



Western Australia

## **Alcohol and Drug Authority Act 1974**

Compare between:

[01 Oct 2010, 02-c0-02] and [18 Oct 2010, 02-d0-01]



Western Australia

## **Alcohol and Drug Authority Act 1974**

**An Act for the purposes of constituting a body corporate with the functions of providing treatment, management, care, and rehabilitation of persons who are suffering from the consumption or use of alcoholic or other intoxicating liquors or drugs to excess; promoting and subsidising research and educational facilities directed at prevention and treatment of alcohol and drug abuse, and with further functions related thereto, and for incidental and other purposes.**

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Alcohol and Drug Authority Act 1974*<sup>1</sup>.

### **2. Commencement**

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

[3. Deleted by No. 10 of 1998 s. 76.]

### **4. Terms used**

In this Act, unless the context requires otherwise —

**Authority** means the Western Australian Alcohol and Drug Authority established under this Act;

**Chairman** means the Chairman of the Authority;

**centre** means premises maintained by the Authority for the assessment, treatment, management, care, or rehabilitation of persons suffering from alcohol or drug abuse;

**Deputy Chairman** means the Deputy Chairman of the Authority;

**medical practitioner** ~~has~~ means a person registered under the [meaning given to that term Health Practitioner Regulation National Law \(Western Australia\)](#) in the ~~Medical Practitioners Act 2008 section 4~~ [medical profession](#);

**member** means a member of the Authority;

**section** means section of this Act;

**subsection** means a subsection of the section wherein the term is used.

[Section 4 amended by No. 32 of 1994 s. 19; No. 22 of 2008 Sch. 3 cl. ~~2~~; [No. 35 of 2010 s. 35](#).]

## **Part II — Alcohol and Drug Authority**

### **Division 1 — Establishment and terms of office**

#### **5. Establishment and incorporation**

- (1) For the purposes of this Act an authority shall be established consisting of 4 members appointed by the Governor, one at least of whom shall be a medical practitioner.
- (2) The Governor shall appoint one member to be Chairman and another member to be Deputy Chairman of the Authority.
- (3) The Minister shall cause notice of appointments to the respective offices of members to be published in the *Government Gazette*.
- (4) When notice of the appointment of the first 4 members is so published the Authority is thereby incorporated as a body corporate by the name of “Western Australian Alcohol and Drug Authority” and under that corporate name —
  - (a) has perpetual succession;
  - (b) shall have a common seal;
  - (c) may sue and be sued in any court;
  - (d) may take, purchase, and hold real and personal property including property devised, bequeathed, or given to the Authority;
  - (e) may, with the approval of the Governor, sell, alienate, mortgage, charge, and demise real or personal property;
  - (f) may sell, assign, or charge personal property; and
  - (g) may do and suffer all other things which bodies corporate may by law do and suffer.
- (5) All courts, judges, and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document, and presume it was duly affixed.

**6. Term of office**

Subject to this Act, each member shall hold office for such period not exceeding 3 years as the Governor may fix at the time of the member's appointment.

**7. Re-appointment**

All members, on the expiration of their term are, unless otherwise disqualified, eligible for re-appointment.

**8. Leave of absence**

The Authority may grant leave of absence to a member on such terms and conditions as the Authority determines.

**9. Dismissal of members**

The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.

**10. Vacation of office**

If a member —

- (a) dies; or
- (b) resigns his office by writing under his hand delivered to the Minister; or
- (c) is a person in respect of whom an administration order is in force under Part 6 of the *Guardianship and Administration Act 1990*; or
- (d) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (e) is convicted of an indictable offence; or
- (f) is absent without leave of the Authority for more than 3 consecutive meetings of the Authority; or
- (g) has his appointment terminated under section 9; or

- (h) being a medical practitioner at the time of his appointment ceases to be one,

his office shall become vacant and shall be filled as a casual vacancy in accordance with section 11.

