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WESTERN AUSTRALIA

**PUBLIC SECTOR MANAGEMENT
ACT 1994**

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WESTERN AUSTRALIA

PUBLIC SECTOR MANAGEMENT ACT 1994

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

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PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Public Sector Management Act 1994*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

Interpretation

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

“**agency**” means —

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

“**appoint**” includes promote;

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

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

“**chief employee**” means —

- (a) chief employee of a non-SES organization;
- (b) chief employee of an agency who is not a member of the Senior Executive Service; or

- (c) person deemed to be a chief employee under regulations referred to in section 4;

“chief executive officer” means —

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

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

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

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

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

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

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

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“department” means department established under section 35;

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

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

“employing authority” has the meaning given by section 5;

“executive officer” means chief executive officer or senior executive officer;

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

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

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

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

“ministerial officer” means person appointed under section 68 as a ministerial officer;

“non-SES organization” means entity which consists of —

- (a) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body or office, post or position that is established

or continued for a public purpose under a written law; and

- (b) persons employed by or for the purposes of that body or holder under that written law or another written law,

and which neither is nor includes —

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

“organization” means non-SES organization or SES organization;

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

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

“political office holder” means —

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

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

“Public Sector” means all —

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

“public sector body” means agency, ministerial office or non-SES organization;

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

“Public Service” means Public Service as constituted under section 34;

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

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

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

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

“respondent” means person —

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

“responsible authority”, in relation to a department or organization, means —

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

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

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

“Senior Executive Service” means Senior Executive Service as constituted under section 43;

“SES organization” means entity which consists of —

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

and

- (b) persons employed by or for the purposes of that body or holder under that written law or another written law;

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

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

“special inquiry” means special inquiry directed to be held under section 11;

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

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

“this Act” includes subsidiary legislation in force under this Act.

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

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

(4) A reference in this Act to the Minister of the Crown responsible for a public sector body of a particular kind is a reference to the Minister of the Crown to whom the administration of the public sector body of that kind is for the time being committed by the Governor.

(5) A reference in this Act —

- (a) to a person being employed by an employing authority;
or
- (b) in relation to a person, to an employing authority as being his or her employing authority,

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

Persons deemed to be chief executive officers or chief employees

4. (1) The Commissioner is deemed to be the chief executive officer of the department principally assisting the Commissioner in the performance of his or her functions.

(2) The Auditor General is deemed to be the chief executive officer of the department known as the Office of the Auditor General.

(3) The Commissioner of Police is deemed to be the chief executive officer of the department known as the Police Department.

(4) The Electoral Commissioner is deemed to be the chief executive officer of the department known as the Western Australian Electoral Commission.

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(5) Regulations made under section 108 may provide that the holder of such office, post or position under a written law as is specified by them is deemed to be the chief executive officer or chief employee of such department or organization as is so specified.

(6) Despite this section, Parts 3, 5 and 6 do not apply to or in relation to a person who is the Commissioner, the Auditor General, the Commissioner of Police or the Electoral Commissioner or the holder of an office, post or position deemed under regulations referred to in subsection (5) to be a chief executive officer or chief employee, except insofar as those Parts confer powers or impose duties on chief executive officers or chief employees, as the case requires, in their capacity as employing authorities.

Employing authorities defined

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

“employing authority” means, in relation to —

- (a) a chief executive officer (other than a chief executive officer referred to in section 4), the Minister;
- (b) a chief employee (other than a chief employee referred to in section 4), the person or board, committee or other body specified by a written law as being the employer of the chief employee;
- (c) a department or organization or an employee (other than a chief executive officer or chief employee) employed in a department or organization —
 - (i) subject to subparagraph (iii), if a chief executive officer or chief employee is the

accountable officer of the department or organization, the chief executive officer or chief employee;

- (ii) subject to subparagraph (iii), if a board, committee or other body established under a written law is the accountable authority of the department or organization, that board, committee or other body; or
- (iii) if a written law confers on a person or board, committee or other body the power to appoint or employ staff, the person or board, committee or other body;

or

- (d) a ministerial office or a ministerial officer, the Minister,

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

(2) For the purposes of this section —

(a) a department —

- (i) which is established to support an organization (other than an organization which is a Minister of the Crown); and
- (ii) which is not prescribed as an independent department for the purposes of this paragraph,

is to be taken to be a part of the organization referred to in subparagraph (i); and

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- (b) “**accountable authority**” and “**accountable officer**” have the respective meanings given by the *Financial Administration and Audit Act 1985*.

(3) Despite anything in paragraph (c) of the definition of “employing authority” in subsection (1), regulations made under section 108 may provide that the holder of an office, post or position, or a board, committee or other body, created or established under a written law is the employing authority of a department or organization or of an employee (other than a chief executive officer) employed in a department or organization.

Application

6. (1) This Act binds the Crown in right of the State.

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

PART 2 — ADMINISTRATION OF PUBLIC SECTOR

Division 1 — General principles

General principles of public administration and management

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

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

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

General principles of human resource management

8. (1) The principles of human resource management that are to be observed in and in relation to the Public Sector are that —

- (a) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;
 - (b) no power with regard to human resource management is to be exercised on the basis of nepotism or patronage;
 - (c) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;
 - (d) there is to be no unlawful discrimination against employees or persons seeking employment in the Public Sector on a ground referred to in the *Equal Opportunity Act 1984* or any other ground; and
 - (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Health, Safety and Welfare Act 1984*.
- (2) In matters relating to —
- (a) the selection, appointment, transfer, secondment, classification, remuneration, redeployment, redundancy or termination of employment of an individual employee; or

(b) the classification of a particular office, post or position, in its department or organization, an employing authority is not subject to any direction given, whether under any written law or otherwise, by the Minister of the Crown responsible for the department or organization, but shall, subject to this Act, act independently.

General principles of official conduct

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

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

Division 2 — Functions, etc. of Minister

Functions of Minister, and ancillary powers

10. (1) The functions of the Minister are —
- (a) to promote the overall effectiveness and efficiency of the Public Sector, having regard to the principles set out in section 7;

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- (b) to advise other Ministers of the Crown on —
 - (i) structural changes;
 - (ii) programmes for management improvement; and
 - (iii) policies, practices and procedures relating to any aspect of management,
which, in the opinion of the Minister, should be implemented in order to improve the effectiveness and efficiency of the whole or any part of the Public Sector;
- (c) to cause to be carried out planning for the future management and operation of the whole or any part of the Public Sector;
- (d) to arrange for reviews to be conducted, on the initiative of the Minister or at the request of another Minister of the Crown, in respect of the functions, management or operations of one or more public sector bodies; and
- (e) to perform such other functions as are conferred or imposed on the Minister by this Act.

(2) The Minister has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Minister.

(3) A review may be conducted under subsection (1) (d) in respect of —

- (a) the functions, management or operations of one public sector body;
- (b) a part only of the functions, management or operations of one public sector body; or
- (c) the functions, management or operations of more than one public sector body in related matters.

(4) For the purpose of the performance of his or her functions under subsection (1) (d), the Minister, or an employee authorized in writing by the Minister, may —

- (a) enter the premises of any public sector body;
- (b) require the production of and examine any book, document or writing in the custody of any employee of a public sector body; and
- (c) require any employee of a public sector body to answer questions,

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

(5) The powers conferred by subsection (4) are exercisable in relation to a public sector body only after consultation with the employing authority of the public sector body and the Minister of the Crown —

- (a) who is responsible for the public sector body; or
- (b) to whom the administration of the Act under which the public sector body is established or continued is for the time being committed by the Governor.

