

Western Australia

## **Public Sector Reform Act 2010**

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As at 01 Oct 2010

No. 39 of 2010

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## Public Sector Reform Act 2010

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Western Australia

## **Public Sector Reform Act 2010**

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**No. 39 of 2010**

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**An Act to amend the *Public Sector Management Act 1994* and for related purposes.**

*[Assented to 1 October 2010]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This is the *Public Sector Reform Act 2010*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

## **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

**Public Sector Reform Act 2010**

**Part 2** Public Sector administration amendments

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

**s. 27**

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- (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

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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

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- (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 <i>statutory office</i>
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**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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**

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

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<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 3(1) def. of <i>non-SES organisation</i>	means entity	means an entity
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

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

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<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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 <i>Public</i>	means the <i>Public</i>
s. 3(1) def. of <i>respondent</i>	means person	means a person
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

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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

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<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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
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

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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.
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

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**Division 2** Other Acts amended

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<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
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

**Division 2 — Other Acts amended**

**71. *Agricultural Practices (Disputes) Act 1995* amended**

- (1) This section amends the *Agricultural Practices (Disputes) Act 1995*.
- (2) In section 19(1) delete “Minister to whom the administration of the *Public Sector Management Act 1994* is committed.” and insert:  
  
Public Sector Commissioner.
- (3) In section 19(2) delete “Minister to whom the administration of that Act is committed,” and insert:

Public Sector Commissioner,

**72. *Auditor General Act 2006* amended**

- (1) This section amends the *Auditor General Act 2006*.
- (2) In section 9(2) delete “sections 21(1)(e) and (g) to (i),” and insert:

sections 21(1)(e), 22C, 22D, 22E,

**73.      *Constitution Acts Amendment Act 1899* amended**

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part I Division 2:
  - (a) delete the item relating to the Commissioner for Public Sector Standards;
  - (b) insert in alphabetical order:

Public Sector Commissioner appointed under the *Public Sector Management Act 1994*.

**74.      *Corruption and Crime Commission Act 2003* amended**

- (1) This section amends the *Corruption and Crime Commission Act 2003*.
- (2) In section 3(1):
  - (a) in the definition of ***independent agency*** delete paragraph (e) and insert:
    - (e) the Public Sector Commissioner;
  - (b) after each of paragraphs (a), (b) and (c) insert:

and
- (3) Delete section 90(6) and insert:

- (6) A report about a person proposed to be appointed as a chief executive officer may be given to —
- (a) the Public Sector Commissioner; and
  - (b) any Minister that the Public Sector Commissioner considers has a relevant interest in the report.

**75. *Electricity Corporations Act 2005* amended**

- (1) This section amends the *Electricity Corporations Act 2005*.
- (2) In section 3(1) delete the definition of ***Commissioner for Public Sector Standards***.
- (3) In the provisions listed in the Table delete “Commissioner for Public Sector Standards” (each occurrence) and insert:

Public Sector Commissioner

**Table**

s. 21(1), (5) and (6)	s. 22(1) and (3)
s. 31(2) and (4)	s. 32(1) and (3)
s. 33(2)	

**76. *Financial Management Act 2006* amended**

- (1) This section amends the *Financial Management Act 2006*.
- (2) In section 51(3) delete “sections 12 and 13” and insert:

sections 24I and 24J

**77. *Energy Arbitration and Review Act 1998* amended**

- (1) This section amends the *Energy Arbitration and Review Act 1998*.
- (2) In section 63(11) delete the definition of **Commissioner** and insert:

**Commissioner** means the Public Sector Commissioner under the *Public Sector Management Act 1994*;

**78. *Interpretation Act 1984* amended**

- (1) This section amends the *Interpretation Act 1984*.
- (2) In section 5 insert in alphabetical order:

**Public Sector Commissioner** means the person holding the office established by the *Public Sector Management Act 1994* section 16;

**public service officer** has the meaning given in the *Public Sector Management Act 1994* section 3(1);

**79. *Midland Redevelopment Act 1999* amended**

- (1) This section amends the *Midland Redevelopment Act 1999*.
- (2) In section 10 delete “Minister to whom the administration of the PSM Act is for the time being committed by the Governor.” and insert:

Public Sector Commissioner.

