the *Industrial Relations Act 1979*.

*[Section 99 amended by No. 20 of 2002 s. 25(6)-(7); amended in Gazette 15 Aug 2003 p. 3690.]*

### **100. Powers of employing authorities**

- (1) An employing authority may in accordance with approved procedures engage a person under a contract for services on

such terms and conditions, including the rate of remuneration, as the employing authority determines.

- (2) An employing authority may in accordance with approved procedures appoint a person on a casual employment basis on such terms and conditions as the employing authority, subject to any relevant written law or any binding award, order or industrial agreement under the *Industrial Relations Act 1979*, determines.
- (3) If the chief executive officer or chief employee of a department or organisation is not its employing authority, the employing authority of the department or organisation may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to that chief executive officer or chief employee any of its powers or duties under this Act.
- (4) Section 33 applies to and in relation to a chief executive officer or chief employee to whom a power or duty is delegated under subsection (3) as if the power or duty were one of his or her own powers or duties under this Act.
- (5) The powers conferred on an employing authority by this section are in addition to, and not in derogation from, any powers conferred on the employing authority by any other written law.

**101. Restriction on compensation payable for early termination of employment**

Subject to section 23A(4) of the *Industrial Relations Act 1979*, the maximum compensation payable under this Act or any other written law in respect of the termination of the employment of an employee in the Public Sector by —

- (a) the employing authority of a department or organisation;  
or
- (b) the employee,

is an amount equal to the amount of the remuneration to which the employee is entitled for the period of one year ending

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immediately before the day on which that employment is terminated.

*[Section 101 amended in Gazette 15 Aug 2003 p. 3690.]*

**102. Employees not to engage in activities unconnected with their functions**

- (1) Except with the written permission of his or her employing authority, which permission may at any time be withdrawn, an employee shall not —
  - (a) accept or continue to hold an office, post or position under the Government or a paid office, post or position in or under any local government or regional local government or the council of a local government or regional local government or any other public body corporate;
  - (b) accept or continue to hold or discharge the duties of or be employed in a paid position in connection with any banking, insurance, mining, mercantile or other commercial business, whether it be carried on by any corporation, company, firm or individual;
  - (c) engage in or undertake any business referred to in paragraph (b), whether as principal or agent;
  - (d) engage or continue in the private practice of any profession; or
  - (e) accept or engage in any employment for reward other than in connection with the functions of his or her office, post or position under the State.
- (2) Subsection (1) does not apply to or in relation to any case or class of case specified in public sector standards for the purposes of this section.
- (3) A person shall not be regarded as holding a paid office, post or position in or under any local government or regional local government or the council of a local government or regional

local government for the purposes of subsection (1)(a) by reason only of the person being paid a fee or allowance or being reimbursed for an expense if the payment or reimbursement is in accordance with Part 5, Division 8 of the *Local Government Act 1995*.

*[Section 102 amended by No. 14 of 1996 s. 4.]*

**103. Reappointment of unsuccessful electoral candidates**

- (1) This section applies to a person who —
- (a) resigned by writing under his or her hand from employment in the Public Sector within the period of 2 months ending on the date for the close of nominations for a candidate for election as a member of —
    - (i) the Legislative Council;
    - (ii) the Legislative Assembly;
    - (iii) either House of the Parliament of the Commonwealth;
    - (iv) the Parliament (or either House of the Parliament) of another State;
    - (v) the Legislative Assembly of the Australian Capital Territory; or
    - (vi) the Legislative Assembly of the Northern Territory;
  - (b) included in that writing notification of his or her intention to become a candidate at that election;
  - (c) was a candidate at that election; and
  - (d) failed to be elected at that election.
- (2) A person to whom this section applies is entitled to be reappointed as an employee in the public sector body in which that person was employed immediately before his or her resignation if that person applies to be so reappointed not later

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than 2 months after the declaration of the result of the election concerned.

- (3) On making an application under subsection (2), a person to whom this section applies is to be reappointed to perform —
- (a) the functions that he or she was required to perform immediately before resigning; or
  - (b) other functions,

at a remuneration and under terms and conditions not less favourable than those which applied to him or her immediately before that resignation.

- (4) The reference in subsection (2) to the declaration of the result of the election concerned is, if the result of that election is challenged, to be read as a reference to —
- (a) the determination of that challenge by a court of disputed returns (by whatever name called); or
  - (b) the lapsing of that challenge,

whichever happens first.

**104. Time between resignation and reappointment not to count as service**

A person does not accrue any rights as an employee in respect of the period between his or her resignation and reappointment under section 103, but that resignation is not to be taken to have affected his or her continuity of service.

**105. Restriction on communications by members of Parliament etc.**

- (1) Subject to this section, a person who is a member of Parliament or ministerial officer shall not interview or communicate with —
- (a) an employing authority or its delegate concerning the selection or appointment of any person to an office, post or position in the Public Sector; or
  - (b) the Commissioner or his or her delegate concerning the selection, appointment or reappointment of a chief executive officer.

Penalty: \$1 000.

- (2) Nothing in subsection (1) applies to discussions —

(a) between —

- (i) a political office holder; and
- (ii) the Minister, a delegate of the Minister, the chief executive officer of the department principally assisting the Minister in the administration of this Act or the delegate of that chief executive officer,

concerning a request by the political office holder for the selection and appointment or engagement of a person as a ministerial officer to assist the political office holder;  
or

(b) between —

- (i) the Minister and other Ministers of the Crown; or

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- (ii) the Commissioner and a Minister of the Crown, concerning the selection, appointment or reappointment of a chief executive officer.
- (3) A reference in subsection (1) to a member of Parliament or a ministerial officer includes a reference to a person acting on behalf of a member of Parliament or a ministerial officer, as the case requires.
- (4) In this section —  
*ministerial officer* includes —
  - (a) person occupying a special office created under section 36 as read with section 75(1); and
  - (b) person engaged under section 100(1) under a contract for services to assist a political office holder.

**106. Immunity**

An action shall not be brought or maintained against any person who is or has been —

- (a) the Commissioner, the Minister, a responsible authority, a political office holder, an employing authority, a delegate or an employee within the meaning of this Act; or
- (b) the Commissioner, a delegate or subdelegate or a member of the Public Service within the meaning of the repealed Act,



in respect of anything done or omitted to be done by or on behalf of that person in his or her official capacity under or for the purposes, or apparently under or for the purposes, of this Act or the repealed Act, as the case requires.

**107. Performance of functions of holder of office, post or position during vacancy therein or absence or incapacity of holder**

- (1) If under any written law or contract or agreement any functions, obligations or rights are imposed or conferred on the holder of an office, post or position in a department or organisation (in this section called *the incumbent*) in his or her capacity as such —
- (a) the Minister may direct a chief executive officer, or an employee whilst directed under section 51; or
  - (b) the employing authority of any employee may direct that employee,

to perform or exercise, in accordance with subsection (2), those functions, obligations and rights during any vacancy in that office, post or position or during the temporary absence or incapacity of the incumbent, as the case requires.

- (2) The functions, obligations and rights directed to be performed or exercised under subsection (1) shall be performed or exercised in the same manner and to the same extent in all respects as those functions, obligations or rights might have been respectively performed or exercised by the incumbent.
- (3) Everything done under a direction under this section shall be as good and effectual for all purposes and against all persons whomsoever as if done by the incumbent.

**108. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act, and, in particular, for —

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- (a) amending Schedule 1 or 2;
  - (b) managing the Public Sector or any part thereof;
  - (c) amending or supplementing, with effect from a time which is not earlier than the commencement of this section, the transitional provisions set out in Schedule 5 or 6 for the purpose of providing an effective and efficient transition from the operation of the repealed Act or from the circumstances of ministerial staff before the commencement of Part 4, as the case requires, to the operation of this Act;
  - (d) prescribing public service holidays; or
  - (e) matters in respect of which the Governor is empowered by other provisions of this Act to make regulations under this section.
- (2) To the extent that regulations made under subsection (1) are inconsistent with a public sector standard, code of ethics or code of conduct, those regulations prevail.

*[109. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Part 9 — Repeal and transitional provisions**

**110. *Public Service Act 1978* repealed, and transitional**

- (1) The *Public Service Act 1978* is repealed.
- (2) The transitional provisions set out in Schedule 5 have effect.

**111. Transitional provisions related to Part 4**

The transitional provisions set out in Schedule 6 have effect.

**112. References to certain words or expressions in written laws etc.**

- (1) A reference in a written law or book, document or writing to the *Public Service Act 1978* or the *Public Service Act 1904* is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to this Act.
- (2) A reference in a written law or book, document or writing to the Public Service Commissioner or the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management.

*[Section 112 amended by No. 57 of 1997 s. 99(3).]*

**Schedule 1 — Entities which are not organisations**

[s. 3 and 108]

*[Heading amended by No. 19 of 2010 s. 4.]*

<b>Column 1 Item</b>	<b>Column 2 Entity</b>
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	The Independent Market Operator established under the <i>Electricity Industry (Independent Market Operator) Regulations 2004</i>
13	The R & I Bank of Western Australia Ltd within the meaning of the <i>R &amp; I Holdings Act 1990</i> <sup>4</sup>

<b>Column 1 Item</b>	<b>Column 2 Entity</b>
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>
16A	Any port authority established under the <i>Port Authorities Act 1999</i>
17	Western Australian Land Authority established by the <i>Western Australian Land Authority Act 1992</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>
20	Western Australian Greyhound Racing Association established by the <i>Western Australian Greyhound Racing Association Act 1981</i>
21	A body established by section 4(1) of the <i>Electricity Corporations Act 2005</i> , namely — <ul style="list-style-type: none"><li>(i) the Electricity Generation Corporation;</li><li>(ii) the Electricity Networks Corporation;</li><li>(iii) the Electricity Retail Corporation; and</li><li>(iv) the Regional Power Corporation.</li></ul>

*[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); No. 67 of 2004 s. 45(2); No. 18 of 2005 s. 139; and in Gazette 16 Sep 1994 p. 4803; 23 Jun 1995 p. 2508; 3 Nov 1995 p. 5204; 4 Jan 2005 p. 6.]*

**Schedule 2 — Entities which are SES organisations**

[s. 3 and 108]

*[Heading amended by No. 19 of 2010 s. 4.]*

<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Entity</b>
<i>[1, 2 deleted]</i>	
3	Botanic Gardens and Parks Authority, established under the <i>Botanic Gardens and Parks Authority Act 1998</i>
<i>[3A-3D deleted]</i>	
3E	Chemistry Centre (WA), established by the <i>Chemistry Centre (WA) Act 2007</i>
3F	Colleges established under the <i>Vocational Education and Training Act 1996</i> section 35
4	Country High School Hostels Authority, established under the <i>Country High School Hostels Authority Act 1960</i>
4A	Country Housing Authority, established under the <i>Country Housing Act 1998</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>
<i>[6, 7 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>
<i>[10 deleted]</i>	
10AA	Economic Regulation Authority, established under the <i>Economic Regulation Authority Act 2003</i>

<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Entity</b>
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, 19	<i>deleted]</i>
19A	Insurance Commission of Western Australia, continued under the <i>Insurance Commission of Western Australia Act 1986</i>
[20-22	<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>
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>

**Public Sector Management Act 1994**

**Schedule 2** Entities which are SES organisations

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<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Entity</b>
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, 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	Rottnest Island Authority, established under the <i>Rottnest 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>
45	South West Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
[46	<i>deleted]</i>
47	Housing Authority, provided for under the <i>Housing Act 1980</i>



<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Entity</b>
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	<i>deleted]</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>
[55-57	<i>deleted]</i>
58	Western Australian Alcohol and Drug Authority, established under the <i>Alcohol and Drug Authority Act 1974</i>
59	Western Australian Land Information Authority, established by the <i>Land Information Authority Act 2006</i>
[60-62	<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	WorkCover Western Australia Authority referred to in the <i>Workers' Compensation and Injury Management Act 1981</i> section 94
66	Zoological Parks Authority, established under the <i>Zoological Parks Authority Act 2001</i> .