(6) Despite subsection (4), an employee of a public sector body has the same privileges in relation to —

- (a) the production of a book, document or writing;
- (b) the furnishing of any information; or
- (c) the answering of questions,

under this section as a witness has in the Supreme Court.

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- (7) Nothing in this section takes away from —
- (a) any enactment that imposes a prohibition or restriction on —
 - (i) the availability of any information; or
 - (ii) the production or examination of any book, document or writing;

or

 - (b) any privilege or immunity existing by custom or convention and relating to the production of books, documents, writings or information of previous Governments of the State.

Minister may direct holding of special inquiry

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

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

Powers of persons conducting special inquiries

12. (1) A special inquirer or a person authorized in writing by him or her may for the purposes of the special inquiry concerned —

- (a) enter the premises of any public sector body;
- (b) by notice in writing require a person to produce to him or her any book, document or writing that is in the possession or under the control of the person; and

- (c) inspect any book, document or writing produced to him or her and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents.

(2) The provisions of Schedule 3 apply to and in relation to a special inquirer.

Procedure and evidence at special inquiries

13. (1) An individual, public sector body or other body may be represented at a special inquiry by a legal practitioner or other agent.

(2) A special inquirer shall act independently in relation to the performance of his or her functions.

(3) A special inquirer shall act on any matter in issue at the special inquiry concerned according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms, and is not bound by the rules of evidence, but may be informed on any such matter in such manner as the special inquirer considers appropriate.

(4) A special inquirer may, in respect of a matter not dealt with by this Act, give directions concerning the procedure to be followed at or in connection with the special inquiry concerned, and a person participating in that special inquiry shall comply with any such direction.

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

Reports of special inquiries

14. A special inquirer shall —

- (a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the special inquiry concerned; and

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- (b) immediately after preparing a report under this section, provide the Minister with a copy of the report.

Delegatory power of Minister

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

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

Division 3 — Commissioner for Public Sector Standards

Commissioner for Public Sector Standards

16. (1) An office of Commissioner for Public Sector Standards is created.

(2) The office created by subsection (1) is not an office in the Public Service.

Appointment, etc. of Commissioner

17. (1) The Commissioner shall be appointed by the Governor on the recommendation of the Minister, and shall hold office in accordance with this Division.

(2) Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.

(3) Subject to this Division, a person appointed as the Commissioner shall hold office for a term of 5 years, and is eligible for reappointment.

Vacation of, or suspension from, office of Commissioner

18. (1) The Commissioner may at any time, by written notice addressed to the Governor, resign from office, and, on receipt of that resignation by the Governor, the Commissioner vacates office as Commissioner.

(2) The Commissioner, if he or she is nominated for election for the Parliament of the Commonwealth, or of any State or Territory, vacates office as Commissioner.

(3) The Commissioner may, at any time, be removed or suspended from office by the Governor on addresses from both Houses of Parliament.

(4) Notwithstanding subsection (3), if the Governor is satisfied that the Commissioner —

- (a) is incapable of properly performing the functions of his or her office;
- (b) has shown himself or herself incompetent properly to perform, or has neglected to perform, the functions of his or her office;
- (c) has applied to take, or has taken, advantage of the law of any country relating to bankruptcy, or has compounded, or entered into any arrangement, with his or her creditors; or
- (d) has been guilty of misconduct,

the Governor may suspend him or her from office.

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(5) When the Commissioner has been suspended from office under subsection (4), the Commissioner shall be restored to office unless —

- (a) a statement of the grounds of that suspension is laid before each House of Parliament during the first 7 sitting days of that House following that suspension; and
- (b) each House of Parliament, during the session in which the statement referred to in paragraph (a) is laid before it and within 30 sitting days of that statement being so laid, passes an address praying for the removal of the Commissioner from office.

(6) The Commissioner shall not, except so far as he or she is authorized so to do by resolutions of both Houses of Parliament —

- (a) hold any office or place referred to in Part 1 or 2 of Schedule V to the *Constitution Acts Amendment Act 1899* (other than the office of Commissioner) or be a member of any commission, council, board, committee, authority, trust or other body referred to in Part 3 of that Schedule; or
- (b) engage in any occupation for reward outside the functions of the office of Commissioner.

(7) Without limiting the generality of subsection (4) (d), the Commissioner shall be regarded for the purposes of subsection (4) (d) as being guilty of misconduct if he or she contravenes subsection (6).

Remuneration, etc. of Commissioner

19. (1) Subject to the *Salaries and Allowances Act 1975*, the Commissioner is entitled to be paid, out of the Consolidated

Fund, such remuneration as is determined by the Governor, and this subsection appropriates the Consolidated Fund accordingly.

(2) The rate of remuneration of the Commissioner shall not be reduced during a term of office of the Commissioner without his or her consent.

(3) Subject to this Division —

- (a) the Commissioner is entitled to such leave of absence as the Governor determines; and
- (b) the Governor may determine other terms and conditions of service, if any, that apply to the Commissioner.

Supplementary provisions relating to Commissioner

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

(2) If subsection (1) does not apply to a person appointed to the office of Commissioner, an order shall be made under section 3 (5) of the *Government Employees Superannuation Act 1987* to have effect in relation to that office while it is held by that person.

(3) If a person held an office in a department or organization immediately before being appointed to the office of Commissioner, the person retains existing and accruing entitlements in respect of leave of absence as if service in the office of Commissioner were a continuation of service in the department or organization.

(4) A person who held an office for an indefinite period in a department or organization immediately before being appointed

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to the office of Commissioner is entitled to employment in a department or organization at a level of classification determined by the Governor if —

- (a) his or her term of office as Commissioner expires by effluxion of time and he or she is not reappointed to the office of Commissioner; and
- (b) on the expiry referred to in paragraph (a) he or she is eligible for employment in a department or organization.

(5) The level of classification determined under subsection (4) shall not be lower than the level that the person held immediately before being appointed to the office of Commissioner.

(6) A person who ceases to hold the office of Commissioner and is employed in a department or organization retains existing and accruing entitlements in respect of leave of absence as if service in the department or organization were a continuation of service in that office.

Functions of Commissioner

21. (1) The functions of the Commissioner are, having regard to the principles set out in sections 7, 8 and 9 —

- (a) to establish public sector standards setting out minimum standards of merit, equity and probity to be complied with in the Public Sector in —
 - (i) the recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment of employees; and

- (ii) such other human resource management activities relating to employees as are prescribed,

and monitor compliance with those public sector standards;
- (b) to establish codes of ethics setting out minimum standards of conduct and integrity to be complied with by public sector bodies and employees, and monitor compliance with those codes;
- (c) to assist public sector bodies to develop, amend or repeal codes of conduct —
 - (i) setting out minimum standards of conduct and integrity to be complied with by themselves and their employees; and
 - (ii) consistent with codes of ethics established under paragraph (b),

and monitor compliance with those codes;
- (d) to assist public sector bodies and employees to comply with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection;
- (e) to monitor compliance by public sector bodies and employees with the principles set out in sections 8 (1) (a), (b) and (c) and 9;
- (f) subject to regulations referred to in section 98, to establish procedures of the kind referred to in section 97 (1) (a);
- (g) to report from time to time to the Minister of the Crown responsible for a public sector body on the compliance or non-compliance by the public sector body and its employees with the principles set out in

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sections 8 (1) (a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection;

(h) to report from time to time to each House of Parliament on —

(i) the compliance or non-compliance by any particular public sector body or public sector bodies and its or their employees with the principles set out in sections 8 (1) (a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection; and

(ii) any other matter arising in connection with the functions of the Commissioner;

(i) to report annually to each House of Parliament on the compliance or non-compliance by public sector bodies and employees with the principles set out in sections 8 (1) (a), (b) and (c) and 9 and with public sector standards, codes of ethics and codes of conduct established or developed, as the case requires, under this subsection; and

(j) to perform such other functions as are conferred or imposed on the Commissioner by this Act.