**80. *Parliamentary Commissioner Act 1971* amended**

- (1) This section amends the *Parliamentary Commissioner Act 1971*.
- (2) In Schedule 1 delete the item relating to the *Public Sector Management Act 1994* and insert:

<i>Public Sector Management Act 1994</i>	Public Sector Commissioner to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting in the administration of the <i>Public Sector Management Act 1994</i>
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**81. *Port Authorities Act 1999* amended**

- (1) This section amends the *Port Authorities Act 1999*.
- (2) In section 3(1) delete the definition of ***Commissioner for Public Sector Standards***.
- (3) In the provisions listed in the Table delete "Commissioner for Public Sector Standards" (each occurrence) and insert:

Public Sector Commissioner

**Table**

s. 17(1), (4) and (5)	s. 18(1) and (3)
s. 21(1) and (3)	s. 22(1) and (3)

s. 23(2)	
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**82. Public Interest Disclosure Act 2003 amended**

- (1) This section amends the *Public Interest Disclosure Act 2003*.
- (2) In section 3(1) delete the definition of *Commissioner* and insert:

*Commissioner* means the person holding the office of  
Public Sector Commissioner established by the *Public  
Sector Management Act 1994* section 16;

- (3) Delete the heading to Part 4 and insert:

**Part 4 — Role of Public Sector Commissioner**

**83. Salaries and Allowances Act 1975 amended**

- (1) This section amends the *Salaries and Allowances Act 1975*.
- (2) In section 10(4)(b) delete “chief executive officer of the department principally assisting the Minister in the administration of the *Public Sector Management Act 1994*” and insert:

Public Sector Commissioner

**84. State Administrative Tribunal Act 2004 amended**

- (1) This section amends the *State Administrative Tribunal Act 2004*.
- (2) In section 121(2) delete “Commissioner for Public Sector Standards” and insert:

Public Sector Commissioner

**85. *State Records Act 2000* amended**

- (1) This section amends the *State Records Act 2000*.
- (2) In section 69(2) delete “sections 12 and 13” and insert:

sections 24I and 24J

**86. *Subiaco Redevelopment Act 1994* amended**

- (1) This section amends the *Subiaco Redevelopment Act 1994*.
- (2) In section 3 delete the definition of ***Public Service Act***.
- (3) In section 10 delete “Minister to whom the administration of the Public Service Act is for the time being committed by the Governor.” and insert:

Public Sector Commissioner.

- (4) In section 14(1) delete “Public Service Act” and insert:

*Public Sector Management Act 1994*

- (5) In section 15(1) delete “Minister to whom the administration of the Public Service Act is for the time being committed by the Governor,” and insert:

Public Sector Commissioner

- (6) In section 17 delete “Public Service Act” and insert:

*Public Sector Management Act 1994*

**87. Water Corporation Act 1995 amended**

- (1) This section amends the *Water Corporation Act 1995*.
- (2) In section 3(1) delete the definition of *Commissioner for Public Sector Standards*.
- (3) In the provisions listed in the Table delete “Commissioner for Public Sector Standards” (each occurrence) and insert:

Public Sector Commissioner

**Table**

s. 16(1), (5) and (6)	s. 17(1) and (3)
s. 24(1) and (3)	s. 25(1) and (3)
s. 26(2)	

**88. Western Australian Land Authority Act 1992 amended**

- (1) This section amends the *Western Australian Land Authority Act 1992*.
- (2) In section 4(1) delete the definition of *Commissioner for Public Sector Standards*.
- (3) In the provisions listed in the Table delete “Commissioner for Public Sector Standards” (each occurrence) and insert:

Public Sector Commissioner

**Table**

s. 12(1), (4) and (5)	s. 13(1) and (3)
s. 14B(1) and (3)	s. 14C(1) and (3)
s. 14D(2)	

**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Agricultural Produce Commission Act 1988</i>	Sch. cl. 2
<i>Agriculture Protection Board Act 1950</i>	s. 8(1)(m)
<i>Animal Resources Authority Act 1981</i>	s. 7, 12(2) and (4)
<i>Architects Act 2004</i>	s. 9
<i>Armadale Redevelopment Act 2001</i>	s. 10
<i>Biosecurity and Agriculture Management Act 2007</i>	s. 48(4)

<i>Botanic Gardens and Parks Authority Act 1998</i>	s. 8
<i>Builders' Registration Act 1939</i>	s. 6(4), 30(1)
<i>Building and Construction Industry Training Fund and Levy Collection Act 1990</i>	Sch. 1 cl. 2
<i>Caravan Parks and Camping Grounds Act 1995</i>	Sch. 1 cl. 7(1)
<i>Carers Recognition Act 2004</i>	s. 17
<i>Cemeteries Act 1986</i>	s. 9
<i>Chemistry Centre (WA) Act 2007</i>	s. 8(1) and (2)
<i>Chicken Meat Industry Act 1977</i>	s. 9
<i>Child Care Services Act 2007</i>	s. 41(8)
<i>Children and Community Services Act 2004</i>	s. 27(8), 92(7)(b)
<i>Chiropractors Act 2005</i>	s. 9
<i>Coal Industry Tribunal of Western Australia Act 1992</i>	s. 27
<i>Commissioner for Children and Young People Act 2006</i>	s. 56
<i>Conservation and Land Management Act 1984</i>	s. 20(4)(b), 30

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<i>Construction Industry Portable Paid Long Service Leave Act 1985</i>	s. 9(1)
<i>Contaminated Sites Act 2003</i>	s. 33(5)
<i>Country Housing Act 1998</i>	s. 6
<i>Criminal Injuries Compensation Act 2003</i>	Sch. 1 cl. 3(4)
<i>Curriculum Council Act 1997</i>	s. 8
<i>Dental Prosthetists Act 1985</i>	s. 9
<i>Disability Services Act 1993</i>	Sch. 3 cl. 4, Sch. 5 cl. 4
<i>East Perth Redevelopment Act 1991</i>	s. 10, 14(1)(b), 15(2)
<i>Economic Regulation Authority Act 2003</i>	s. 12(1)
<i>Edith Cowan University Act 1984</i>	s. 31(2)
<i>Electricity Industry Act 2004</i>	s. 81(3)
<i>Energy Coordination Act 1994</i>	s. 11ZPO(3), 25(4)
<i>Environmental Protection Act 1986</i>	s. 9, 22(2), 25(3), 29(4), 40(8), 108(2), Sch. 7 cl. 2(1)(a) and 5
<i>Equal Opportunity Act 1984</i>	s. 75(5), 78(3)(a), 142(4)
<i>Fire and Emergency Services Authority of Western Australia Act 1998</i>	s. 10, 28

<i>Fish Resources Management Act 1994</i>	s. 245(1)
<i>Fisheries Adjustment Schemes Act 1987</i>	s. 13
<i>Food Act 2008</i>	s. 124(2)(c)
<i>Forest Products Act 2000</i>	s. 8(1) and (2), 66(7) and (8)
<i>Gaming and Wagering Commission Act 1987</i>	s. 13(1), 109D(8)
<i>Gender Reassignment Act 2000</i>	s. 9(1)
<i>Grain Marketing Act 2002</i>	s. 9
<i>Guardianship and Administration Act 1990</i>	s. 91(3), 93(3)(a)
<i>Health Legislation Administration Act 1984</i>	s. 6(3), 11(3)
<i>Health Services (Conciliation and Review) Act 1995</i>	Sch. 2 cl. 2(a), 6
<i>Heritage of Western Australia Act 1990</i>	s. 10(2), 27(2), 28(1)
<i>Higher Education Act 2004</i>	s. 21(3)
<i>Hospitals and Health Services Act 1927</i>	s. 7E(4)
<i>Housing Act 1980</i>	s. 18(1)
<i>Human Reproductive Technology Act 1991</i>	Sch. cl. 4(1)