**Public Sector Management Act 1994**

**Schedule 2** Entities which are SES organisations

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*[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; No. 42 of 2004 s. 168; No. 67 of 2004 s. 45(3); No. 28 of 2006 s. 398; No. 60 of 2006 s. 187; No. 10 of 2007 s. 43; No. 38 of 2007 s. 197; amended 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; 9 Jun 2009 p. 1926; 18 Jun 2010 p. 2697.]*

### **Schedule 3 — Provisions applicable to and in relation to special inquirers**

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

*[Heading amended by No. 19 of 2010 s. 4.]*

**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

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(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 accused 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.

*[Clause 4 amended by No. 84 of 2004 s. 82.]*

**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 — Form of declaration**

[s. 26]

*[Heading amended by No. 19 of 2010 s. 4.]*

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 — General transitional provisions**

[s. 108 and 110(2)]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **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

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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 —

**cl. 8**

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- (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. Deleted by No. 1 of 1995 s. 35.]*

**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

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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

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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

**cl. 13**

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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.

*[Clause 13 amended in Gazette 16 Sep 1994 p. 4804; 2 May 1995 p. 1691; 27 Sep 1996 p. 4827; 19 Nov 1999 p. 5795.]*

**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.

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**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.

*[Clause 15 amended in Gazette 16 Sep 1994 p. 4804; 9 Dec 1994 p. 6715.]*

**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,

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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 6 — Transitional provisions relating to ministerial staff**

[s. 108 and 111]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **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

**cl. 2**

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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.

*[Clause 1 amended in Gazette 5 Jul 1996 p. 3252.]*

**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).

*[Clause 2 amended by No. 57 of 1997 s. 99(5); amended in Gazette 5 Jul 1996 p. 3252.]*

**cl. 3**

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**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.

*[Clause 3 amended in Gazette 5 Jul 1996 p. 3252.]*

**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*.



## Notes

- <sup>1</sup> This is a compilation of the *Public Sector Management Act 1994* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 5</sup>. The table also contains information about any reprint.

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Public Sector Management Act 1994</i>	31 of 1994	8 Jul 1994	s. 1 and 2: 8 Jul 1994; s. 3, 16, 19, 20, 26, 28 and Sch. 4: 20 Aug 1994 (see s. 2 and <i>Gazette</i> 19 Aug 1994 p. 4155); s. 4-6, Pt. 2 Div. 1, 2 and 4, s. 17, 18, 21-25 and 27, Pt. 3-6, 8, and 9 and Sch. 1-3, 5 and 6: 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948); Pt. 7: 1 Jan 1996 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5389)
<i>Public Sector Management (General) Regulations 1994</i> r. 27 published in <i>Gazette</i> 16 Sep 1994 p. 4803			1 Oct 1994 (see r. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Public Sector Management (Transitional) Regulations 1994</i> published in <i>Gazette</i> 16 Sep 1994 p. 4804			1 Oct 1994 (see r. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Public Sector Management (Transitional) Regulations (No. 2) 1994</i> published in <i>Gazette</i> 9 Dec 1994 p. 6715			9 Dec 1994
<i>Public Sector Management (SES Organizations) Regulations 1994</i> published in <i>Gazette</i> 9 Dec 1994 p. 6716			9 Dec 1994
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994</i> s. 109	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 1994</i> published in <i>Gazette</i> 23 Dec 1994 p. 7122			23 Dec 1994
<i>State Supply Commission Amendment Act (No. 2) 1994</i> s. 16	97 of 1994	30 Dec 1994	18 Mar 1995 (see s. 2(2) and <i>Gazette</i> 17 Mar 1995 p. 1011)

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Short title	Number and year	Assent	Commencement
<i>Hospitals Amendment Act 1994</i> s. 18	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Public Sector Management (SES Organizations) Regulations 1995</i> published in <i>Gazette</i> 7 Feb 1995 p. 423			7 Feb 1995
<i>Public Sector Management (Transitional) Regulations 1995</i> published in <i>Gazette</i> 2 May 1995 p. 1690-1			2 May 1995
<i>Industrial Legislation Amendment Act 1995</i> s. 35	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389)
<b>Reprint of the Public Sector Management Act 1994 as at 16 May 1995</b> (includes amendments listed above except those in the <i>Public Sector Management Act 1994</i> Pt. 7 and the <i>Industrial Legislation Amendment Act 1995</i> )			
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 1995</i> published in <i>Gazette</i> 30 May 1995 p. 2148-9			30 May 1995
<i>Public Sector Management (Entities which are not Organizations) Regulations 1995</i> published in <i>Gazette</i> 23 Jun 1995 p. 2507-8			23 Jun 1995
<i>Occupational Safety and Health Legislation Amendment Act 1995</i> s. 48	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and <i>Gazette</i> 15 Sep 1995 p. 4301)
<i>Public Sector Management (Entities which are not Organizations) Regulations (No. 2) 1995</i> published in <i>Gazette</i> 3 Nov 1995 p. 5204			3 Nov 1995
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Public Sector Management (Schedule 6) Regulations 1996</i> published in <i>Gazette</i> 5 Jul 1996 p. 3251-2			1 Oct 1994 (see r. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Public Sector Management (SES Organizations) Regulations 1996</i> published in <i>Gazette</i> 20 Aug 1996 p. 4068			20 Aug 1996

Short title	Number and year	Assent	Commencement
<i>Public Sector Management (Transitional) Regulations 1996</i> published in <i>Gazette</i> 27 Sep 1996 p. 4827			27 Sep 1996
<i>Curtin University of Technology Amendment Act 1996</i> s. 29	35 of 1996	27 Sep 1996	13 Nov 1996 (see s. 2(2) and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Vocational Education and Training Act 1996</i> s. 71(1)	42 of 1996	16 Oct 1996	1 Jan 1997 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Acts Amendment (ICWA) Act 1996</i> s. 38	45 of 1996	25 Oct 1996	1 Oct 1997 (see s. 2 and <i>Gazette</i> 23 Sep 1997 p. 5357)
<i>Financial Legislation Amendment Act 1996</i> s. 58	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Public Sector Management (SES Organizations) Regulations 1997</i> published in <i>Gazette</i> 28 Feb 1997 p. 1334			28 Feb 1997
<i>Curriculum Council Act 1997</i> s. 35	17 of 1997	8 Jul 1997	1 Aug 1997 (see s. 2 and <i>Gazette</i> 25 Jul 1997 p. 3907)
<b>Reprint of the Public Sector Management Act 1994 as at 3 Sep 1997</b> (includes amendments listed above except those in the <i>Acts Amendment (ICWA) Act 1996</i> )			
<i>Professional Standards Act 1997</i> s. 58	22 of 1997	18 Sep 1997	18 Apr 1998 (see s. 2 and <i>Gazette</i> 17 Apr 1998 p. 2045)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 99	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Public Sector Management (SES Organizations) Regulations 1998</i> published in <i>Gazette</i> 24 Mar 1998 p. 1620-1			24 Mar 1998
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 1998</i> published in <i>Gazette</i> 17 Jul 1998 p. 3798			17 Jul 1998
<i>Fire and Emergency Services Authority of Western Australia (Consequential Provisions) Act 1998</i> s. 38	42 of 1998	4 Nov 1998	1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Public Sector Management (SES Organizations) Regulations (No. 3) 1998</i> published in <i>Gazette</i> 24 Nov 1998 p. 6326			24 Nov 1998

## Public Sector Management Act 1994

Short title	Number and year	Assent	Commencement
<i>Botanic Gardens and Parks Authority Act 1998</i> s. 56	53 of 1998	7 Dec 1998	1 Jul 1999 (see s. 2 and <i>Gazette</i> 30 Jun 1999 p. 2879)
<b>Reprint of the Public Sector Management Act 1994 as at 26 Mar 1999</b> (includes amendments listed above except those in the <i>Botanic Gardens and Parks Authority Act 1998</i> )			
<i>Port Authorities (Consequential Provisions) Act 1999</i> s. 21 and 23	5 of 1999	13 Apr 1999	14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823)
<i>Public Sector Management (SES Organizations) Regulations 1999</i> published in <i>Gazette</i> p. 1933			14 May 1999
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 1999</i> published in <i>Gazette</i> p. 2920-1			2 Jul 1999
<i>Public Sector Management (SES Organizations) Regulations (No. 3) 1999</i> published in <i>Gazette</i> 24 Sep 1999 p. 4667-8			24 Sep 1999
<i>Midland Redevelopment Act 1999</i> s. 75	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and <i>Gazette</i> 31 Dec 1999 p. 7059)
<i>Public Sector Management (Transitional) Regulations 1999</i> published in <i>Gazette</i> p. 5794-5			19 Nov 1999
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 106	58 of 1999	24 Dec 1999	16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<i>Public Sector Management (SES Organizations) Regulations 2000</i> published in <i>Gazette</i> p. 504			11 Feb 2000
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 2000</i> published in <i>Gazette</i> 9 May 2000 p. 2236			9 May 2000
<b>Reprint of the Public Sector Management Act 1994 as at 9 Jun 2000</b> (includes amendments listed above except those in the <i>Gas Corporation (Business Disposal) Act 1999</i> )			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14(13) and 34	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Dairy Industry and Herd Improvement Legislation Repeal Act 2000 s. 20 and 34</i>	25 of 2000	5 Jul 2000	s. 20: 14 Jul 2000 (see s. 2(2) and <i>Gazette</i> 14 Jul 2000 p. 3841); s. 34: 1 Aug 2000 (see s. 2(3) and <i>Gazette</i> 14 Jul 2000 p. 3841)
<i>Public Sector Management (SES Organisations) Regulations (No. 3) 2000</i> published in <i>Gazette</i> 11 Aug 2000 p. 4697			11 Aug 2000
<i>Public Sector Management (SES Organisations) Regulations (No. 4) 2000</i> published in <i>Gazette</i> 15 Sep 2000 p. 5388-9			15 Sep 2000
<i>Electoral Amendment Act 2000 s. 24</i>	36 of 2000	10 Oct 2000	21 Oct 2000 (see s. 2 and <i>Gazette</i> 20 Oct 2000 p. 5899)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 59(b)</i>	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<i>State Records (Consequential Provisions) Act 2000 Pt. 8</i>	53 of 2000	28 Nov 2000	1 Dec 2001 (see s. 2 and <i>Gazette</i> 30 Nov 2001 p. 6067)
<i>Rural Business Development Corporation Act 2000 s. 44</i>	72 of 2000	6 Dec 2000	20 Dec 2000 (see s. 2 and <i>Gazette</i> 19 Dec 2000 p. 7273)
<i>Public Sector Management (SES Organisations) Regulations (No. 5) 2000</i> published in <i>Gazette</i> 19 Dec 2000 p. 7298-9			19 Dec 2000
<i>Public Sector Management (SES Organisations) Regulations (No. 6) 2000</i> published in <i>Gazette</i> 29 Dec 2000 p. 7985			1 Jan 2001 (see r. 2)
<i>Public Sector Management (SES Organisations) Regulations 2001</i> published in <i>Gazette</i> 9 Feb 2001 p. 775			9 Feb 2001
<b>Reprint of the Public Sector Management Act 1994 as at 9 Feb 2001</b> (includes amendments listed above except those in the <i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> and the <i>State Records (Consequential Provisions) Act 2000</i> )			
<i>Zoological Parks Authority Act 2001 s. 47</i>	24 of 2001	26 Nov 2001	22 May 2002 (see s. 2 and <i>Gazette</i> 10 May 2002 p. 2445)