(2) The Commissioner may amend or repeal any public sector standard or code of ethics.

(3) In establishing, amending or repealing any public sector standards, the Commissioner shall take into account the impact which those public sector standards may have on the efficiency and effectiveness of the Public Sector, and shall endeavour to minimize any adverse impact.

(4) The Commissioner shall, before establishing, amending or repealing a public sector standard or code of ethics, consult such persons as he or she considers desirable and practicable to consult.

(5) Each public sector standard and code of ethics shall be published in the *Gazette*.

(6) A public sector standard or code of ethics comes into operation on the day on which it is published in the *Gazette* or on such later day as is specified in the public sector standard or code of ethics.

(7) Section 42 of the *Interpretation Act 1984* applies to and in relation to a public sector standard or code of ethics as if it were regulations within the meaning of that section.

(8) Subsections (5) to (7) also apply to an amendment or repeal of a public sector standard or code of ethics.

(9) Subject to subsection (10), a public sector standard or code of ethics has in relation to other Acts and subsidiary legislation made under them the force of law as if enacted as part of this Act, but may be amended or repealed by regulations made under section 108.

(10) Nothing in subsection (9) prevents a court from inquiring into, and deciding, whether or not a public sector standard or code of ethics or any of its provisions —

- (a) has been validly established;
- (b) is inconsistent with a provision of this Act; or
- (c) is unrelated to the power conferred by this Act to establish public sector standards or codes of ethics, as the case requires,

as if the public sector standard or code of ethics or that provision were regulations within the meaning of the *Interpretation Act 1984*.

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- (11) To the extent that —
- (a) a public sector standard is inconsistent with a code of ethics or a code of conduct, the public sector standard prevails; or
 - (b) a code of ethics is inconsistent with a code of conduct, the code of ethics prevails.

Commissioner to act independently

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

Power of delegation of Commissioner

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

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

Powers of investigation of Commissioner

24. (1) The Commissioner may, for the purpose of performing his or her functions, investigate the activities of any public sector body and for that purpose the Commissioner, or a person authorized by the Commissioner in writing, has all the powers

conferred on a special inquirer by this Act and the provisions of sections 12 and 13 and Schedule 3 apply to and in relation to —

- (a) the Commissioner or that person as if he or she were a special inquirer; and
- (b) that investigation as if it were a special inquiry.

(2) Section 14 applies to and in relation to a person authorized within the meaning of subsection (1) as if references in that section to a special inquirer, the Minister or the special inquiry concerned were references to that person, the Commissioner or the investigation concerned, respectively.

General powers of Commissioner

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

- (a) exempt the whole or any part of any public sector body from compliance with the whole or any part of any public sector standard or code of ethics; and
- (b) repeal or amend any exemption made under this subsection.

(2) The Commissioner may do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Commissioner.

Declaration by Commissioner

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

Staff of Commissioner

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

Acting Commissioner for Public Sector Standards

28. (1) The Governor may, on the recommendation of the Minister, appoint a person to act in the office of the Commissioner whenever —

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

(2) Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.

(3) A person appointed to act under subsection (1) is, while that appointment subsists, to be known as the Acting Commissioner for Public Sector Standards.

(4) An acting appointment subsists until —

- (a) the relevant leave of absence, inability, absence, suspension or vacancy ceases;
- (b) the term of that appointment expires; or

- (c) the expiry of 12 months from the day of that appointment,

whichever is soonest.

(5) If an acting appointment ends under subsection (4) (b), it can be renewed under subsection (1) but not so as to extend beyond 12 months from the day of the original acting appointment.

(6) While a person is acting in the office of the Commissioner under this section —

- (a) he or she shall perform the functions of the Commissioner, and any act or thing done by him or her in that performance has the like effect as if it were done by the Commissioner;
- (b) any act or thing that is required under a written law to be done to, by reference to or in relation to the Commissioner shall be regarded as effectually done if done to, by reference to or in relation to the person so acting; and
- (c) references to the Commissioner in sections 18 to 27 include references to the person so acting.

Division 4 — Chief executive officers and chief employees

Functions of chief executive officers and chief employees, and ancillary powers

29. (1) Subject to this Act and to any other written law relating to his or her department or organization, the functions of

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a chief executive officer or chief employee are to manage that department or organization, and in particular —

- (a) to provide leadership, strategic direction and a focus on results for that department or organization;
- (b) to provide policy advice to the responsible authority of that department or organization;
- (c) to plan for and undertake financial, information and other management in relation to that department or organization and to monitor the administrative and financial performance of that department or organization;
- (d) to ensure the appropriate deployment and redeployment of resources within that department or organization;
- (e) to ensure the proper organization of that department or organization, including the devising of organizational structures and arrangements;
- (f) to ensure the appropriate division of responsibilities between, and the assignment of functions to, the employees employed in that department or organization;
- (g) to manage and direct employees employed in that department or organization and, without limiting the generality of this paragraph, to be responsible for the recruitment, selection, appointment and deployment of those employees;
- (h) to classify, and determine the remuneration of, employees in that department or organization and

their offices, posts or positions, and to vary any such classification or remuneration, in accordance with —

- (i) the requirements of any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or of any workplace agreement made under the *Workplace Agreements Act 1993*; and
 - (ii) such classification systems and procedures, if any, as are approved in respect of those employees or any class of those employees;
- (i) to evaluate the performances of employees employed in that department or organization;
 - (j) subject to the *Equal Opportunity Act 1984*, to devise and implement initiatives to ensure that employees in that department or organization have equal opportunities in relation to their employment in accordance with the principles of merit and equity;
 - (k) to establish and implement necessary management training programmes and staff training, education and development programmes;
 - (l) subject to Part 7 and the *Industrial Relations Act 1979*, to resolve or redress the grievances of employees in that department or organization;
 - (m) subject to the *Occupational Health, Safety and Welfare Act 1984*, to implement any health and safety standards and programmes adopted with respect to employment in the Public Sector;
 - (n) to maintain proper records; and
 - (o) to perform such other functions as are conferred or imposed on the chief executive officer or chief employee under this Act or any other Act.

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(2) A chief executive officer or chief employee has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

Performance of functions of chief executive officers and chief employees

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

- (a) endeavour to attain performance objectives agreed with the responsible authority of the department or organization;
- (b) comply with public sector standards, codes of ethics and any relevant code of conduct;
- (c) comply with the principles set out in sections 7, 8 and 9; and
- (d) comply with any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or any workplace agreement made under the *Workplace Agreements Act 1993*.

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

31. (1) A chief executive officer or chief employee shall cause to be included in the annual report submitted —

- (a) in the case of a department, by the accountable officer of the relevant department under section 62 of the *Financial Administration and Audit Act 1985*; or
- (b) in the case of an organization, by the accountable authority of the relevant statutory authority under

section 66 of the *Financial Administration and Audit Act 1985*,

a report, prepared in accordance with guidelines, if any, issued by the Commissioner, on the extent to which public sector standards, codes of ethics and any relevant code of conduct have been complied with in relation to the relevant department or organization.