*[Section 10 amended by No. 24 of 1990 s. 123; No. 18 of 2009 s. 8.]*

**11. Casual vacancy**

Where a casual vacancy occurs in the office of a member the vacancy may be filled by such person as the Governor thinks fit, and the person who fills the vacancy shall, subject to this Act, hold office as member for the residue of his predecessor's term of office, but, if by reason of the vacancy there is no member who is a medical practitioner, the person who fills the vacancy shall be a medical practitioner.

**12. Acting members**

- (1) Where the Minister is satisfied that a member is prevented by illness, absence, or other reasonable cause from performing his duties as a member, the Minister may appoint such person as the Minister thinks fit to be an acting member to act for the member and that person, while he so acts, shall be deemed to be a member, but, if the member is the only member who is a medical practitioner, the person appointed to act for him shall be a medical practitioner.
- (2) The Minister may at any time terminate the appointment of an acting member.

**13. Meetings of the Authority**

- (1) The Authority shall hold such meetings as are necessary for the exercise of its functions.

**Alcohol and Drug Authority Act 1974**

**Part II** Alcohol and Drug Authority

**Division 2** General functions, powers, and duties

**s. 14**

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- (2) The Chairman, or if the Chairman is absent, or his office is vacant, the Deputy Chairman, may convene meetings of the Authority.
- (3) If the Chairman is absent from a meeting of the Authority the Deputy Chairman shall preside at the meeting, and when doing so, shall have all the powers and duties of the Chairman.
- (4) At a meeting of the Authority 2 members shall constitute a quorum.
- (5) Subject to this Act, the Authority may regulate its procedure in such manner as it thinks fit.

**14. Validity of acts of Authority**

No act, proceeding, or determination of the Authority shall be invalid on the ground only of any vacancy in the office of any member or of any defect in the appointment of any member or in the appointment of any acting member.

**15. Remuneration of members**

The members shall be paid such fees and allowances as may from time to time be fixed by the Governor.

[16. Deleted by No. 18 of 1984 s. 3.]

**Division 2 — General functions, powers, and duties**

**17. Administration of this Act**

- (1) Subject to subsection (2), the Authority shall carry out the administration of this Act.
- (2) The Minister may from time to time give directions to the Authority with respect to its functions, powers, and duties, either generally or with respect to a particular matter, and the Authority shall give effect to those directions.

**18. Functions of the Authority**



The functions of the Authority include the following —

- (a) to provide assessment, treatment, management, care, and rehabilitation of persons suffering from alcohol or drug abuse, and to subsidise and otherwise support, as the Authority thinks fit, any other persons or organizations providing any one or more of those things;
- (b) to establish and maintain premises for the assessment, treatment, management, care, and rehabilitation of persons suffering from alcohol or drug abuse, and to subsidise and otherwise support, as the Authority thinks fit, other persons and organizations establishing or maintaining premises for any one or more of those purposes;
- (c) to establish and maintain accommodation for persons for whom assessment, treatment, management, care, or rehabilitation services are provided under this Act and to subsidise and otherwise support, as the Authority thinks fit, other persons and organizations establishing or maintaining such accommodation;
- (d) to provide such other facilities and services as the Authority considers necessary or desirable for the purposes of this Act;
- (e) to determine the persons or classes of persons for whom the Authority may provide facilities or services under this Act, or in respect of whom the Authority may subsidise or otherwise support other persons and organizations providing facilities and services consistent with the purposes of this Act;
- (f) to co-ordinate, promote, and subsidise, in Western Australia, research into and education on the causation, prevention, and treatment of alcohol and drug abuse;
- (g) to inquire into the respective provisions of the laws of this State with respect to offences in which the use of alcohol or drugs, or both, is an element, and with respect to the penalties for those offences, to consider the

desirability or otherwise, in the community interest, of repealing or modifying any of those provisions, and to make such recommendations thereon to the Minister and the Attorney General as the Authority thinks fit;

- (h) to co-operate and enter into agreement with other persons and organizations, in this State or otherwise, to such extent as may be necessary for the purposes of this Act; and
- (i) such other functions as are prescribed by any other Act or regulation, local law, by-law, or rule made under any other Act.