**Public Sector Management Act 1994**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Labour Relations Reform Act 2002 s. 25</i>	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Public Interest Disclosure Act 2003 s. 28</i>	29 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Public Transport Authority Act 2003 s. 207</i>	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2384)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 s. 23 and 221(3)</i>	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 14 published in Gazette p. 3685-92</i>			15 Sep 2003 (see r. 2)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2(1) and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 97</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 6: The Public Sector Management Act 1994 as at 14 May 2004</b> (includes amendments listed above)			
<i>Workers' Compensation Reform Act 2004 s. 168</i>	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Public Sector Management (SES Organisations) Regulations 2004 published in Gazette p. 5315-16</i>			26 Nov 2004
<i>Western Australian Land Authority Amendment Act 2004 s. 45</i>	67 of 2004	8 Dec 2004	25 Dec 2004 (see s. 2 and <i>Gazette</i> 24 Dec 2004 p. 6247)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Public Sector Management (Entities which are not Organisations) Regulations 2004 published in Gazette 4 Jan 2005 p. 5-6</i>			4 Jan 2005
<i>Financial Administration Legislation Amendment Act 2005 s. 43</i>	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)

Short title	Number and year	Assent	Commencement
<i>Electricity Corporations Act 2005</i> s. 139	18 of 2005	13 Oct 2005	1 Apr 2006 (see s. 2(2) and <i>Gazette</i> 31 Mar 2006 p. 1153)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 15 Div. 2	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 7: The Public Sector Management Act 1994 as at 25 Aug 2006</b> (includes amendments listed above)			
<i>Land Information Authority Act 2006</i> s. 187	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 6, 7 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Chemistry Centre (WA) Act 2007</i> s. 43	10 of 2007	29 Jun 2007	1 Aug 2007 (see s. 2(1) and <i>Gazette</i> 27 Jul 2007 p. 3735)
<i>Water Resources Legislation Amendment Act 2007</i> s. 197	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)
<b>Reprint 8: The Public Sector Management Act 1994 as at 14 Nov 2008</b> (includes amendments listed above)			
<i>Public Sector Management (SES Organisations) Regulations 2009</i> published in <i>Gazette</i> 9 Jun 2009 p. 1926			r. 1 and 2: 9 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Jun 2009 (see r. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 71	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Public Sector Management (SES Organisations) Regulations 2010</i> published in <i>Gazette</i> 18 Jun 2010 p. 2696-7			r. 1 and 2: 18 Jun 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Jun 2010 (see r. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 59(a) <sup>6</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 39 <sup>7</sup>	24 of 2007	12 Oct 2007	To be proclaimed (see s. 2(1))
<i>State Superannuation Amendment Act 2007</i> s. 85 <sup>8</sup>	25 of 2007	16 Oct 2007	Operative on publication of an order under the <i>State Superannuation Act 2000</i> s. 56 (“transfer time”) (see s. 2(1)(c))
<i>Public Sector Reform Act 2010</i> Pt. 2 Div. 1 and Pt. 3 Div. 1 <sup>9</sup>	39 of 2010	1 Oct 2010	<del>To be proclaimed</del> <a href="#">Pt. 2 Div. 1: 1 Dec 2010</a> (see <a href="#">s. 2(b)</a> ) and <a href="#">Gazette 5 Nov 2010 p. 5563</a> <a href="#">Pt. 3 Div. 1: 28 Mar 2011</a> (see <a href="#">s. 2(b)</a> and <a href="#">Gazette 5 Nov 2010 p. 5563</a> )

<sup>2</sup> Under the *Alteration of Statutory Designations Order (No. 2) 1997* a reference in any law to the Police Department shall be read and construed as a reference to the department in the Public Service designated as the Police Service.

<sup>3</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

<sup>4</sup> The *R & I Holdings Act 1990* was repealed in *Gazette* 26 Jun 2001 p. 3063 under s. 22(2) of the *R & I Holdings Act 1990*.

<sup>5</sup> The amendment in the *Western Australian Greyhound Racing Association Amendment Act 1998* s. 20 is not included because of an error in the reference to the item to be amended. The same amendment was made by the *Statutes (Repeals and Minor Amendments) Act 2000* s. 34(2) and then the provision amended was again amended by the *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 221(3).



<sup>6</sup> On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 59(a) had not come into operation. It reads as follows:

“

**59. Public Sector Management Act 1994 amended**

The *Public Sector Management Act 1994* is amended as follows:

- (a) by repealing section 20(1);

”.

<sup>7</sup> On the date as at which this compilation was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 39 had not come into operation. It reads as follows:

“

**39. Public Sector Management Act 1994 amended**

- (1) The amendment in this section is to the *Public Sector Management Act 1994*.
- (2) Schedule 2 item 48 is deleted.

”.

<sup>8</sup> On the date as at which this compilation was prepared, the *State Superannuation Amendment Act 2007* s. 85 had not come into operation. It reads as follows:

“

**85. Public Sector Management Act 1994 amended**

- (1) The amendments in this section are to the *Public Sector Management Act 1994*.
- (2) Schedule 2 item 16 is deleted.

”.

<sup>9</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* Pt. 2 Div. 1 and Pt. 3 Div. 1 had not come into operation. They read as follows:

**Part 2 — Public Sector administration amendments**

**Division 1 — Public Sector Management Act 1994 amended**

**3. Act amended**

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

**4. Section 3 amended**

- (1) In section 3(1) delete the definitions of:

*approved*

*code of ethics*

*Commissioner*

*public sector standard*

*public service notices*

*special inquirer*

*special inquiry*

- (2) In section 3(1) insert in alphabetical order:

*code of ethics* means a code of ethics referred to in section 21(1) and established under the Commissioner's instructions;

*Commissioner* means the person holding the office of Public Sector Commissioner established by section 16(1);

*Commissioner's instructions* means instructions issued under section 22A;

*improvement action* means any one or more of the following actions by an employing authority in respect of an employee for the purpose of improving the performance or conduct of the employee —

- (a) counselling;
- (b) training and development;
- (c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory;
- (d) any other action of a similar nature;

*public sector notice* means a notice issued by or under the authority of the Commissioner for the purposes of this Act that is published as a public sector notice in accordance with the Commissioner's instructions;

*public sector standard* means a public sector standard referred to in section 21(1) and established under the Commissioner's instructions;

*special inquirer* means a person or persons appointed under section 24H to carry out a special inquiry;

*special inquiry* means a special inquiry held under section 24H;

- (3) Delete section 3(2).

**5. Section 4 amended**

Delete section 4(1) and insert:

- (1) The Commissioner is deemed to be the chief executive officer of the department principally assisting in the administration of this Act.

**6. Section 5 amended**

In section 5(1) in the definition of *employing authority* paragraph (a) delete “Minister;” and insert:

Commissioner; or

**7. Part 2 heading replaced**

Delete the heading to Part 2 and insert:

**Part 2 — Public Sector principles**

**8. Part 2 Division 1 heading deleted**

Delete the heading to Part 2 Division 1.

**9. Section 8 amended**

After section 8(2) insert:

- (3) For the purposes of this Act a proper assessment of merit in a selection process must be carried out in accordance with the relevant Commissioner’s instructions and does not always require a competitive assessment of merit.

**10. Section 9 amended**

Delete section 9(a)(ii) and “and” after it and insert:

- (ii) the Commissioner’s instructions, public sector standards and codes of ethics; and

- 11. Part 2 Division 2 deleted**  
Delete Part 2 Division 2.
- 12. Part 2 Division 3 heading replaced**  
Delete the heading to Part 2 Division 3 and insert:

**Part 3A — Public Sector Commissioner**

**Division 1 — Public Sector Commissioner**

- 13. Section 16 replaced**  
Delete section 16 and insert:
- 16. Public Sector Commissioner**
- (1) An office of Public Sector Commissioner is established.
  - (2) The office of Public Sector Commissioner is not an office in the Public Service.
- 14. Section 17 amended**  
After section 17(3) insert:
- (4) Before performing the functions of Commissioner for the first time, the Commissioner must make a declaration before the Governor in the form in Schedule 4.
- 15. Section 19 amended**  
After section 19(3) insert:
- (4) Subject to any determination under subsection (3), the Commissioner is entitled to leave of absence and other conditions of service as applicable to public service officers.
- 16. Section 20 amended**  
Delete section 20(4) and (5) and insert:
- (4) If —

- (a) a person immediately before appointment as Commissioner occupied an office, post or position in a department or organisation; and
- (b) the person's term of office as Commissioner expires by effluxion of time and the person is not reappointed to the office; and
- (c) but for the appointment as Commissioner, the person would still be entitled to hold the office, post or position referred to in paragraph (a),

the person is entitled to be appointed to an office, post or position in a department or organisation of at least the equivalent level of classification as the office, post or position that the person occupied immediately before appointment as Commissioner.

**17. Part 3A Division 2 heading inserted**

After section 20 insert:

**Division 2 — Functions of Commissioner**

**18. Section 21A inserted**

Before section 21 insert:

**21A. General functions of Commissioner**

The functions of the Commissioner include the following —

- (a) to promote the overall efficiency and effectiveness of the Public Sector, having regard to the principles set out in section 7;
- (b) to advise Ministers, chief executive officers and chief employees of changes, improvements and management practices which, in the opinion of the Commissioner, should be implemented in order to improve the efficiency and effectiveness of the whole or any part of the Public Sector;
- (c) to plan for the future management and operation of the Public Sector;
- (d) to perform other functions that are conferred on the Commissioner under this Act or any other Act.

**19. Section 21 amended**

- (1) In section 21(1):
  - (a) in paragraphs (a) and (b) delete “establish” and insert:  
  
issue Commissioner’s instructions establishing
  - (b) in paragraph (f) delete “section 97(1)(a);” and insert:  
  
section 97(1)(a).
  - (c) delete paragraphs (g) to (j).
- (2) Delete section 21(4).
- (3) After section 21(8) insert:
  - (9A) The Commissioner may by order published in the *Gazette* exempt the whole or any part of any public sector body from compliance with the whole or any part of a public sector standard or code of ethics.
  - (9B) The Commissioner may by order published in the *Gazette* repeal or amend an order made under subsection (9A).
- (4) Delete section 21(11) and insert:
- (11) To the extent that —
  - (a) a public sector standard is inconsistent with a code of ethics, a code of conduct or another Commissioner’s instruction, the public sector standard prevails; or
  - (b) a code of ethics is inconsistent with a code of conduct or another Commissioner’s instruction (other than a Commissioner’s instruction establishing a public sector standard), the code of ethics prevails.