(2) The chief executive officer or chief employee of an organization which is not a statutory authority within the meaning of the *Financial Administration and Audit Act 1985* shall, before 31 August in each year or such earlier date in that year as the Commissioner may determine by order published in the *Gazette*, cause to be prepared and submitted to the Commissioner a report, prepared in accordance with guidelines, if any, issued by the Commissioner, on the extent to which public sector standards, codes of ethics and any relevant code of conduct have been complied with in relation to that organization.

(3) If the whole or any part of a department or organization is exempted under section 25 (1) from compliance with the whole or any part of any public sector standard or code of ethics, subsections (1) and (2) do not apply to or in relation to any thing to which that exemption relates.

(4) The Commissioner shall include in the relevant annual report referred to in section 21 (1) (i) each report submitted to him or her under subsection (2).

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

32. (1) In performing his or her functions, a chief executive officer or chief employee shall, subject to —

- (a) section 8 (2);
- (b) any public sector standard or code of ethics; and

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- (c) any other written law relating to his or her department or organization,

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

(2) For the purposes of subsection (1), to the extent that there is any conflict between —

- (a) section 8 (2) or any public sector standard or code of ethics (in this subsection referred to as “**the paragraph (a) provision**”); and
- (b) any other written law relating to the relevant department or organization,

the paragraph (a) provision prevails.

Delegatory powers of chief executive officers and chief employees

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

PART 3 — PUBLIC SERVICE

Division 1 — General

Constitution of Public Service

34. The Public Service is constituted by —

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

Departments

35. The Governor may, on the recommendation of the Minister —

- (a) establish and designate departments;
- (b) amalgamate or divide existing departments and designate the resulting department or departments;
- (c) abolish departments; and
- (d) alter the designations of existing departments.

Certain powers relating to departments and organizations

36. (1) Subject to subsection (2), the employing authority of a department or organization may, in relation to the department or organization —

- (a) determine organizational structures and arrangements;

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- (b) create, transfer or abolish offices; and
- (c) in accordance with approved procedures classify, or alter the classification of, offices other than offices included in the Special Division of the Public Service under section 38.

(2) Subject to subsection (3), subsection (1) does not apply to the employing authority of an organization unless the written law under which the organization is established or continued authorizes or requires the appointment or employment of public service officers for the purposes of the organization.

(3) Nothing in subsection (2) prevents the employing authority of an organization from exercising the powers conferred by subsection (1) in relation to the offices of executive officers within the organization.

(4) When departments are established in lieu of existing departments or organizations or by the amalgamation or division of existing departments or organizations, the Minister may effect the disposition of offices and public service officers and such other consequential changes as appear necessary to give effect to the change in departments or organizations.

Absorbed personnel

37. (1) If, as a result of an organization becoming a part of the Public Service, a person who was employed in the organization immediately before it became a part of the Public Service receives an appointment as a public service officer, that appointment is not subject to the provisions of Division 4 of Part IIA of the *Industrial Relations Act 1979*.

(2) If, in respect of an appointment referred to in subsection (1), the relevant employing authority determines that the remuneration payable to the public service officer shall be at a rate less than was payable to him or her as an employee of the organization immediately prior to it becoming a part of the Public

Service, the public service officer may, in the manner prescribed under Division 2 of Part IIA of the *Industrial Relations Act 1979*, appeal to the Industrial Commission constituted by a Public Service Arbitrator appointed under that Division against any provision of that determination, and, notwithstanding any provision of that Act, the Public Service Arbitrator has jurisdiction to hear and determine that appeal.

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

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

Retirement of public service officers on grounds of ill health

39. (1) A public service officer may retire, or an employing authority may call on a public service officer to retire, from the Public Service on the grounds of ill health.

(2) A public service officer who is called on to retire from the Public Service under subsection (1) shall forthwith so retire.

Service of notices, etc. when address of public service officer unknown

40. (1) If the address for the time being of a public service officer is unknown to his or her employing authority, all notices, orders or communications to or for the public service officer shall be posted to the last known address of the public service officer and a notice of the act of that posting shall be published in public service notices.

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(2) Compliance with subsection (1) shall be deemed a sufficient service of any notice, order or communication on the public service officer concerned.

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

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

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

Division 2 — Senior Executive Service

Purposes of Senior Executive Service

42. (1) The purposes of the Senior Executive Service are —
- (a) to provide for a group of executive officers who are capable of —
 - (i) furnishing high level policy advice and undertaking managerial responsibilities in agencies; and

- (ii) being deployed within agencies, and between agencies, so as best to promote the efficiency of the Public Sector;

and

- (b) to promote the efficiency of individual agencies.

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

Constitution of Senior Executive Service

43. (1) Subject to this section, the Senior Executive Service consists of —

- (a) each public service officer employed in a department whose salary;
- (b) each office in a department, or post in an SES organization, the salary attached to which; and
- (c) each person employed in an SES organization whose salary,

exceeds such level as is prescribed for the purposes of this subsection and who, or the holder of which, as the case requires, becomes or remains a member of the Senior Executive Service by virtue of —

- (d) section 110 (2);
- (e) an appointment under section 45 or 53; or
- (f) a reappointment under section 46.

(2) The Senior Executive Service —

- (a) excludes such public service officer, holder of an office, office, post, holder of a post, or person, referred to in subsection (1) as is the subject of a declaration in force under subsection (3); but
- (b) includes such public service officer, holder of an office, office, post, holder of a post, or person, not referred to in subsection (1) as is the subject of a declaration in force under subsection (4).

(3) The Minister may from time to time by notice published in public service notices —

- (a) declare that a public service officer, holder of an office, office, post, holder of a post, or person, referred to in subsection (1) is excluded from the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration; or
- (b) repeal or amend a declaration made under this subsection.

(4) The Minister may from time to time by notice published in public service notices —

- (a) declare that a public service officer, holder of an office, office, post, holder of a post, or person, not referred to in subsection (1) is included in the Senior Executive Service on and from such day, not being a day earlier than the day of that publication, as is specified in that declaration; or
- (b) repeal or amend a declaration made under this subsection.

(5) If a declaration is made under subsection (3) or repealed under subsection (4) in respect of —

- (a) a public service officer employed in a department who was, immediately before the day specified in that declaration or the day of that repeal, a member of the Senior Executive Service, that public service officer; or
- (b) an office in a department, the holder of that office immediately before the day specified in that declaration or the day of that repeal,

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

(6) If a declaration is made under subsection (3) or repealed under subsection (4) in respect of —

- (a) a person employed in an SES organization who was, immediately before the day specified in that declaration or the day of that repeal, a member of the Senior Executive Service, that person; or
- (b) a post in an SES organization, the person who was the holder of that post immediately before the day specified in that declaration or the day of that repeal,

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

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(7) A public service officer or person to whom a declaration made under subsection (3) or (4) relates may be identified in that declaration by name or by any other means of identification.

(8) The Minister shall, before making a declaration referred to in subsection (3) or (4), consult the employing authority of the agency in which the public service officer, holder of an office, office, post, holder of a post, or person, to whom or which the proposed declaration relates is employed or is located, as the case requires.

(9) When, under this Division, a person is appointed to, reappointed to, transferred to, or directed to act in, an office or post which is included in the Senior Executive Service and which is created under another written law, the person shall be regarded as having also been appointed to, reappointed to, transferred to, or directed to act in, that office or post under that written law.

(10) When an executive officer is employed in an SES organization, the executive officer has all the functions and protection which he or she would have if he or she —

- (a) were not an executive officer; and
- (b) were employed under the written law under which the SES organization is established or continued.

Chief executive officers and chief employees in agencies

44. (1) Subject to subsection (2), each agency shall have a chief executive officer.