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<i>Industry and Technology Development Act 1998</i>	s. 24
<i>Insurance Commission of Western Australia Act 1986</i>	s. 5(5), 11(5)
<i>Land Administration Act 1997</i>	s. 97(9)
<i>Land Information Authority Act 2006</i>	s. 23
<i>Law Reform Commission Act 1972</i>	s. 9(2)
<i>Legal Aid Commission Act 1976</i>	s. 20(1), 21(1)
<i>Legal Profession Act 2008</i>	s. 317, 564
<i>Liquor Control Act 1988</i>	s. 9H(1)
<i>Litter Act 1979</i>	s. 15(3)
<i>Local Government Act 1995</i>	Sch. 2.5 cl. 8(1), Sch. 5.1 cl. 9(1)
<i>Local Government Grants Act 1978</i>	s. 7(2)
<i>Lotteries Commission Act 1990</i>	s. 9(2), Sch. 1 cl. 3
<i>Main Roads Act 1930</i>	First Sch. cl. 5
<i>Marketing of Potatoes Act 1946</i>	s. 18(2)
<i>Medical Practitioners Act 2008</i>	s. 10
<i>Medical Radiation Technologists Act 2006</i>	s. 8

<i>Mental Health Act 1996</i>	s. 180(1), Sch. 1 cl. 2(2)
<i>Minerals and Energy Research Act 1987</i>	s. 16, 25, 31(3)
<i>Mines Safety and Inspection Act 1994</i>	s. 19(3), 20(3), 48(3), 82(5)
<i>Mining Act 1978</i>	s. 13(4)
<i>Nurses and Midwives Act 2006</i>	s. 9
<i>Occupational Safety and Health Act 1984</i>	s. 8(2), 9(3), 14A(6), 15(4)
<i>Occupational Therapists Act 2005</i>	s. 9
<i>Optometrists Act 2005</i>	s. 9
<i>Osteopaths Act 2005</i>	s. 9
<i>Owner-Drivers (Contracts and Disputes) Act 2007</i>	s. 24
<i>Painters' Registration Act 1961</i>	s. 8
<i>Parks and Reserves Act 1895</i>	s. 15(2)(a)
<i>Pearling Act 1990</i>	s. 41
<i>Perth Market Act 1926</i>	s. 8
<i>Physiotherapists Act 2005</i>	s. 9
<i>Planning and Development Act 2005</i>	s. 13

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<i>Podiatrists Act 2005</i>	s. 9
<i>Port Authorities Act 1999</i>	s. 7(2)
<i>Port Kennedy Development Agreement Act 1992</i>	s. 17
<i>Prisons Act 1981</i>	s. 6(5), 13(1)
<i>Professional Combat Sports Act 1987</i>	s. 6(1)
<i>Professional Standards Act 1997</i>	Sch. 1 cl. 4(1) and (2)
<i>Psychologists Act 2005</i>	s. 8
<i>Public Works Act 1902</i>	s. 9D
<i>Racing Penalties (Appeals) Act 1990</i>	Sch. cl. 1(3), 2
<i>Radiation Safety Act 1975</i>	s. 20
<i>Real Estate and Business Agents Act 1978</i>	s. 11, 23A(9), 131KA
<i>Regional Development Commissions Act 1993</i>	s. 19(1) and (2)(a), 29(2)
<i>Retail Trading Hours Act 1987</i>	s. 17(5)
<i>Rights in Water and Irrigation Act 1914</i>	s. 26GR
<i>Road Safety Council Act 2002</i>	s. 10
<i>Rottnest Island Authority Act 1987</i>	s. 8