Note: The heading to amended section 21 is to read:  
**Public sector standards, codes of ethics and codes of conduct**

**20. Sections 22A to 22G inserted**

After section 21 insert:

**22A. Commissioner's instructions**

- (1) The Commissioner may issue written instructions concerning the following —
  - (a) the management and administration of public sector bodies;
  - (b) the management and administration of the Senior Executive Service;
  - (c) human resource management, including the disposition of employees and offices under section 22B;
  - (d) official conduct;
  - (e) the taking of improvement action;
  - (f) dealing with suspected breaches of discipline, disciplinary matters and the taking of disciplinary action, under Part 5 Division 3;
  - (g) any other matter in respect of which Commissioner's instructions are required or permitted under this Act;
  - (h) any other matter in connection with the functions of the Commissioner in respect of which the Commissioner considers it is necessary or desirable to issue instructions.
- (2) The Commissioner's instructions must not be inconsistent with this Act and must have regard to the principles set out in sections 7, 8 and 9.
- (3) The Commissioner's instructions may apply —
  - (a) generally; or
  - (b) to a public sector body or class of public sector body specified in the instructions; or
  - (c) to an office or class of office specified in the instructions; or
  - (d) to an employee or class of employees specified in the instructions.
- (4) Except as provided in section 21, the Commissioner's instructions need not be published in the *Gazette* but must be made publicly available in such manner as the Commissioner thinks appropriate.
- (5) The Commissioner may amend or revoke the Commissioner's instructions.
- (6) The Commissioner must, before issuing, amending or revoking a Commissioner's instruction, consult such persons as the Commissioner considers it desirable and practicable to consult.

- (7) The Commissioner's instructions are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**22B. Disposition of employees and offices**

When departments or organisations are established in place of existing departments or organisations or by the amalgamation or division of existing departments or organisations, the Commissioner may effect the disposition of offices, posts and positions and employees and such other consequential changes as appear necessary to give effect to the change in departments or organisations.

**22C. Reports to Ministers**

The Commissioner may report from time to time to the Minister responsible for a public sector body on the compliance or non-compliance by the public sector body and employees in the public sector body with —

- (a) the principles set out in sections 8(1)(a), (b) and (c) and 9; and
- (b) public sector standards, codes of ethics and codes of conduct.

**22D. Annual report**

- (1) The Commissioner must in each year prepare a report on the following —
  - (a) the state of administration and management of the Public Sector;
  - (b) the compliance or non-compliance by public sector bodies and employees, either generally or in particular, with the principles set out in sections 8(1)(a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct;
  - (c) any other matters arising out of the performance of the Commissioner's functions that are, in the opinion of the Commissioner, of such significance as to require reporting in that manner.
- (2) A report required under subsection (1) may be prepared and dealt with in conjunction with any report required under the *Financial Management Act 2006* by the Commissioner in his or her capacity as the accountable authority of the department principally assisting in the administration of this Act.



**22E. Other reports**

The Commissioner may, in addition to the annual report required under section 22D(1), at any time prepare a report on a matter referred to in section 22D(1).

**22F. Reports under section 22D or 22E must be laid before Parliament**

- (1) Within 14 days after signing a report prepared under section 22D or 22E, the Commissioner is to transmit a copy of the report to each House of Parliament.
- (2) If—
  - (a) when the Commissioner is ready to transmit a report under subsection (1), a House of Parliament is not sitting; and
  - (b) the Commissioner is of the opinion that that House will not sit during the remainder of the period referred to in subsection (1),the Commissioner must transmit a copy of the report to the Clerk of that House.
- (3) Subsections (1) and (2) do not apply in relation to a report prepared under section 22D if the report is prepared and dealt with as provided for in section 22D(2).
- (4) A copy of a report transmitted to the Clerk of a House of Parliament under subsection (2) is taken to have been laid before the House.
- (5) The laying of a copy of a report before a House that is taken to have occurred under subsection (4) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after the receipt of the copy.

**22G. Powers**

The Commissioner has all the powers that are needed for the performance of the Commissioner's functions.

**21. Section 22 amended**

- (1) In section 22 delete "The" and insert:
  - (1) The

- (2) At the end of section 22 insert:
- (2) In particular, except as provided in this Act, the Commissioner is not subject to direction by the Minister or any other person in the performance of the Commissioner's functions.
- (3) Section 32 does not apply to or in relation to the Public Sector Commissioner.

**22. Section 23 replaced**

Delete section 23 and insert:

**23. Delegation by Commissioner**

- (1) The Commissioner may delegate to a person any power or duty of the Commissioner under another provision of this Act or any other Act.
- (2) A delegation under this section must be in writing and signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

**23. Part 3A Division 3 inserted**

After section 23 insert:

**Division 3 — Reviews, special inquiries and investigations**

**Subdivision 1 — Reviews**

**24A. Terms used**

In this Division —

*authorised person* has the meaning given in section 24C;

*review* means a review conducted under section 24B.

**24B. Reviews**

- (1) The Commissioner may on his or her own initiative conduct a review in respect of part or all of the functions, management or operations of one or more public sector bodies.
- (2) The Minister may by written notice direct the Commissioner to conduct a review in respect of part or all of the functions, management or operations of one or more public sector bodies.
- (3) The text of a direction given under subsection (2) is to be included in the annual report prepared by the Commissioner under section 22D.
- (4) The Commissioner must comply with a direction given under subsection (2) unless, in the Commissioner's opinion, there are exceptional circumstances for not complying.
- (5) If the Commissioner refuses to comply with a direction given under subsection (2) the Commissioner must prepare written reasons for the failure to comply and cause the text of those reasons to be included in the annual report prepared by the Commissioner under section 22D.

**24C. Commissioner may authorise people to perform functions**

The Commissioner may, by written notice, authorise a person (an *authorised person*) to perform functions under this Subdivision.

**24D. Powers of Commissioner and authorised person**

- (1) The Commissioner or an authorised person may for the purposes of a review —
  - (a) enter the premises of a public sector body;
  - (b) by written notice direct an employee to produce to him or her any document that is in the possession or under the control of the employee;
  - (c) inspect any document produced to him or her and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;
  - (d) direct an employee to answer questions.
- (2) An employee who, without reasonable excuse, fails to comply with a direction under subsection (1)(b) within 14 days of receiving it commits an offence.  
Penalty: a fine of \$1 000.
- (3) An employee who, without reasonable excuse, fails to comply with a direction under subsection (1)(d) commits an offence.  
Penalty: a fine of \$1 000.

**24E. Consultation before exercise of powers**

The powers conferred by section 24D are exercisable in relation to a public sector body only after consultation with —

- (a) the employing authority of the public sector body; and
- (b) the Minister —
  - (i) who is responsible for the public sector body; or
  - (ii) to whom the administration of the Act under which the public sector body is established or continued is committed.

**24F. Privileges and other protection**

- (1) Despite section 24D, an employee has the same privileges in relation to a requirement imposed under that section as a witness would have in proceedings in the Supreme Court.
- (2) Section 24D does not derogate from —
  - (a) an enactment that imposes a prohibition or restriction on —
    - (i) the availability of any information; or
    - (ii) the production or examination of any document;or
  - (b) a privilege or immunity existing by custom or convention and relating to the production of documents or other information of previous Governments of the State.

**24G. Report on review**

If a review was conducted on the direction of the Minister under section 24B(2), the Commissioner must provide the Minister with a written report on the conduct and findings of the review.

**Subdivision 2 — Special inquiries**

**24H. Special inquiries**

- (1) The Commissioner may on his or her own initiative —
  - (a) arrange for the holding of a special inquiry into a matter related to the Public Sector; and
  - (b) appoint a person or persons to carry out the special inquiry.
- (2) The Minister may direct the Commissioner to arrange for the holding of a special inquiry into a matter related to the Public Sector.
- (3) A direction given under subsection (2) must specify the matter to be the subject of the special inquiry.

- (4) The text of a direction given under subsection (2) is to be included in the annual report prepared by the Commissioner under section 22D.
- (5) The Commissioner must —
  - (a) comply with a direction given under subsection (2); and
  - (b) appoint a person or persons to carry out the special inquiry,unless, in the Commissioner's opinion, there are exceptional circumstances for not complying.
- (6) If the Commissioner refuses to comply with a direction given under subsection (2) the Commissioner must prepare written reasons for the failure to comply and cause the text of those reasons to be included in the annual report prepared by the Commissioner under section 22D.

**24I. Powers of person conducting special inquiry**

- (1) A special inquirer or a person authorised in writing by a special inquirer may for the purposes of a special inquiry —
  - (a) enter the premises of a public sector body; and
  - (b) by written notice require a person to produce to him or her any document that is in the possession or under the control of the person; and
  - (c) inspect any document produced to him or her and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents.
- (2) Schedule 3 applies to and in relation to a special inquirer.

**24J. Procedure and evidence at special inquiries**

- (1) An individual, public sector body or other body may be represented at a special inquiry by a legal practitioner or other agent.
- (2) A special inquirer must act independently in relation to the performance of his or her functions.
- (3) A special inquirer —
  - (a) is not bound by the rules of evidence and may be informed as the special inquirer thinks fit; and
  - (b) must act according to equity, good conscience and the substantial merits of the case and without regard to technicalities and legal forms.

(4) To the extent that the practice or procedure of a special inquirer is not prescribed by or under this Act, it is to be as the special inquirer determines.

(5) A special inquirer does not have power to make an award of costs.

**24K. Reports on special inquiries**

- (1) A special inquirer must —
- (a) within such period as the Commissioner requires, prepare a report on the conduct and findings, and any recommendations, of the special inquiry; and
  - (b) immediately after preparing the report, provide the Commissioner with a copy of the report.
- (2) If a special inquiry was held on the direction of the Minister under section 24H(2), the Commissioner must provide the Minister with a copy of the report on the special inquiry provided to the Commissioner under subsection (1)(b).

**Subdivision 3 — Investigations**

**24. Section 24 amended**

Delete section 24(2) and insert:

- (2) A person authorised under subsection (1) must —
- (a) within such period as the Commissioner requires, prepare a report on the conduct and findings of, and any recommendations resulting from, an investigation by the person; and
  - (b) immediately after preparing the report, provide the Commissioner with a copy of the report.

**25. Sections 25, 26 and 27 deleted**

Delete sections 25, 26 and 27.

**26. Part 3A Division 4 heading inserted**

Before section 28 insert:

**Division 4 — Acting appointments**

**27. Section 28 amended**

(1) Delete section 28(1) and insert:

- (1) The Governor may, on the recommendation of the Minister, appoint a person to act in the office of Commissioner during a period when —
- (a) the Commissioner is on leave of absence, or otherwise unable to perform the functions of Commissioner, or is absent from the State; or
  - (b) the Commissioner is suspended from that office under section 18(3) or (4); or
  - (c) that office is vacant.

(2) In section 28(3) delete “Commissioner for Public Sector Standards.” and insert:

Public Sector Commissioner.