(2) An agency which does not have a chief executive officer because of a declaration made under section 43 (3) shall have a chief employee.

- (3) The Minister may —
- (a) subject to any other written law relating to the agency concerned, create an office of chief executive officer for an agency; and
 - (b) determine the level of classification of an office created under this subsection, other than an office included in the Special Division of the Public Service under section 38.

Appointment of chief executive officers

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

(2) Subject to this Act, the employment of a chief executive officer is to be governed by a contract of employment referred to in section 56.

(3) When there is a vacancy or impending vacancy in the office of a chief executive officer, the Minister shall, unless that vacancy or impending vacancy is to be filled by transferring a chief executive officer to that office under section 50, or temporarily by directing an employee to act in that office under section 51 —

- (a) inform the Commissioner of that vacancy or impending vacancy; and
- (b) request the Commissioner to act under this section to enable the filling of that vacancy or impending vacancy.

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(4) The Commissioner shall, on receiving a request made under subsection (3), invite —

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

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

(5) The Commissioner shall notify the vacancy or impending vacancy in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for the relevant office.

(6) The Commissioner shall cause applicants for the relevant office to be examined, but nothing in this section requires the examination of all those applicants.

(7) The Commissioner may seek advice from such sources as the Commissioner considers relevant and may invite such other persons as the Commissioner thinks fit to assist him or her to decide on the person or persons suitable for appointment to the relevant office, and any person so invited may take part in the examination of applicants or in the deliberations of the Commissioner on the matter or in both.

(8) The Commissioner shall, if he or she decides on a person or persons suitable for appointment to the relevant office, nominate that person or those persons and forward to the Minister the name or names of the person or persons nominated, together with full particulars of the qualifications of that person or those persons.

(9) After consulting the Minister of the Crown responsible for the agency in which the office of chief executive officer to which the nomination relates is located, the Minister shall decide whether or not the person, or one of the persons, nominated by the Commissioner is to be accepted.

(10) If the person, or one of the persons, nominated by the Commissioner is accepted, the Minister shall recommend to the Governor that the person accepted be appointed.

(11) If the person, or both or all of the persons, nominated by the Commissioner is or are rejected, the Minister may request the nomination of another person by the Commissioner and shall deal with any further nomination in accordance with subsections (9) and (10).

(12) If the Commissioner does not nominate any person suitable for appointment to the relevant office or a nomination or further nomination by the Commissioner is rejected, the Minister —

(a) may recommend to the Governor that —

(i) in the absence of a nomination by the Commissioner, a named person; or

(ii) a named person other than a person nominated by the Commissioner,

as the case requires, be appointed to the relevant office; and

(b) shall cause notice of the making of that recommendation, together with the reasons for recommending the named person, to be published in the *Gazette* as soon as practicable.

(13) In deciding on a person to be nominated or recommended for appointment as a chief executive officer, the

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Commissioner or the Minister, as the case requires, shall have regard to the need for the appointment of a person who —

- (a) is able to discharge the specific responsibilities placed on the chief executive officer;
- (b) will imbue the employees of his or her agency with a spirit of service to the community;
- (c) will promote effectiveness and efficiency in his or her agency;
- (d) will be a responsible manager of his or her agency; and
- (e) will maintain appropriate standards of conduct and integrity among the employees of his or her agency.

Reappointment of chief executive officers

46. (1) If the Minister proposes not to recommend to the Governor that a person (in this section referred to as “**the incumbent**”) be reappointed to his or her office of chief executive officer, the Minister shall comply with section 48 in respect of the incumbent.

(2) If the Minister —

- (a) recommends to the Governor that the incumbent be reappointed to the relevant office, the Governor shall so reappoint the incumbent for and on behalf of the Crown for such term not exceeding 5 years as is specified in the instrument of his or her reappointment; or
- (b) does not recommend to the Governor that the incumbent be reappointed to the relevant office, the vacancy or impending vacancy in the office of the

incumbent shall be filled in accordance with section 45.

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

Performance agreements, etc. of chief executive officers

47. (1) Subject to subsection (2), a chief executive officer shall on his or her appointment under section 45, and as soon as practicable after the commencement of each financial year afterwards, enter in accordance with approved procedures into an agreement with the responsible authority of his or her agency concerning the performance criteria to be met by the chief executive officer during the period to which that agreement relates.

(2) A performance agreement entered into between a chief executive officer and a responsible authority does not take effect until —

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

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

(3) A performance agreement is not legally enforceable.

(4) The responsible authority of the agency of a chief executive officer is responsible for assessing in accordance with

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approved procedures, on or shortly before the end of each period referred to in subsection (1), the extent to which the chief executive officer meets the performance criteria set out in his or her current performance agreement.

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

48. (1) If —

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

the Minister shall —

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

recommendation referred to in subparagraph (i), having regard to the manner in which the assessment referred to in that subparagraph was undertaken, to the relationship between that recommendation and that assessment and to such other factors as appear relevant.

(2) Having complied with subsection (1), the Minister shall —

- (a) consider the assessment and recommendation, and the advice, obtained under subsection (1) (d) before not recommending the reappointment of the chief executive officer concerned or recommending his or her removal from office, as the case requires; and
- (b) if, contrary to the advice of the Commissioner, the Minister does not recommend the reappointment, or recommends the removal from office, of the chief executive officer concerned, forthwith cause to be published in the *Gazette* the fact that the Minister has not recommended that reappointment or has recommended that removal.

(3) If the contract of employment of a chief executive officer who has notified the Minister that he or she wishes to be reappointed expires without —

- (a) that chief executive officer having been reappointed; and
- (b) the Minister having complied with the requirements of subsections (1) and (2) in respect of that chief executive officer,

that contract of employment continues in force as if it had not expired until the Minister complies with the requirements of subsections (1) and (2) in respect of that chief executive officer and that chief executive officer is notified in writing of his or her

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reappointment or that chief executive officer receives payment under section 56 (5) (b).

Removal of chief executive officer from office

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

Transfer of chief executive officers

50. (1) The Governor may at any time on the recommendation of the Minister transfer a chief executive officer from —

- (a) his or her office of chief executive officer to —
 - (i) another office of chief executive officer that is vacant and that is at the same level of classification as, or at a lower level of classification than, the first-mentioned office; or
 - (ii) the performance of other functions in the Senior Executive Service;

or

- (b) the performance of other functions in the Senior Executive Service to an office of chief executive officer that is vacant and that is at the same level of classification as, or at a lower level of classification than, the office from which the chief executive officer was transferred to the performance of those functions.

(2) Before making a recommendation referred to in subsection (1), the Minister shall consult —

- (a) if the Minister is not the responsible authority of the agency in which the office of the chief executive officer to whom the proposed recommendation relates is located, that responsible authority;
- (b) if the Minister is not the responsible authority of the agency of destination, that responsible authority;
- (c) if neither the Minister nor a responsible authority referred to in paragraph (a) or (b) is the Minister of the Crown responsible for the relevant agency, that Minister of the Crown; and
- (d) the chief executive officer to whom the proposed recommendation relates.

(3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a chief executive officer who is transferred under subsection (1) retains for the remainder of the term of his or her contract of employment a level of classification equal to the highest level of classification of any office previously occupied by him or her during that term.

(4) The transfer of a chief executive officer under this section does not affect the term of his or her contract of employment.

(5) In subsection (2) (b) —

“the agency of destination” means the agency —

- (a) to an office; or
- (b) to the performance of other functions in the Senior Executive Service,

in which the chief executive officer to whom the proposed recommendation relates is proposed to be transferred.