*[Section 18 amended by No. 14 of 1996 s. 4.]*

**19. Powers**

The Authority may do all such acts and things as may be necessary to enable it to perform its functions effectively.

*[20. Deleted by No. 98 of 1985 s. 3.]*

**Division 3 — Staff**

**21. Officers and wages employees**

- (1) For the purposes of this Act and subject to it, the Authority —
  - (a) may appoint such officers of the Authority as the Authority thinks fit; and
  - (b) may appoint such wages employees of the Authority as the Authority thinks fit.
- (2) Subject to any relevant award or industrial agreement under the *Industrial Arbitration Act 1912*<sup>2</sup>, the terms and conditions of appointment and employment of officers and wages employees of the Authority, including the salary and wages payable, shall be such terms and conditions as the Authority, with the approval of the Minister for Public Sector Management<sup>3</sup>, determines.

- (3) Where a person so appointed was, immediately before being so appointed, an officer or a wages employee in the service of a department of the Public Service of the State —
- (a) he retains his existing and any rights that may have accrued to him under the Act pursuant to which he was then serving, and, subject to section 22, in particular his rights if any under the *Superannuation and Family Benefits Act 1938*<sup>4</sup>; and
  - (b) for the purpose of determining those rights his service as such an officer or a wages employee shall be taken into account as if it were service with the Authority.
- (4) A person appointed under the provisions of this section is not a person appointed under Part 3 of the *Public Sector Management Act 1994*, and the provisions of the *Government Employees (Promotion Appeal Board) Act 1945*<sup>5</sup>, do not apply to or in relation to an officer or a wages employee of the Authority.
- (5) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (1)(a) to be an officer of the Authority and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*<sup>6</sup> an inconsistency between this Act and that Act that Act shall prevail.

*[Section 21 amended by No. 113 of 1987 s. 32; No. 32 of 1994 s. 19.]*

## **22. Superannuation**

- (1) The Authority may request the Minister to whom the administration of the *Superannuation and Family Benefits Act 1938*<sup>4</sup>, is committed to recommend that the Authority be included as a corporate body in the term **department** for the purposes of that Act, and the Treasurer may, on such recommendation and upon the Authority complying with the requirements of that Act, approve of the Authority as, and the

Authority shall thereupon be deemed to be, a department for the purposes of that Act.

- (2) An officer or a wages employee of the Authority is not obliged to become a contributor under the *Superannuation and Family Benefits Act 1938*<sup>4</sup>.

**23. Co-opted and seconded staff**

- (1) The Authority may, with the consent of the Minister administering any department of the Public Service of the State, for the purposes of this Act, co-opt the services, whether of an administrative, professional, technical, or other nature, of any person employed in any of those departments, or request the secondment of any such person, upon such terms as may be agreed between that Minister and the Authority.
- (2) Where the services of any person are co-opted or a person is seconded under the provisions of this section, it does not prejudice that person's existing or accruing rights under the *Public Service Act 1904*<sup>7</sup>, or under any other Act applying to him as a public servant, and his service with the Authority under this Act shall be regarded as service in the Public Service of the State for the purposes of determining those rights.

*[Section 23 amended by No. 32 of 1994 s. 19.]*

**24. Contractual services**

- (1) The Authority may engage under contract for services such professional, technical, or other assistance as may be necessary to enable the Authority to perform its functions effectively.
- (2) A person engaged under the provisions of subsection (1) is not a person appointed under Part 3 of the *Public Sector Management Act 1994*, and subject to this Act and to any award or agreement in force under the *Industrial Arbitration Act 1912*<sup>2</sup>, the Authority may effect, suspend, and terminate the engagement subject to such terms and conditions as the Authority thinks fit.