(3) Delete section 28(6) and insert:

- (6) If—
- (a) a person immediately before appointment as Acting Commissioner under this section occupied an office in a department or organisation; and
  - (b) the person’s period of office as Acting Commissioner ends and the person is not reappointed to the office; and
  - (c) but for the appointment as Acting Commissioner, the person would still be entitled to hold the office referred to in paragraph (a),

the person is entitled to be appointed to an office in a department or organisation of at least the equivalent level of classification as the office that the person occupied immediately before appointment as Acting Commissioner.

(7) Sections 17(4), 18, 19 and 20(1), (3) and (6) apply to an Acting Commissioner appointed under this section.

Note: The heading to amended section 28 is to read:  
**Acting Commissioner appointed by Governor**

**28. Sections 29A and 29B inserted**

After section 28 insert:

**29A. Acting Commissioner appointed by Commissioner**

- (1) If the Governor has not appointed a person under section 28, the Commissioner may appoint a person to act in the office of Commissioner in the circumstances referred to in section 28(1)(a).
- (2) A person must not be appointed under subsection (1) for more than 13 weeks in a 12 month period.
- (3) An appointment under this section —
  - (a) may be terminated at any time by the Commissioner; and
  - (b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (4) If the Commissioner appoints a person under subsection (1) and the Governor later appoints a person under section 28 whose term of appointment is to begin before the term of the Commissioner's appointee has ended, the appointment of the Commissioner's appointee ceases to have effect on and from the day on which the term of the Governor's appointee begins.
- (5) Sections 18(1) and (2), 19 and 20(1), (3) and (6) apply to an Acting Commissioner appointed under this section.

**29B. Matters relevant to all acting appointments**

While an Acting Commissioner is acting in the office of Commissioner under section 28 or 29A —

- (a) the Acting Commissioner is to perform all the functions of the Commissioner and any act or thing done by the Acting Commissioner in that performance has the like effect as if it were done by the Commissioner; and
- (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Commissioner is taken to be effectually done if done to, by reference to or in relation to the Acting Commissioner; and
- (c) the Acting Commissioner has the same immunities and independence as the Commissioner.

**29. Part 2 Division 4 heading replaced**

Delete the heading to Part 2 Division 4 and insert:



### **Part 3B — Chief executive officers and chief employees**

**30. Section 29 amended**

In section 29(1):

- (a) delete paragraph (h)(ii) and insert:
  - (ii) the relevant Commissioner's instructions, if any;
- and
- (b) after paragraph (i) insert:
  - (ja) where appropriate, to take improvement action in respect of employees employed in that department or organisation; and

**31. Section 30 amended**

In section 30(b) after "comply with" insert:

the Commissioner's instructions,

**32. Section 31 amended**

- (1) In section 31(1) and (2) delete "guidelines, if any, issued by the Commissioner," and insert:

the relevant Commissioner's instructions, if any,

- (2) In section 31(4) delete "relevant annual report referred to in section 21(1)(i)" and insert:

annual report prepared by the Commissioner under section 22D

**33. Section 32 amended**

In section 32(1)(b) after "any" insert:

Commissioner's instruction,

**34. Section 33 replaced**

Delete section 33 and insert:

**33. Delegation by chief executive officer or chief employee**

- (1) Subject to any other written law, a chief executive officer or chief employee may delegate any power or duty of the chief executive officer or chief employee under another provision of this Act to —
  - (a) a public service officer; or
  - (b) any other employee; or
  - (c) a person who is appointed, employed or holds office in an entity that is —
    - (i) listed in Schedule 1 column 2; and
    - (ii) prescribed for the purposes of this section;or
  - (d) with the approval of the Commissioner, any other person.
- (2) The Commissioner must not approve a delegation under subsection (1)(d) unless the Commissioner is satisfied that the delegation is necessary or convenient having regard to —
  - (a) the functions of the department or organisation in relation to which the chief executive officer or chief employee has the power or duty; or
  - (b) the specialised knowledge, expertise or resources of the person to whom the power or duty is delegated.
- (3) The delegation must be in writing and signed by the chief executive officer or chief employee.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) If a power or duty is delegated under subsection (1), the power or duty is, when exercised or performed by the delegate, to be taken to be exercised or performed by the person who delegated it.

- (7) Nothing in this section limits the ability of the chief executive officer or chief employee to perform a function through an officer or agent.

**35. Section 35 amended**

- (1) In section 35(1) delete “Minister —” and insert:

Commissioner —

- (2) After section 35(3) insert:
- (4) The Minister may direct the Commissioner to make a recommendation to the Governor under subsection (1) in respect of a department or departments specified in the direction, and the Commissioner must comply with the direction.
- (5) The text of a direction given under subsection (4) is to be included in the annual report prepared by the Commissioner under section 22D.

**36. Section 36 amended**

- (1) In section 36(1)(c) delete “approved procedures” and insert:

the Commissioner’s instructions

- (2) Delete section 36(4).

**37. Section 38 amended**

- (1) In section 38:  
(a) delete “For the” and insert:

- (1) For the

- (b) delete “Governor may, on the recommendation of the Minister,” and insert:

Commissioner may

(2) At the end of section 38 insert:

(2) The Commissioner may amend or revoke a determination made under subsection (1).

**38. Section 40 amended**

In section 40(1) delete “in public service notices.” and insert:

as a public sector notice in accordance with the Commissioner’s instructions.

**39. Section 42 amended**

Delete section 42(2).

**40. Section 43 amended**

In section 43(3) and (4) delete “Minister may from time to time by notice published in public service notices —” and insert:

Commissioner may from time to time by notice published as a public sector notice in accordance with the Commissioner’s instructions —

**41. Section 45 amended**

(1) Delete section 45(3) and (4) and insert:

(3) If—

- (a) there is a vacancy or an impending vacancy in the office of a chief executive officer; and
- (b) it is not intended to fill the vacancy by transferring a chief executive officer to that office under section 50, or temporarily by directing an employee to act in the office under section 51,

the Commissioner must act under this section to enable the filling of that vacancy or impending vacancy.

(4) The Commissioner must, for the purposes of subsection (3), invite —

- (a) the Minister; and

- (b) if the Minister is not the responsible authority of the agency concerned, that responsible authority; and
- (c) if the responsible authority of the agency concerned is not the Minister responsible for that agency, that Minister,

to inform the Commissioner of any matters that they wish the Commissioner to take into account in recommending a person for appointment to the office referred to in subsection (3).

(2) Delete section 45(8) to (12) and insert:

(8) When the Commissioner decides on a person suitable for appointment to the relevant office, the Commissioner must recommend to the Governor that that person be appointed to the relevant office.

(3) In section 45(13):

- (a) delete “nominated or”;
- (b) delete “or the Minister, as the case requires.”.

**42. Section 46 amended**

Delete section 46(1) and insert:

- (1) If the contract of employment of a chief executive officer is about to expire and the chief executive officer has notified the Commissioner that he or she wishes to be reappointed to his or her office of chief executive officer, the Commissioner may —
  - (a) recommend to the Governor that —
    - (i) the chief executive officer be reappointed to the relevant office; or
    - (ii) if the chief executive officer has been transferred to the performance of other functions under section 50, the chief executive officer be reappointed to perform those functions at the same level of classification; or
  - (b) notify the chief executive officer that he or she will not be reappointed.

**43. Section 47 amended**

(1) Delete section 47(1) and (2) and insert:

- (1) A chief executive officer must, on appointment under section 45, and at any time when required to do so under the Commissioner's instructions, enter in accordance with the Commissioner's instructions into an agreement with —
- (a) the Commissioner; and
  - (b) the responsible authority of the agency of the chief executive officer,

concerning the performance criteria to be met by the chief executive officer during the period to which the agreement relates.

- (2) A performance agreement does not take effect until the Minister responsible for the agency concerned (if that Minister is not the responsible authority of the agency) has approved the performance agreement and a note of that approval has been endorsed on the performance agreement.

- (2) In section 47(4) delete “approved procedures,” and insert:

the Commissioner's instructions,

**44. Section 48 deleted**

Delete section 48.

**45. Section 49 amended**

In section 49 delete “Minister made under section 48,” and insert:

Commissioner,

**46. Section 50 amended**

Delete section 50(2) and insert:

- (2) Before making a recommendation referred to in subsection (1) the Commissioner must consult —
- (a) the responsible authority of the agency in which the office of the chief executive officer to whom the proposed recommendation relates is located; and
  - (b) the responsible authority of the agency of destination; and

- (c) if neither of the responsible authorities referred to in paragraphs (a) or (b) is the Minister responsible for the relevant agency, that Minister; and
- (d) the chief executive officer to whom the proposed recommendation relates.

**47. Section 51 amended**

Delete section 51(3) and insert:

- (3) The Commissioner must, before giving a direction under subsection (1), consult —
  - (a) the responsible authority of the agency concerned; and
  - (b) if that responsible authority is not the Minister responsible for that agency, that Minister.

**48. Section 53 amended**

- (1) In section 53(1) delete “approved procedures” and insert:

the Commissioner’s instructions

- (2) In section 53(3)(a) delete “approved procedures; and” and insert:

the Commissioner’s instructions; and

- (3) In section 53(5) delete “approved procedures” and insert:

the Commissioner’s instructions

**49. Section 56 amended**

In section 56(3) delete “Subject to sections 48 and 49, a contract” and insert:

A contract

**50. Section 63 amended**

In section 63(1)(h) delete “office.” and insert:

office (unless it is an appointment and the Commissioner authorises the offices being held concurrently by the executive officer).

**51. Section 64 amended**

- (1) In section 64(1) delete “approved procedures” and insert:

the Commissioner’s instructions

- (2) In section 64(2)(a) and 64(3)(a) delete “approved procedures; and” and insert:

the Commissioner’s instructions; and

- (3) In section 64(4) delete “in public service notices” and insert:

as a public sector notice in accordance with the Commissioner’s instructions

**52. Section 67 amended**

In section 67(f) delete “position.” and insert:

position (unless it is an appointment and the Commissioner authorises the offices, posts or positions being held concurrently by that public service officer).

**53. Section 70 amended**

In section 70(1) delete “administration of this Act.” and insert:

administration of this Part.

**54. Section 75 amended**

- (1) In section 75(1) delete “assisting the Minister in the administration of this Act” and insert:



assisting in the administration of this Part

- (2) In section 75(2):
- (a) in paragraph (b) delete “office.” and insert:  
  
office; or
  - (b) after paragraph (b) insert:
  - (c) an employee in the department principally assisting in the administration of this Part as if the employee were seconded to occupy that office.
- (3) In section 75(3):
- (a) delete “subsection (2)(b) —” and insert:  
  
subsection (2)(b) or (c) —
  - (b) delete “by such person or persons as are appointed by the Minister.” and insert:

in accordance with the Commissioner’s instructions by a person or persons appointed by the chief executive officer of the department principally assisting in the administration of this Part.

**55. Section 79 amended**

- (1) In section 79(4) delete “an employee —” and insert:  
  
an employee other than a chief executive officer —
- (2) After section 79(4) insert:
- (5A) The Governor may, on the recommendation of the Commissioner, terminate the employment in the Public Sector of a chief executive officer whose performance is, in the opinion of the Commissioner, substandard for the purposes of this section.

(5B) The Commissioner must consult the responsible authority of the agency of the chief executive officer before making a recommendation under subsection (5A).

(3) Delete section 79(6).