Acting chief executive officers

51. (1) Subject to this section, the Minister may —

- (a) if an office of chief executive officer is vacant, or a chief executive officer is absent from duty or for any reason unable to perform his or her functions, direct an employee to act for such period not exceeding 12 months as is specified in that direction in the office of chief executive officer during that vacancy, absence or inability, as the case requires; and
- (b) at any time cancel a direction given under this subsection.

(2) The Minister may, in a direction given under subsection (1), state that anything done by the employee to whom that direction is given during the period commencing on the occurrence of the relevant vacancy, or on the beginning of the relevant absence or inability, and ending on the giving of that direction, which thing would have been valid had it been done by the chief executive officer referred to in that subsection, is valid as if it had been done by that chief executive officer, and any such statement has effect according to its tenor.

(3) If the Minister is not the responsible authority of the agency concerned, the Minister shall, before giving a direction under subsection (1), consult —

- (a) that responsible authority; and
- (b) if that responsible authority is not the Minister of the Crown responsible for that agency, that Minister of the Crown.

(4) An employee directed under subsection (1) to act in an office —

- (a) shall comply with that direction; and
- (b) has, whilst he or she is so acting, all the functions and obligations attaching to the office.

Industrial arbitration or legal proceedings not available for chief executive officers

52. (1) In this section, a reference to the employment of a chief executive officer is a reference to —

- (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive officer;
- (b) the removal, retirement, termination of employment or other cessation of office of a chief executive officer;
- (c) any disciplinary proceedings or action taken under Part 5 against a chief executive officer; or
- (d) the remuneration or terms and conditions of employment of a chief executive officer.

(2) The employment of a chief executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1979*.

(3) Subsection (2) applies whether or not any person has been appointed to a vacant office of chief executive officer.

(4) An award, order or industrial agreement under the *Industrial Relations Act 1979*, whether made or registered, as the case requires, before or after the commencement of this section, does not have effect insofar as it relates to the employment of a chief executive officer.

(5) Subsection (4) does not prevent a contract of employment of a chief executive officer from applying any provision of an award, order or industrial agreement under the *Industrial Relations Act 1979* to the employment of the chief executive officer.

(6) An appeal does not lie under the *Industrial Relations Act 1979* in relation to the employment of a chief executive officer.

(7) No proceedings for an order in the nature of prohibition, *certiorari* or mandamus or for a declaration or injunction or for any other relief lie in respect of —

- (a) the appointment of, or failure to appoint, a person to a vacant office of chief executive officer;
- (b) the reappointment of, or failure to reappoint, a chief executive officer; or
- (c) the entitlement or non-entitlement of a person to be so appointed or reappointed.

(8) Nothing in this section prevents a person from raising with the Commissioner a complaint concerning the employment of a chief executive officer.

Appointment of senior executive officers

53. (1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or any workplace agreement made under the *Workplace Agreements Act 1993*, an employing authority of an agency may in accordance with approved procedures appoint for and on behalf of the Crown for such term not exceeding 5 years as is specified in the relevant instrument of appointment a public service officer or other person to the Senior Executive Service otherwise than as a chief executive officer.

(2) A public service officer or other person appointed under subsection (1) shall be so appointed as a senior executive officer, and that appointment is to be governed by a contract of employment referred to in section 56.

(3) An appointment under subsection (1) shall be to such level of classification as is determined by the employing authority —

- (a) in accordance with approved procedures; and
- (b) as being appropriate to the functions to be performed by the person or public service officer so appointed.

(4) On the expiry of his or her term of office, a senior executive officer is eligible for reappointment under subsection (1) as a senior executive officer on the basis of terms and conditions agreed between him or her and the employing authority.

(5) An employing authority shall in accordance with approved procedures appoint a senior executive officer to fill a vacancy in an office, or to the performance of other functions, in the Senior Executive Service for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(6) A person shall be appointed under subsection (5) at the same time as his or her appointment under subsection (1).

Transfer of senior executive officers

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

- (a) another office of senior executive officer that is vacant;
or
- (b) the performance of other functions in the Senior Executive Service.

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(2) An employing authority shall, before transferring a senior executive officer under subsection (1) from its agency to another agency —

- (a) obtain the consent of the employing authority of the agency to which the senior executive officer is proposed to be transferred; and
- (b) consult the senior executive officer proposed to be transferred.

(3) Subject to the provisions of this Act relating to the management of the redeployment and redundancy of employees, a senior executive officer may only be transferred under subsection (1) at the level of classification which he or she had immediately before that transfer.

(4) If the office to which a senior executive officer is transferred under subsection (1) (a) is an office, or the functions to the performance of which a senior executive officer is transferred under subsection (1) (b) are functions, in a different agency, the employing authority of that agency becomes the employing authority of the senior executive officer.

(5) On the transfer of a senior executive officer under subsection (1), the employing authority of the agency to which that transfer takes place is substituted for the employing authority of the agency from which that transfer takes place as a party to the contract of employment of the senior executive officer.

(6) The transfer of a senior executive officer under subsection (1) does not affect the term of his or her contract of employment.

Performance assessments of senior executive officers

55. (1) The performance of his or her functions by a senior executive officer shall be assessed at intervals of not more than one year by the employing authority of his or her agency.

(2) In assessing under subsection (1) the performance of a senior executive officer, the employing authority concerned shall have regard to any performance criteria specified in the contract of employment of the senior executive officer and to any other relevant matter.

Employment of executive officers to be governed by their contracts of employment

56. (1) Subject to this Act, the employment of an executive officer shall be governed by a contract of employment between the executive officer and his or her employing authority.

(2) A contract of employment referred to in subsection (1) shall —

- (a) be in writing;
- (b) be signed by or on behalf of the parties to that contract; and
- (c) expire on the day on which the term of appointment of the executive officer concerned expires or is terminated.

(3) Subject to sections 48 and 49, a contract of employment of an executive officer may be terminated before its expiry on the expiry of not less than 4 weeks' notice of termination —

- (a) given to him or her by his or her employing authority, or payment in lieu of that period of notice by that employing authority to the executive officer of an amount not exceeding such amount as is prescribed; or

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- (b) given to his or her employing authority by the executive officer or such shorter period of notice as is agreed between the executive officer and his or her employing authority.

(4) A contract of employment referred to in this section (in this subsection referred to as “**the original contract**”) may be varied at any time by a further contract in writing entered into, and signed by, the parties to the original contract, but the term of the original contract cannot be extended to a total period of more than 5 years after the day on which the original contract came into force.

(5) If the employing authority of an executive officer does not propose to reappoint, or to recommend the reappointment of, the executive officer, that employing authority shall —

- (a) notify the executive officer of that fact not less than 4 weeks before the expiry of his or her contract of employment; or
- (b) pay the executive officer in lieu of that period of notice an amount —
 - (i) not exceeding such maximum amount as is prescribed; and
 - (ii) not less than such minimum amount as is prescribed for each day by which that period of notice falls short of 4 weeks.

(6) The employing authority of an executive officer acts for and on behalf of the Crown in any contract of employment between that employing authority and the executive officer.

Matters to be dealt with by contracts of employment

57. (1) The matters to be dealt with in a contract of employment between an executive officer and his or her employing authority include —

- (a) the functions of the office of the executive officer, including the meeting of performance criteria;
- (b) the remuneration to be accorded the executive officer in accordance with any relevant determination of the Tribunal or such other arrangements as are prescribed; and
- (c) any election by the executive officer to retain a right of return within the meaning of section 58.