<i>Royalties for Regions Act 2009</i>	s. 20
<i>Rural Business Development Corporation Act 2000</i>	s. 14
<i>School Education Act 1999</i>	s. 39(9)(b), 87(7)(b), 93(9)(b), 241(7)(b)
<i>Sentence Administration Act 2003</i>	Sch. 1 cl. 6(1)
<i>Settlement Agents Act 1981</i>	s. 11
<i>Small Business Development Corporation Act 1983</i>	s. 7(1)
<i>Soil and Land Conservation Act 1945</i>	s. 41(3)
<i>State Administrative Tribunal Act 2004</i>	s. 119(5)
<i>State Records Act 2000</i>	Sch. 4 cl. 7
<i>State Superannuation Act 2000</i>	s. 68(2), Sch. 1 cl. 7
<i>Swan and Canning Rivers Management Act 2006</i>	s. 21(2), 78(2)
<i>Swan Valley Planning Act 1995</i>	s. 19
<i>Taxi Act 1994</i>	s. 12
<i>Tobacco Products Control Act 2006</i>	s. 63
<i>Transport Co-ordination Act 1966</i>	s. 7B(9)

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<i>Vocational Education and Training Act 1996</i>	s. 63
<i>Waste Avoidance and Resource Recovery Act 2007</i>	s. 15
<i>Water Agencies (Powers) Act 1984</i>	s. 21, 109(2)
<i>Water Boards Act 1904</i>	s. 29(1)
<i>Western Australian College of Teaching Act 2004</i>	s. 11(1)
<i>Western Australian Land Authority Act 1992</i>	s. 8(1)
<i>Western Australian Sports Centre Trust Act 1986</i>	s. 7, 11(2)
<i>Western Australian Tourism Commission Act 1983</i>	s. 7(1), 17(3a), (4) and (5)
<i>Western Australian Treasury Corporation Act 1986</i>	s. 5D
<i>Workers' Compensation and Injury Management Act 1981</i>	s. 99(2), 100A(4)
<i>Zoological Parks Authority Act 2001</i>	s. 8, 25(3), Sch. 3 cl. 6, 9

**90. Various references to “Public Service Board” amended**

- (1) This section amends the Acts listed in the Table.

- (2) In the provisions listed in the Table delete “Public Service Board” and insert:

Public Sector Commissioner

**Table**

<i>Alcohol and Drug Authority Act 1974</i>	s. 21(2)
<i>Companies (Administration) Act 1982</i>	s. 4(6)
<i>Country High School Hostels Authority Act 1960</i>	s. 10(2)
<i>Perth Theatre Trust Act 1979</i>	s. 9(1), 17(3)

## **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

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- (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:  
  
(b) 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

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- (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**

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**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.

**Division 2 — Other Acts amended**

**109. Industrial Relations Act 1979 amended**

- (1) This section amends the *Industrial Relations Act 1979*.
- (2) In section 80I(1):
  - (a) in paragraph (b) after “decision” insert:  
  
or finding
  - (b) in paragraph (d) after “decision” insert:  
  
or finding

**110. School Education Act 1999 amended**

- (1) This section amends the *School Education Act 1999*.

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(2) In section 239(1)(b) delete “that is not the Minister (within the meaning in that Part)”.

(3) Delete section 239(2) and insert:

(2) In addition to —

(a) the actions that may be taken under section 79(3) of the PSMA; and

(b) any disciplinary action or improvement action that may be taken under section 82A(3)(b) or 88(b) of the PSMA,

the chief executive officer may under those provisions make a determination under section 238(1)(a) in respect of a member of the teaching staff.

(4) In section 240(1):

(a) in paragraph (a) delete “is guilty of an act or omission that comes within” and insert:

may have committed a breach of discipline as referred to in

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

(ii) in the case of a suspected breach of discipline dealt with under Part 5 of the PSMA — a decision is made under section 81(1)(b), 82A(2) or (3) or 88 of the PSMA; or

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