**56. Section 93 amended**

(1) After section 93(1) insert:

(2A) The Commissioner must consult with the Minister to whom the administration of the *Industrial Relations Act 1979* is committed, before giving an approval under subsection (1).

(2) Delete section 93(2).

(3) Delete section 93(4), (5) and (6).

**57. Section 99 deleted**

Delete section 99.

**58. Section 100 amended**

In section 100(1) and (2) delete “approved procedures” and insert:

the Commissioner’s instructions

**59. Section 105 amended**

In section 105(2):

(a) in paragraph (a)(ii) delete “the Minister in the administration of this Act” and insert:

in the administration of Part 4

(b) delete paragraph (b)(i) and “or” after it and insert:

(i) the Minister and other Ministers; or

**60. Section 108A inserted**

After section 107 insert:

**108A. Delegation by Minister**

- (1) The Minister may delegate to any person any power or duty of the Minister under another provision of this Act.
- (2) A delegation under this section must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated in accordance with this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person in accordance with this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

**61. Section 108 amended**

- (1) After section 108(1) insert:
  - (2A) The regulations may make provision for or with respect to any matter for which the Commissioner's instructions can provide.
  - (2B) A reference in this Act to a Commissioner's instruction is taken to include a reference to a regulation referred to in subsection (2A).
- (2) In section 108(2) after "inconsistent with a" insert:

Commissioner's instruction,

**62. Part 9 Division 1 heading inserted**

After the heading to Part 9 insert:

**Division 1 — *Public Service Act 1978* repeal and transitional provisions**

**63. Part 9 Division 2 inserted**

After section 112 insert:

**Division 2 — Public Sector Reform Act 2010 Part 2 amendments:  
transitional provisions**

- 113. Transitional provisions**  
Schedule 7 sets out transitional provisions.
- 64. Schedule 4 replaced**  
Delete Schedule 4 and insert:

**Schedule 4 — Form of declaration**

[s. 17(4)]

I, ....., sincerely  
promise and declare that, according to the best of my skill and  
ability, I will faithfully, impartially and truly execute the office  
and perform the functions of Public Sector Commissioner  
according to law.

.....  
(Signature of declarant) (Date)

- 65. Schedule 5 amended**
- (1) In Schedule 5 clause 2(1) delete “Any” and insert:  
  
Subject to Schedule 7 clause 4(6), any
- (2) Delete Schedule 5 clause 5(1)(a) and (b) and “or” after  
paragraph (b) and insert:  
  
(a) a Commissioner’s instruction; or
- (3) In Schedule 5 clause 5(2) delete “Minister in public service  
notices.” and insert:  
  
Commissioner in a notice published as a public sector notice in  
accordance with the Commissioner’s instructions.

66. **Schedule 7 inserted**  
After Schedule 6 insert:

**Schedule 7 — Public Sector Reform Act 2010 Part 2  
amendments: transitional provisions**

[s. 113]

1. **Terms used**  
In this Schedule —  
*amended Act* means this Act as amended by the *Public Sector Reform Act 2010*;  
*commencement day* means the day on which the *Public Sector Reform Act 2010* section 13 comes into operation;  
*former Commissioner* means the person holding the office of Commissioner for Public Sector Standards under this Act immediately before the commencement day.
2. **Incumbent CEO remains in office as Public Sector Commissioner**  
(1) In this clause —  
*former office* means the office of chief executive officer of the department principally assisting in the administration of Part 3 immediately before the commencement day.  
(2) Despite section 17, if a person held the former office immediately before the commencement day (other than in an acting capacity), that person is to hold office as Commissioner subject to Part 3A Division 1 for a term of 5 years beginning on the commencement day as if appointed under section 17, and is eligible to be reappointed to that office.
3. **Commissioner for Public Sector Standards**  
(1) The former Commissioner is entitled to be employed in the Public Service at the same level of classification as the former Commissioner held immediately before the commencement day until the end of the period for which the former Commissioner was last appointed under this Act to hold office.  
(2) The former Commissioner retains existing and accruing entitlements in respect of leave of absence as if service in the Public Service were a continuation of service in the office of the Commissioner of Public Sector Standards.

- (3) If a person is acting in the office of the Commissioner of Public Sector Standards under section 28 immediately before the commencement day, section 20 as in force before the commencement day continues to apply to that person.

**4. Approved procedures and other instruments**

- (1) Any procedure or classification system approved under section 3(2) as in force before the commencement day and of effect immediately before that day is to be taken to be, with any necessary modifications, a Commissioner's instruction.
- (2) Any public sector standard or code of ethics established by the former Commissioner under this Act and of effect immediately before the commencement day is to be taken to be, with any necessary modifications, a public sector standard or code of ethics for the purposes of the amended Act.
- (3) Any order published under section 25(1)(a) as in force before the commencement day and of effect immediately before that day is to be taken to be, with any necessary modifications, an order published under section 21(9A) of the amended Act.
- (4) Any guidelines issued by the former Commissioner for the purposes of section 31 as in force before the commencement day and of effect immediately before that day are to be taken to be, with any necessary modifications, Commissioner's instructions.
- (5) Any direction given under section 42(2) as in force before the commencement day and of effect immediately before that day is to be taken to be, with any necessary modifications, a Commissioner's instruction.
- (6) Any public service notice of effect immediately before the commencement day is to be taken to be a public sector notice.
- (7) Any approval given by the Minister under section 93(1) as in force before the commencement day and of effect immediately before that day continues to be of effect as if it were an approval given by the Commissioner.

**5. Reviews, special inquiries and investigations**

- (1) If immediately before the commencement day —
  - (a) a review was being carried out under an arrangement by the Minister under section 10 as in force immediately before the commencement day; and
  - (b) any employee had been authorised by the Minister to perform functions for the purpose of the review,

the review is to be continued as if it were a review the Minister had directed the Commissioner to conduct under section 24B of the amended Act and the employee had been authorised for the purpose of that review by the Commissioner.

- (2) If immediately before the commencement day, a special inquirer was carrying out a special inquiry under this Act, the special inquirer is to continue to carry out the inquiry as if the special inquirer were appointed under section 24H of the amended Act to carry out the special inquiry.
- (3) If immediately before the commencement day —
  - (a) an investigation was being carried out under section 24 as in force immediately before the commencement day;
  - (b) any person had been authorised to perform functions for the purpose of the investigation,

the investigation is to be continued as if it were an investigation the Commissioner had commenced under section 24 of the amended Act and the person had been authorised for the purpose of that investigation by the Commissioner.

**6. Special offices**

A special office created under section 36 as in force before the commencement day for the purposes of section 75(1) as in force before that day and in existence immediately before that day continues in existence after that day as if it were created by the chief executive officer of the department assisting in the administration of Part 4.

**7. Provisions affecting employment of chief executive officers**

- (1) If —
  - (a) before the commencement day the Minister requested the former Commissioner to act under section 45 as in force before the commencement day to fill a vacancy or impending vacancy in the office of a chief executive officer; and
  - (b) the vacancy or impending vacancy is not filled before the commencement day,

any actions taken by the former Commissioner under that section are to be taken to have been taken by the Commissioner, and the Commissioner may continue to act under section 45 of the amended Act to fill the vacancy.

- (2) If —

- (a) before the commencement day the Minister acted on a matter under section 48 for the purposes of section 46(1) or 49 (as those sections were in force immediately before the commencement day); and
  - (b) on the commencement day further action remains to be taken under section 46 or 49 in relation to that matter,

the Commissioner may continue to act under section 46 or 49 of the amended Act as the case requires.
- (3) Any performance agreement of effect immediately before the commencement day continues to be of effect under section 47 of the amended Act.
- (4) If—
  - (a) before the commencement day the Minister took action under section 50(2) for the purpose of making a recommendation under section 50(1) (as those provisions were in force before the commencement day); and
  - (b) the recommendation has not been made before the commencement day,

the action referred to in paragraph (a) is to be taken to have been taken by the Commissioner, and the Commissioner may continue to act under section 50 of the amended Act in relation to the recommendation.
- (5) If—
  - (a) before the commencement day the Minister took action under section 51(3) for the purpose of giving a direction under section 51(1) (as those provisions were in force before the commencement day); and
  - (b) the Minister has not given the direction before the commencement day,

the Commissioner may give the direction under section 51(1) of the amended Act as if the action referred to in paragraph (a) had been taken by the Commissioner.
- (6) A direction given under section 51(1) as in force before the commencement day and of effect before the commencement day is to be taken to have been given under section 51 of the amended Act by the Commissioner.
- (7) On the commencement day the Commissioner is substituted for the Minister as a party to the contract of employment of each chief executive officer.



**8. Continuing effect of things done under section 97**

A thing done or omitted to be done by the former Commissioner under section 97 as in force before the commencement day has the same effect after that day as if it had been done or omitted under section 97 of the amended Act.

**9. Section 107 directions**

A direction given under section 107(1) as in force before the commencement day and of effect on that day is to be taken to be a direction of the Commissioner.

**10. General savings — Commissioner**

- (1) A thing done or omitted to be done by, to or in relation to the former Commissioner before the commencement day, whether under this Act or any other written law, has the same effect after the commencement day, to the extent that it has any force or significance after that day, as if it had been done or omitted by, to or in relation to the Commissioner.
- (2) Subclause (1) does not apply if a contrary intention appears or the context otherwise requires.

**11. Power to amend subsidiary legislation**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subclause (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the *Public Sector Reform Act 2010* Part 2.
- (3) Nothing in this clause prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

**12. Transitional regulations**

- (1) If there is no sufficient provision in this Schedule for dealing with a transitional matter, regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subclause (1) —  
*transitional matter* means a matter that needs to be dealt with for the purpose of effecting the transition from an Act (including this Act) as enacted immediately before the commencement day to the Act as amended by the *Public Sector Reform Act 2010* Part 2.
- (3) Regulations made under subclause (1) may provide that specified provisions of this Act as in force after the commencement of the

*Public Sector Reform Act 2010*, or of subsidiary legislation made under this Act, or of an Act amended by the *Public Sector Reform Act 2010* —

- (a) do not apply; or
- (b) apply with specified modifications,

to or in relation to any matter.

- (4) If regulations under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclauses (3) and (4) —  
**specified** means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
  - (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

**13. Interpretation Act 1984 not affected**

The provisions of this Schedule are additional to and do not prejudice or affect the application of the *Interpretation Act 1984* Part V.

**67. Various references to “Minister” amended**

In the provisions listed in the Table delete “Minister” (each occurrence) and insert:

Commissioner

**Table**

s. 41(a)(i)	s. 43(8)
s. 44(3)	s. 45(1)

s. 46(2)	s. 50(1)
s. 51(1) and (2)	s. 59(2)
s. 63(1)(g)	s. 77(a)(i)
s. 89(1) and (2)	s. 93(1)
s. 94(3)	s. 107(1)(a)

**68. Various references to “of the Crown” deleted**

In the provisions listed in the Table delete “of the Crown” (each occurrence).