(2) In this section —

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

Right of return for certain executive officers

58. (1) An executive officer may elect to retain a right of return if, for a continuous period of not less than 6 months ending immediately before his or her first appointment as an executive officer, the executive officer —

- (a) was employed for an indefinite period in a department or organization; or
- (b) held a statutory office or a series of statutory offices on a full-time basis and, before holding the statutory office or any of those statutory offices, was employed for an indefinite period in a department or organization.

(2) An election referred to in subsection (1) —

- (a) may be made in the first contract of employment entered into by the executive officer, but, unless made in that contract, cannot be made in any subsequent contract of employment for the same or another office in the Senior Executive Service;
- (b) is revoked if that election is not again made by the executive officer in a subsequent contract of employment;
- (c) may be revoked by the executive officer by notice in writing delivered to his or her employing authority; and
- (d) if revoked, cannot be made again.

(3) An executive officer who has elected to retain a right of return is entitled to employment in a department or organization at the same level of classification as he or she held immediately before ceasing to be employed for an indefinite period within the meaning of subsection (1) (a) or (b), as the case requires, if he or she —

- (a) ceases to be an executive officer otherwise than by reason of a declaration made under section 43 (3) or repealed under section 43 (4); and
- (b) in the case of —
 - (i) a chief executive officer, is not reappointed to the same or another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
 - (ii) a senior executive officer, is not reappointed to the same or another office of senior executive

officer or to the performance of other functions in the Senior Executive Service.

(4) A person is not entitled to a right of return if his or her employment in the Public Sector was terminated, or he or she was dismissed, under this Act for substandard performance or breach of discipline.

(5) This section does not prevent the application of the provisions of this Act relating to the management of the redeployment and redundancy of employees to a person who is employed in a department or organization under a right of return.

(6) Nothing in this section affects the entitlement of any executive officer under another written law to employment in a department or organization in accordance with that written law.

(7) In this section —

“right of return” means entitlement of an executive officer to employment in a department or organization in accordance with this section;

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

Compensation, etc. if executive officer has no right of return

59. (1) This section applies to a person —

(a) who ceases to be an executive officer, otherwise than by reason of —

(i) a declaration made under section 43 (3) or repealed under section 43 (4); or

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- (ii) termination of employment in the Public Sector, or dismissal, under this Act for substandard performance or breach of discipline,

before his or her contract of employment expires by effluxion of time; and

- (b) who does not have a right of return within the meaning of section 58.

(2) A person to whom this section applies is entitled to such compensation, if any, as the Minister determines by reference to the remuneration to which that person is entitled for a particular period ending immediately before the day referred to in subsection (3).

(3) The maximum compensation payable to a person under this section is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before the day on which the person ceased to be an executive officer in the manner specified in subsection (1) (a).

(4) A person to whom compensation is paid under this section and who is subsequently —

- (a) employed in a department or organization; or
- (b) engaged by an employing authority under a contract for services, whether under section 100 (1) or another written law,

before the expiry of such period commencing on the payment of the compensation as is prescribed in relation to the amount of the compensation shall forthwith refund to the Treasurer of the State an amount that bears to the amount of the compensation the same proportion as the unexpired portion of that period bears to that period.

(5) If a person who is required to comply with subsection (4) does not do so, the amount unrefunded may be recovered in a

court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owed by that person to the Crown.

Election to take compensation

60. (1) An executive officer who has an entitlement under section 58 (3) to employment may elect in writing to take compensation under section 59 instead of exercising that entitlement.

(2) On an election under subsection (1) taking effect, the executive officer concerned —

- (a) ceases to have the entitlement under section 58 (3); and
- (b) becomes entitled to compensation under section 59.

Secondment of executive officers

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

Cessation of membership of Senior Executive Service

62. If a person appointed or reappointed as an executive officer subsequently holds an office, post or position outside the Senior Executive Service, that person ceases to be a member of the Senior Executive Service unless a declaration is made under section 43 (4) in respect of that person.

Vacation of office of executive officer

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

Division 3 — Public service officers other than executive officers

Appointment of public service officers other than executive officers

64. (1) Subject to this section and to any binding award, order or industrial agreement under the *Industrial Relations Act 1979* or any workplace agreement made under the *Workplace Agreements Act 1993*, the employing authority of a department or organization may in accordance with approved procedures appoint for and on behalf of the Crown a person as a public service officer (otherwise than as an executive officer) on a full-time or part-time basis —

- (a) for an indefinite period as a permanent officer; or
- (b) for such term not exceeding 5 years as is specified in the instrument of his or her appointment.

(2) An appointment under subsection (1) shall be to such level of classification and remuneration as is determined by the relevant employing authority —

- (a) in accordance with approved procedures; and
- (b) as being appropriate to the functions to be performed by the person so appointed.

(3) The employing authority of a department or organization shall —

- (a) in accordance with approved procedures; and
- (b) at the time of the appointment of a person under subsection (1) or, if that employing authority considers

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it impracticable to make the appointment concerned at that time, at a later time,

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

(4) Subject to subsection (5), a person appointed under subsection (1) (b) cannot apply for an appointment under subsection (1) (a) unless the relevant vacancy has first been advertised in a daily newspaper circulating throughout the State.

(5) Subsection (4) does not apply to a person —

(a) appointed under subsection (1) (b); and

(b) having, or occupying an office, post or position having, the lowest level of classification at which persons of the same prescribed class as that person are at the relevant time recruited into the Public Service.

(6) The employing authority of an organization shall not make an appointment under subsection (1) unless the written law under which the organization is established or continued authorizes or requires the appointment or employment of public service officers for the purposes of that organization.

(7) Nothing in this section prevents a public service officer who holds an office, post or position in one department or organization from being appointed, whether by way of promotion or otherwise, to an office, post or position in another department or organization.

Transfer of public service officers other than executive officers within and between departments and organizations

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

- (a) for which that public service officer possesses the requisite qualifications; and
- (b) the functions assigned to which are appropriate to that level of classification.

(2) If an employing authority of a department or organization considers it to be in the interests of the Public Service to do so, that employing authority may, with the approval of the employing authority of another department or organization and after consulting the public service officer concerned, transfer at the same level of classification a public service officer (other than an executive officer) from an office, post or position in the first-mentioned department or organization to an office, post or position in the other department or organization —

- (a) for which latter office, post or position that public service officer possesses the requisite qualifications; and
- (b) the functions assigned to which latter office, post or position are appropriate to that level of classification.

(3) On the transfer of a public service officer under subsection (2), the employing authority of the department or organization to which that transfer takes place —

- (a) becomes the employing authority of the public service officer; and

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- (b) is substituted for the employing authority of the department or organization from which that transfer takes place as a party to any contract of employment of the public service officer.

Secondment of public service officers other than executive officers from departments or organizations

66. An employing authority of a department or organization (in this section referred to as “**the seconding authority**”) may, if it considers it to be in the public interest to do so and the public service officer concerned consents, enter into an arrangement in writing with another such employing authority or with an employer outside the Public Sector for the secondment of a public service officer (other than an executive officer) in the department or organization of the seconding authority to perform functions or services for, or duties in the service of, the other department or organization or that employer during such period as is specified in that arrangement.

Vacation of office of public service officer other than executive officer

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

- (a) that public service officer dies;
- (b) in the case of a term officer, the term officer completes a term of office and is not reappointed;
- (c) that public service officer is dismissed, or retires from office, under this Act;
- (d) the employment of that public service officer in the Public Sector is terminated under section 79 (3);

- (e) that public service officer resigns his or her office in writing addressed to his or her employing authority and that employing authority accepts that resignation;
or
- (f) that public service officer is appointed or transferred under this Part to another office, post or position.