*[Section 24 amended by No. 32 of 1994 s. 19.]*

### **Part III — Alcohol and drug centres**

#### **25. Centres**

The Authority, may with the approval of the Minister, from time to time with respect to any centre —

- (a) prohibit or regulate the admission of persons to or the right of persons to remain in, the centre;
- (b) fix fees for any facility or service provided and determine the persons or classes of persons who are liable for payment to the Authority of those fees in full or in part or who may be exempted from such payment.

#### **26. Procedure on deaths in centres**

- (1) An inquiry shall be held by the Authority as to the death or injury caused to any person in a centre while he is there for assessment, treatment, management, care, or rehabilitation.
- (2) The person in charge of a centre shall report to the Authority with respect to the circumstances surrounding the death or injury to any person in a centre, while he is there for assessment, treatment, management, care, or rehabilitation.

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## Part IV — Financial provisions

### 27. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

*[Section 27 inserted by No. 98 of 1985 s. 3; amended by No. 77 of 2006 Sch. 1 cl. 8(1).]*

### 28. Funds of the Authority

- (1) The funds available to the Authority for the purpose of enabling it to exercise its functions, powers, and duties under this Act are —
  - (a) moneys from time to time appropriated by Parliament for that purpose;
  - (b) moneys received by the Authority by way of fees, gifts, bequests, or otherwise;
  - (c) moneys borrowed by the Authority under this Act; and
  - (d) moneys made available to the Authority for the purposes of this Act.
- (2) An account called the Western Australian Alcohol and Drug Authority Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the moneys referred to in subsection (1) are to be credited.

- (3) All expenditure incurred by the Authority for the purposes of giving effect to this Act, including the repayment of moneys

**s. 29**

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borrowed by or advanced to the Authority in accordance with this Act, shall be charged to the account referred to in subsection (2).

*[Section 28 amended by No. 49 of 1996 s. 48 and 64; No. 77 of 2006 Sch. 1 cl. 8(2).]*

**29. Power to borrow money**

- (1) The Authority has power to borrow money upon the guarantee of the Treasurer of the State for the purposes of carrying out its powers and functions under this Act.
- (2) The Authority is authorised with the prior approval in writing of the Treasurer to borrow money upon such terms and conditions only as the Treasurer approves.
- (3) The Treasurer is hereby authorised to so approve and to give the guarantee, including the guarantee of interest, in subsection (1), for and on behalf of the Crown in right of the State.
- (4) Any moneys borrowed by the Authority under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve, but the amount of the moneys so borrowed shall not in any one year exceed in the aggregate such amount as the Treasurer approves.
- (5) Before a guarantee is given by the Treasurer under this section, the Authority shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.
- (6) The Authority shall use all moneys borrowed under the power conferred by this section for the purposes of carrying this Act into effect.

**30. Power of the Authority to invest certain moneys**

Where any money standing to the credit of the Western Australian Alcohol and Drug Authority Account is not immediately required for the purposes of this Act, the Authority



may invest it in any investments authorised by law as in force immediately before the coming into operation of the *Trustees Amendment Act 1997*<sup>8</sup> as those in which trust funds may be invested.

*[Section 30 amended by No. 1 of 1997 s. 18.]*

*[31. Deleted by No. 98 of 1985 s. 3.]*

**32. Application of moneys received by the Authority**

The Authority shall apply for the objects of the Authority all fees and other moneys received by it under this Act or otherwise.

*[33. Deleted by No. 98 of 1985 s. 3.]*

## **Part V — Miscellaneous provisions**

### **34. Recovery of fees**

In any court of competent jurisdiction an officer of the Authority, who is authorised in writing by the Authority in that behalf, may recover for the Authority any fees that are payable to the Authority and have not been paid.

### **35. Protection of members**

- (1) Any person who is, or has at any time been, a member or an acting member of the Authority is not personally liable for any act done, or omitted to be done, in good faith by the Authority or by him as a member or an acting member.
- (2) Acceptance of or being in the office of member or acting member of the Authority by any person does not of itself render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member or acting member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or being in that office.