**Table**

s. 3(1) def. of <i>political office holder</i> par. (g), def. of <i>responsible authority</i> par. (b)	s. 3(4)
s. 5(2)(a)(i)	s. 8(2)
s. 41(b)	s. 58(7) def. of statutory office
s. 74(1)	s. 77(b)
s. 79(4) and (6)	s. 105(2)(b)(ii)

**69. Various cross-references amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

Provision	Delete	Insert
s. 24(1)	sections 12 and 13	sections 24I and 24J
s. 31(3)	section 25(1)	section 21(9A)
s. 87(1)	sections 12 and 13	sections 24I and 24J
Schedule 3	[s. 12(2),	[s. 24I(2),

**70. Other provisions amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

Provision	Delete	Insert
s. 3(1) def. of <i>agency</i> par. (a)	department	a department

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 3(1) def. of <i>agency</i> par. (b)	SES	a SES
s. 3(1) def. of <i>breach of discipline</i>	means breach	means a breach
s. 3(1) def. of <i>chief employee</i> par. (a) and (b)	chief employee	a chief employee
s. 3(1) def. of <i>chief employee</i> par. (a)	organisation;	organisation; or
s. 3(1) def. of <i>chief employee</i> par. (c)	person	a person
s. 3(1) def. of <i>chief executive officer</i> par. (a) and (b)	person	a person
s. 3(1) def. of <i>classification system</i>	means system	means a system
s. 3(1) def. of <i>code of conduct</i>	means code	means a code
s. 3(1) def. of <i>compensation</i> after par. (a)		or
s. 3(1) def. of <i>department</i>	means department	means a department
s. 3(1) def. of <i>document</i>	includes tape,	includes a tape,
s. 3(1) def. of <i>employee</i>	means person	means a person
s. 3(1) def. of <i>executive officer</i>	means chief	means a chief
s. 3(1) def. of <i>Minister</i>	means Minister of the Crown	means the Minister
s. 3(1) def. of <i>ministerial officer</i>	means person	means a person
s. 3(1) def. of <i>non-SES organisation</i>	means entity	means an entity

Provision	Delete	Insert
s. 3(1) def. of <i>organisation</i>	means non-SES	means a non-SES
s. 3(1) def. of <i>performance agreement</i>	means agreement	means an agreement
s. 3(1) def. of <i>permanent officer</i>	means person	means a person
s. 3(1) def. of <i>political office holder</i> par. (a)	Minister of the Crown	a Minister
s. 3(1) def. of <i>political office holder</i> par. (b)	Parliamentary	the Parliamentary
s. 3(1) def. of <i>political office holder</i> par. (c)	Parliamentary	a Parliamentary
s. 3(1) def. of <i>political office holder</i> par. (d)	Government	the Government
s. 3(1) def. of <i>political office holder</i> par. (e) and (f)	Leader	the Leader
s. 3(1) def. of <i>political office holder</i> par. (g)	person	a person
s. 3(1) def. of <i>political office holder</i> after each of par. (a), (b), (c), (d) and (e)		or
s. 3(1) def. of <i>Public Sector</i> after par. (a)		and
s. 3(1) def. of <i>public sector body</i>	agency,	an agency,
s. 3(1) def. of <i>Public Service</i>	means Public	means the Public
s. 3(1) def. of <i>public service officer</i>	means executive	means an executive
s. 3(1) def. of <i>repealed Act</i>	means Public	means the Public
s. 3(1) def. of <i>respondent</i>	means person	means a person

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 3(1) def. of <i>responsible authority</i> par. (a)	board,	a board,
s. 3(1) def. of <i>responsible authority</i> par. (b)	Minister	the Minister
s. 3(1) def. of <i>responsible authority</i>	means responsible	means a responsible
s. 3(1) def. of <i>senior executive officer</i>	means member	means a member
s. 3(1) def. of <i>Senior Executive Service</i>	means Senior	means the Senior
s. 3(1) def. of <i>SES organisation</i>	means entity	means an entity
s. 3(1) def. of <i>special disciplinary inquiry</i>	means special	means a special
s. 3(1) def. of <i>term officer</i>	means person	means a person
s. 3(5)	Crown (each occurrence)	State
s. 5(1) def. of <i>employing authority</i> after each of par. (b) and (c)(i)		or
s. 8(1) after each of par. (a), (b) and (c)		and
s. 9 after each of par. (a)(i) and par. (a)		and
s. 21(1) after each of par. (a) to (e)		and
s. 29(1) after each of par. (a) to (g) and (i) to (m)		and
s. 30 after each of par. (a) and (b)		and
s. 32 after par. (a)		and

Provision	Delete	Insert
s. 35(1) after each of par. (a) and (b)		and
s. 36(1) after par. (a)		and
s. 45(1)	Crown	State
s. 45(13) after each of par. (a), (b) and (c)		and
s. 46(2)(a)	Crown	State
s. 51(2)	is valid	is as valid
s. 53(1)	Crown	State
s. 56(2) after par. (a)		and
s. 56(6)	Crown	State
s. 57(1) after par.(a)		and
s. 57(2) def. of <i>Tribunal</i>	means Salaries	means the Salaries
s. 58(7) def. of <i>right of return</i>	means entitlement	means the entitlement
s. 58(7) def. of <i>statutory office</i>	means office,	means an office,
s. 59(5)	Crown.	State.
s. 63(1) after each of par. (a) to (f)		or
s. 64(1)	Crown	State
s. 67 after each of par. (a) to (d)		or
s. 70(7)	Crown	State
s. 86(13) def. of <i>directed person</i>	means person	means a person
s. 86(13) def. of <i>disciplinary inquiry</i>	means disciplinary	means a disciplinary
s. 91	Crown.	State.

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 93(3) def. of <i>affected department or organisation</i>	means department	means a department
s. 94(2) after each of par. (a) and (b)		and
s. 94(3)	provide for —	provide for the following —
s. 94(3) after par. (f)	and	
s. 94(6)	means office,	means an office,
s. 94(6) after par. (a)		and
s. 99(1) after par. (a)		and

### **Part 3 — Public Sector discipline amendments**

#### **Division 1 — *Public Sector Management Act 1994* amended**

**91. Act amended**

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

**92. Section 3 amended**

(1) In section 3(1) delete the definitions of:

*respondent*

*special disciplinary inquiry*

(2) In section 3(1) insert in alphabetical order:

*disciplinary action* has the meaning given in section 80A;

*special disciplinary inquiry* means a special disciplinary inquiry held under section 87;

**93. Section 22A amended**

After section 22A(1) insert:

(2A) The Commissioner must issue instructions to ensure that, if a decision is made under section 81(1)(a) in respect of an employee, the employee is —



- (a) notified in writing of the possible breach of discipline;  
and
- (b) given a reasonable opportunity to respond.

**94. Section 76 amended**

- (1) In section 76(1) delete “subsection (3),” and insert:  
  
subsections (3) and (4),
- (2) After section 76(3) insert:
- (4) A former employee who —
  - (a) may have committed a breach of discipline; and
  - (b) was an employee to whom this Part applied at the time of the suspected breach,is, in circumstances specified in the Commissioner’s instructions, to be taken to be an employee for the purposes of this Part even though the person has ceased to be employed in the Public Sector by or under an employing authority.
- (5) The Commissioner’s instructions may specify the disciplinary action that may be taken under this Act in respect of a former employee who is found to have committed a breach of discipline, and the provisions of this Part apply to and in relation to the disciplinary action as if the former employee were an employee.
- (6) The taking of disciplinary action with respect to a former employee does not affect the former employee’s retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (7) For the purposes of this Part, in circumstances specified in the Commissioner’s instructions, a former employing authority of an employee is to be taken to be the employing authority of the employee.
- (8) Nothing in this Part limits the power of an employing authority under other provisions of this Act to take improvement action in relation to an employee in circumstances in which the employing authority considers it appropriate to do so.

**95. Section 78 amended**

- (1) In section 78(1):
- (a) delete “section 52, an employee who —” and insert:  
  
section 52, an employee or former employee who —
  - (b) in paragraph (a) delete “is” and insert:  
  
is, or was,
  - (c) delete paragraph (b) and insert:  
  
(b) is aggrieved by —
    - (i) a decision made in respect of the Government officer under section 79(3)(b) or (c) or (4); or
    - (ii) a finding made in respect of the Government officer in the exercise of a power under section 87(3)(a)(ii); or
    - (iii) a decision made under section 82 to suspend the Government officer on partial pay or without pay; or
    - (iv) a decision to take disciplinary action made in respect of the Government officer under section 82A(3)(b), 88(b) or 92(1),
  - (d) delete “that decision” and insert:  
  
that decision or finding
- (2) In section 78(2):
- (a) delete “subsection (3), an employee who —” and insert:  
  
subsection (3), an employee or former employee who —
  - (b) delete paragraph (b) and insert:  
  
(b) is aggrieved by —

- (i) a decision made in respect of the employee under section 79(3)(b) or (c) or (4); or
  - (ii) a finding made in the exercise of a power under section 87(3)(a)(ii); or
  - (iii) a decision made under section 82 to suspend the employee on partial pay or without pay; or
  - (iv) a decision to take disciplinary action made under section 82A(3)(b), 88(b) or 92(1),
- (c) delete “the decision” and insert:
- the decision or finding
- (d) delete “that decision” (each occurrence) and insert:
- that decision or finding
- (3) In section 78(3):
- (a) delete “section 52, an employee —” and insert:  
section 52, an employee or former employee —
  - (b) delete paragraph (b) and insert:  
who is aggrieved by —
    - (i) a decision made under section 82 to suspend the employee on partial pay or without pay; or
    - (ii) a finding made in respect of the person referred to in section 82A(3)(a), 87(3)(a)(i) or 88(a),
  - (c) delete “the decision” and insert:  
the decision or finding
  - (d) delete “that decision” (each occurrence) and insert:  
that decision or finding

- (4) In section 78(4) delete “decision” (each occurrence) and insert:

direction

- (5) After section 78(4) insert:

- (5) If it appears to the Industrial Commission or the Public Service Appeal Board that the employing authority failed to comply with a Commissioner’s instruction or the rules of procedural fairness in making the decision or finding the subject of a referral or appealed against, the Industrial Commission or Public Service Appeal Board —

- (a) is not required to determine the reference or allow the appeal solely on that basis and may proceed to decide the reference or appeal on its merits; or
- (b) may quash the decision or finding and remit the matter back to the employing authority with directions as to the stage at which the disciplinary process in relation to the matter is to be recommenced by the employing authority if the employing authority continues the disciplinary process.

**96. Section 80A inserted**

At the beginning of Part 5 Division 3 insert:

**80A. Terms used**

In this Division —

***disciplinary action***, in relation to a breach of discipline by an employee, means any one or more of the following —

- (a) a reprimand;
- (b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made;
- (c) transferring the employee to another public sector body with the consent of the employing authority of that public sector body;

- (d) if the employee is not a chief executive officer or chief employee, transferring the employee to another office, post or position in the public sector body in which the employee is employed;
- (e) reduction in the monetary remuneration of the employee;
- (f) reduction in the level of classification of the employee;
- (g) dismissal;

**section 94 breach of discipline** means a breach of discipline arising out of disobedience to, or disregard of, a lawful order referred to in section 94(4);

**serious offence** means —

- (a) an indictable offence against a law of the State (whether or not the offence is or may be dealt with summarily), another State or a Territory of the Commonwealth or the Commonwealth; or
- (b) an offence against the law of another State or a Territory of the Commonwealth that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
- (c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or
- (d) an offence, or an offence of a class, prescribed under section 108.