*[Section 35 amended by No. 32 of 1994 s. 19.]*

### **36. Regulations**

- (1) The Governor may make such regulations, not inconsistent with this Act, as he considers necessary or desirable for the proper administration of this Act or for achieving the purposes of this Act.
- (2) Without limiting the generality of subsection (1) the Governor may make regulations —
  - (a) for maintaining order and discipline and regulating the general conduct of inmates of and visitors to a centre or any other place at which accommodation is provided by the Authority under this Act;

- (b) for prohibiting and preventing trespass on the centres.
- (3) The regulations may prescribe penalties, not exceeding a fine of \$40, in respect of a breach of any of the regulations.
- (4) The regulations may require that any information, account, document, or form required to be given or furnished thereunder shall be verified by statutory declaration.
- (5) A regulation —
  - (a) may be limited in its application to time, place, or circumstance; and
  - (b) may provide that any act or thing done shall be done with the approval or to the satisfaction of a specified person or class of persons and may confer a discretionary authority.

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### Notes

- <sup>1</sup> This is a compilation of the *Alcohol and Drug Authority Act 1974* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Alcohol and Drug Authority Act 1974</i>	32 of 1974	4 Nov 1974	29 Nov 1974 (see s. 2 and <i>Gazette</i> 29 Nov 1974 p. 5167)
<i>Acts Amendment and Repeal (Disqualification for Parliament) Act 1984 Pt. II</i>	78 of 1984	14 Nov 1984	1 Jul 1985 (see s. 2 and <i>Gazette</i> 17 May 1985 p. 1671)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Guardianship and Administration Act 1990 s. 123</i>	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 48 and 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the <i>Alcohol and Drug Authority Act 1974</i> as at 1 Apr 1999</b> (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 8	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Medical Practitioners Act 2008</i> Sch. 3 cl. 2	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 8	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<b>Reprint 2: The Alcohol and Drug Authority Act 1974 as at 5 Feb 2010</b> (includes amendments listed above)			
<a href="#"><u>Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 2</u></a>	<a href="#"><u>35 of 2010</u></a>	<a href="#"><u>30 Aug 2010</u></a>	<a href="#"><u>18 Oct 2010 (see s. 2(b) and Gazette 1 Oct 2010 p. 5075-6)</u></a>

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

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 29 <sup>9</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<del><i>Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 2</i><sup>10</sup></del>	<del>35 of 2010</del>	<del>30 Aug 2010</del>	<del>18 Oct 2010 (see s. 2(b) and Gazette 1 Oct 2010 p. 5075-6)</del>
<i>Public Sector Reform Act 2010</i> s. 90 <sup>11</sup>	39 of 2010	1 Oct 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> Repealed by the *Industrial Relations Act 1979*.

<sup>3</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the

Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).

<sup>4</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26. See also note 9.

<sup>5</sup> Repealed by the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984*.

<sup>6</sup> Repealed by the *Public Sector Management Act 1994*.

<sup>7</sup> Repealed by the *Public Service Act 1978* which was repealed by the *Public Sector Management Act 1994*.

<sup>8</sup> The *Trustees Amendment Act 1997* came into operation on 16 June 1997.

<sup>9</sup> On the date on which this reprint was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 29 had not come into operation. It reads as follows:

**29. *Alcohol and Drug Authority Act 1974* amended**

The *Alcohol and Drug Authority Act 1974* is amended as follows:

- (a) in section 21(3)(a) by deleting “, and, subject to section 22, in particular his rights if any under the *Superannuation and Family Benefits Act 1938*”;
- (b) by repealing section 22.

<sup>10</sup> ~~On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 2 had not come into operation. It reads as follows:~~

~~**Division 2 — *Alcohol and Drug Authority Act 1974* amended**~~

~~**24. — Act amended**~~

~~— This Division amends the *Alcohol and Drug Authority Act 1974*.~~

~~**25. — Section 4 amended**~~

~~— In section 4 delete the definition of *medical practitioner* and insert:~~

~~— *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;~~

<sup>10</sup> [No longer applicable.](#)

<sup>11</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 90 had not come into operation. It reads as follows:

**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)
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