**97. Section 81 replaced**

Delete section 81 and insert:

**81. Employing authority to decide how to deal with suspected breach of discipline**

- (1) If an employing authority of an employee is made aware, or becomes aware, by any means that the employee may have committed a breach of discipline, the employing authority may —
  - (a) decide to deal with the matter as a disciplinary matter under this Division in accordance with the Commissioner's instructions; or
  - (b) decide that it is appropriate —

- (i) to take improvement action with respect to the employee; or
  - (ii) to take no action.
- (2) If the Minister, in his or her capacity as employing authority of a ministerial officer, decides to act under subsection (1)(a), the Minister must direct another person to submit to the Minister a report as to whether there has been a breach of discipline and a recommendation as to any decision to be made under section 82A(3).
- (3) A direction must not be given under subsection (2) to the Commissioner.
- (4) A person directed under subsection (2) —
  - (a) must comply with the direction of the Minister; and
  - (b) for that purpose, has the functions of an employing authority under section 82A(1) and under the Commissioner's instructions.

**82A. Dealing with disciplinary matter**

- (1) In dealing with a disciplinary matter under this Division an employing authority —
  - (a) must proceed with as little formality and technicality as this Division, the Commissioner's instructions and the circumstances of the matter permit; and
  - (b) is not bound by the rules of evidence; and
  - (c) may, subject to this Division and the Commissioner's instructions, determine the procedure to be followed.
- (2) Even though an employing authority decides to act under section 81(1)(a), the employing authority may, at any stage of the process, decide instead that it is appropriate —
  - (a) to take improvement action with respect to the employee; or
  - (b) that no further action be taken.
- (3) Subject to subsection (4) and section 89, after dealing with a matter as a disciplinary matter under this Division —
  - (a) if the employing authority finds that the employee has committed a section 94 breach of discipline, the employing authority must take disciplinary action by dismissing the employee; and
  - (b) if the employing authority finds that the employee has committed a breach of discipline that is not a section 94

breach of discipline, the employing authority must decide —

- (i) to take disciplinary action, or both disciplinary action and improvement action, with respect to the employee; or
  - (ii) to take improvement action with respect to the employee; or
  - (iii) that no further action is to be taken.
- (4) The Minister —
- (a) is bound by any finding in a report submitted as directed under section 81(2); and
  - (b) must, when making a decision under subsection (3)(b), have regard to, but is not bound by, a recommendation submitted as directed under section 81(2).

**98. Section 82 replaced**

Delete section 82 and insert:

**82. Suspension pending decision in relation to breach of discipline or criminal charge**

- (1) If —
- (a) an employing authority has decided to act under section 81(1)(a) in relation to an employee; or
  - (b) an employee is charged with having committed a serious offence,
- the employing authority may, in accordance with the Commissioner's instructions, suspend the employee on full pay, partial pay or without pay.
- (2) Subject to subsection (3) —
- (a) a suspension arising from a decision referred to in subsection (1)(a) has effect until a decision is made under section 82A(2) or (3) or 88 in respect of the suspected breach; or
  - (b) a suspension arising from a charge referred to in subsection (1)(b) has effect until the criminal charge or any action that the employing authority is considering taking under section 92 has been finalised.
- (3) The employing authority may at any time remove, or vary the terms of, the suspension.

- (4) Unless the employing authority otherwise directs, any pay withheld under subsection (1) is forfeited to the State if —
  - (a) it is decided to take disciplinary action with respect to the employee for the breach of discipline; or
  - (b) the employee is convicted or found guilty of the offence concerned or another serious offence.
- (5) An employee is entitled to have any pay of the employee that is withheld under subsection (1) and not forfeited under subsection (4) restored to the employee.

**99. Sections 83, 84, 85 and 86 deleted**

Delete sections 83, 84, 85 and 86.

**100. Section 87 amended**

- (1) Before section 87(1) insert:
  - (1A) The Commissioner may at any time before a decision is made under section 81(1)(b) or 82A(2) or (3) in respect of a suspected breach of discipline direct that —
    - (a) a special disciplinary inquiry be held into the suspected breach; or
    - (b) an investigation by the employing authority or a person directed under section 81(2) into the suspected breach be continued as a special disciplinary inquiry.
  - (1B) A direction under subsection (1A) may be made on the request of the employing authority of the employee suspected to have committed the breach of discipline or on the initiative of the Commissioner.
- (2) Delete section 87(3) and insert:
- (3) A person who holds a special disciplinary inquiry must, at the conclusion of the inquiry —
  - (a) make a finding that the employee —
    - (i) has committed a section 94 breach of discipline; or
    - (ii) has committed a breach of discipline other than a breach referred to in subparagraph (i); or
    - (iii) has not committed a breach of discipline;



and

- (b) prepare a report on the conduct and finding, of the special disciplinary inquiry; and
- (c) if the finding is that the employee has committed a breach of discipline other than a section 94 breach of discipline, include in the report a recommendation as to any disciplinary action and improvement action that should be taken by the employing authority; and
- (d) provide the employing authority and the Commissioner with a copy of the report.

**101. Section 88 replaced**

Delete section 88 and insert:

**88. Action on receipt of report of special disciplinary inquiry**

On receiving a report under section 87(3), the employing authority must, subject to section 89, accept the finding in the report and —

- (a) in the case of a finding that the employee has committed a section 94 breach of discipline, take disciplinary action by dismissing the employee; or
- (b) in the case of a finding that the employee has committed a breach of discipline other than a breach referred to in paragraph (a) —
  - (i) decide to take disciplinary action or improvement action, or both disciplinary action and improvement action in relation to the employee in accordance with the recommendation in the report; or
  - (ii) decline to accept the recommendation in the report and decide to take such other disciplinary action or improvement action, or both disciplinary action and improvement action, in relation to the employee as could have been recommended in the report;

or

- (c) in the case of a finding that no breach of discipline was committed by the employee, notify the employee of that finding and that no further action will be taken in the matter.

**102. Section 89 replaced**

Delete section 89 and insert:

**89. Dismissal of chief executive officer on disciplinary grounds**

(1) If a chief executive officer is the subject of a finding under section 82A(3)(a) or a finding under section 87(3)(a)(i) in respect of a section 94 breach of discipline, the Commissioner must recommend to the Governor that the chief executive officer be dismissed, and the Governor must dismiss the chief executive officer.

(2) If a chief executive officer —

- (a) is the subject of a finding under section 82A(3)(b) or a finding under section 87(3)(a)(ii) in respect of a breach of discipline other than a section 94 breach of discipline; and
- (b) the Commissioner considers that the chief executive officer ought to be dismissed,

the Commissioner must recommend to the Governor that the chief executive officer be dismissed, and the Governor must dismiss the chief executive officer.

**103. Section 90 amended**

In section 90:

- (a) delete “a respondent” and insert:

an employee

- (b) delete “notify the respondent —” and insert:

notify the employee —

- (c) in paragraph (a) delete “the respondent” and insert:

the employee

- (d) in paragraph (b) delete “the respondent,” (each occurrence) and insert:

the employee,

- (e) delete “within the prescribed period after the making of that finding or the taking of that action, as the case requires.” and insert:

within the period prescribed in the Commissioner’s instructions.

Note: The heading to amended section 90 is to read:  
**Employing authority to notify employee of outcome of disciplinary matter**

**104. Section 91 amended**

In section 91:

- (a) delete “a respondent” and insert:

an employee

- (b) delete “Division, the respondent” and insert:

Division, the employee

- (c) delete “the respondent does” and insert:

the employee does

**105. Section 92 replaced**

Delete section 92 and insert:

**92. Action if employee convicted of serious offence**

- (1) Despite the *Sentencing Act 1995* section 11, if an employee is convicted or found guilty of a serious offence, the employing authority may take disciplinary action or improvement action, or both disciplinary action and improvement action, with respect to the employee.
- (2) Before any disciplinary action or improvement action is taken with respect to an employee under this section, the employee must

be given an opportunity to make a submission in relation to the action that the employing authority is considering taking.

- (3) If an employee is dismissed under this section, for the purposes of sections 58(4) and 59(1) the employee is taken to have been dismissed for breach of discipline.

**93A. Implementation of decisions under this Division**

A decision of an employing authority to take disciplinary action or improvement action with respect to an employee may be carried into effect at any time.

**106. Section 94 amended**

In section 94(2)(d) delete “section 86(3)(a) or (9)(b)(i), 88(1)(b)(i) or 89(1).” and insert:

section 82A(3)(a), 88(a) or 89(1).

**107. Part 9 Division 3 inserted**

Before Schedule 1 insert:

**Division 3 — *Public Sector Reform Act 2010* Part 3 amendments:  
transitional provisions**

**114. Transitional provisions**

Schedule 8 sets out transitional provisions.

**108. Schedule 8 inserted**

At the end of the Act insert:

**Schedule 8 — *Public Sector Reform Act 2010* Part 3  
amendments: transitional provisions**

[s. 114]

**1. Term used: commencement day**

In this Schedule —

***commencement day*** means the day on which the *Public Sector Reform Act 2010* section 97 comes into operation.

**2. Disciplinary proceedings**

- (1) If a proceeding (including an investigation, disciplinary inquiry or special disciplinary inquiry) commenced under Part 5 Division 3 before the commencement day has not been finalised under that Division before that day, Part 5 Division 3 as in force immediately before that day continues to apply to and in relation to that proceeding as if the *Public Sector Reform Act 2010* Part 3 had not been enacted until the proceeding is finalised.
- (2) Section 78 as in force immediately before the commencement day continues to apply to a decision made in a proceeding referred to in subclause (1).
- (3) Except as provided in subclauses (1) and (2), Part 5 as amended by the *Public Sector Reform Act 2010* Part 3 applies in relation to any act, omission or conduct that occurred before or after the commencement day.

**3. Suspensions**

- (1) A suspension that is of effect under section 82 immediately before the commencement day continues to be of effect for the remainder of the period for which it would, but for the *Public Sector Reform Act 2010* Part 3, have been of effect.
- (2) Section 82 as in force immediately before the commencement day continues to apply to a suspension referred to in subclause (1).

**4. Appeals**

An appeal pending under section 78 immediately before the commencement day is to be dealt with under that section as in force before the commencement day.

**5. Power to amend subsidiary legislation**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subclause (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the *Public Sector Reform Act 2010* Part 3.
- (3) Nothing in this clause prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

**6. Transitional regulations**

- (1) If there is no sufficient provision in this Schedule for dealing with a transitional matter, the regulations may prescribe all matters that

are required or necessary or convenient to be prescribed for dealing with the matter.

- (2) In subclause (1) —  
*transitional matter* means a matter that needs to be dealt with for the purpose of effecting the transition from an Act (including this Act) as enacted immediately before the commencement day to the Act as amended by the *Public Sector Reform Act 2010* Part 3.
- (3) Regulations made under subclause (1) may provide that specified provisions of this Act as in force on or after the commencement of the *Public Sector Reform Act 2010*, or of subsidiary legislation made under this Act, or of an Act amended by the *Public Sector Reform Act 2010* —
- (a) do not apply; or
  - (b) apply with specified modifications,
- to or in relation to any matter.
- (4) If regulations under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclauses (3) and (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
  - (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

**7. Interpretation Act 1984 not affected**

Unless the contrary intention appears in this Schedule, the provisions of this Schedule are additional to and do not prejudice or affect the application of the *Interpretation Act 1984* Part V.