**PART 4 — ASSISTANCE FOR POLITICAL OFFICE
HOLDERS**

Division 1 — Ministerial officers

Employment of ministerial officers

68. (1) The Minister may appoint any person as a ministerial officer to assist —

- (a) the Minister; or
- (b) another political office holder,

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

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

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

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

Functions of ministerial officers

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

- (a) specified in that contract; or

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

Terms and conditions of employment

70. (1) The terms and conditions of employment of a ministerial officer, other than terms and conditions relating to —

- (a) the functions of the ministerial officer; or
- (b) any matter for which express provision is made by section 72,

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

(2) The terms and conditions of employment of a ministerial officer that are determined by the Minister under subsection (1) shall be specified in the relevant contract of employment.

(3) Without limiting subsection (1), but subject to subsections (4) and (5), a ministerial officer whose employment is terminated by section 72 (1) (a) or by the Minister under section 72 (2) before the day specified in the relevant contract of employment as the day on which that employment expires is entitled to such compensation, if any, as the Minister determines.

(4) The maximum compensation payable to a person under subsection (3) is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before his or her employment is terminated.

(5) If the employment of a ministerial officer is terminated in the manner specified in subsection (3) but is deemed to have continued, or to continue, until a later day by virtue of a direction made under section 72 (5), the ministerial officer is not entitled to compensation under subsection (3).

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(6) A person to whom compensation is paid under this section and who is subsequently —

- (a) employed in a public sector body; or
- (b) engaged by an employing authority under a contract for services, whether under section 100 (1) or another written law,

before the expiry of such period commencing on the payment of the compensation as is prescribed in relation to the amount of the compensation shall forthwith refund to the Treasurer of the State an amount that bears to the amount of the compensation the same proportion as the unexpired portion of that period bears to that period.

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

Variation of contract of employment

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

Termination of employment

72. (1) Subject to Part 5 and subsections (2) and (4), the employment of a ministerial officer terminates —

- (a) if the political office holder for whose assistance the ministerial officer was employed ceases to hold office as such;

- (b) on the day fixed for the return of the writs for the general election for the Legislative Assembly next following the first day of that employment; or
- (c) on the day specified in the relevant contract of employment as the day on which that employment expires,

whichever is soonest.

(2) Subject to subsection (3), the Minister may at any time, by —

- (a) notice in writing given to a ministerial officer not less than 4 weeks before the termination concerned; or
- (b) payment to a ministerial officer in lieu of the period of notice referred to in paragraph (a) of an amount not exceeding such amount of the salary of the ministerial officer as is prescribed,

terminate the employment of the ministerial officer.

(3) The Minister shall not terminate under subsection (2) the employment of a ministerial officer employed to assist another political office holder unless the Minister has first consulted the other political office holder.

(4) A ministerial officer may at any time terminate his or her employment by notice in writing given to the Minister not less than 4 weeks, or such shorter period as is agreed between the ministerial officer and the Minister, before that termination.

(5) If the employment of a person as a ministerial officer is terminated by subsection (1) (a), the Minister may by writing direct that the employment of the person shall be deemed —

- (a) not to have been so terminated; and

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- (b) subject to subsection (6), to have continued, or to continue, until a day specified in that direction.

(6) A direction under subsection (5) has effect according to its terms until the termination of the relevant employment under Part 5 or subsection (1), (2) or (4).

Restriction on subsequent employment in departments or organizations

73. Notwithstanding anything in any other Act, a person who —

- (a) immediately before his or her employment as a ministerial officer, was not employed in a department or organization; or
- (b) is engaged under a contract for services under section 100 (1) to assist a political office holder,

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

Relationship between ministerial officers, etc. and employees employed in departments or organizations

74. (1) A Minister of the Crown shall —

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

make arrangements in writing in relation to each department or organization for which the Minister of the Crown is responsible

setting out the manner in which, and the circumstances in which, dealings are to be had, and communications are to be made, between ministerial officers assisting the Minister of the Crown and the employees in that department or organization.

(2) Notwithstanding anything in subsection (1), a ministerial officer shall not, otherwise than with the agreement of the employing authority of the department or organization concerned, direct an employee of that department or organization in relation to the manner in which that employee is to perform the functions of his or her office, post or position in that department or organization.

(3) In this section —

“**ministerial officer**” includes —

- (a) person occupying a special office created under section 36 as read with section 75 (1); and
- (b) person engaged under a contract for services under section 100 (1) to assist a political office holder.

Division 2 — Assistance by permanent officers and seconded employees

Permanent officers and seconded employees occupying special offices

75. (1) The chief executive officer of the department principally assisting the Minister in the administration of this Act may, for the purpose of assisting a political office holder, create under section 36 one or more special offices within that department.

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(2) A special office created under subsection (1) may be occupied by —

(a) a person who —

(i) is appointed to fill a vacancy in that office under section 64 (3); or

(ii) is transferred to that office under section 65 (1) or (2),

and whose salary does not exceed such level as is prescribed for the purposes of this paragraph; or

(b) an employee in a department or organization who is seconded to occupy that office.

(3) An employee referred to in subsection (2) (b) —

(a) whose salary has exceeded the level referred to in subsection (2) (a); and

(b) who has occupied a special office created under subsection (1),

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

**PART 5 — SUBSTANDARD PERFORMANCE AND
DISCIPLINARY MATTERS**

Division 1 — General

Application and effect of Part 5

76. (1) Subject to subsection (3), this Part applies to and in relation to —

- (a) all public service officers and ministerial officers; and
- (b) such other employees, or members of such other class of employees, as are or is prescribed for the purposes of this section.

(2) To the extent that this Part is inconsistent with any enactment which applies to —

- (a) an employee; or
- (b) a member of a class of employees,

prescribed under subsection (1) (b), this Part prevails.

(3) If the employing authority of an employee who is not a public service officer suspects that that employee has disobeyed or disregarded a direction which is by virtue of section 94 (4) a lawful order for the purposes of section 80 (a), that employee shall be taken for the purposes of this Part to be a public service officer, and proceedings may be taken accordingly under this Part against that employee for the suspected breach of discipline arising out of that disobedience or disregard.

Exercise of certain powers when employee is appointed by Governor

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

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

and

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

Rights of appeal and reference

78. (1) Subject to subsection (3) and to section 52, an employee who —

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

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

that Public Service Appeal Board has jurisdiction to hear and determine that appeal under and subject to that Division.

(2) Despite section 29 of the *Industrial Relations Act 1979*, but subject to subsection (3), an employee who —

- (a) is not a Government officer within the meaning of section 80C of that Act; and
- (b) is aggrieved by a decision referred to in subsection (1) (b),

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

(3) Despite section 29 of the *Industrial Relations Act 1979*, but subject to section 52, an employee —

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

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

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

Division 2 — Substandard performance

Employees whose performance is substandard

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

(2) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether or not the performance of an employee is substandard, regard —

(a) shall be had —

- (i) to any written selection criteria or job specifications applicable to;
- (ii) to any duty statement describing; and
- (iii) to any written work standards or instructions relating to the manner of performance of,

the functions the employee is required to perform; and

(b) may be had —

- (i) to any written selection criteria or job specifications applicable to;
- (ii) to any duty statement describing; and
- (iii) to any written work standards or instructions relating to the manner of performance of,

functions similar to those functions.

(3) Subject to subsections (4), (5) and (6), an employing authority may, in respect of one of its employees whose performance is in the opinion of the employing authority substandard for the purposes of this section —

- (a) withhold for such period as the employing authority thinks fit an increment of remuneration otherwise payable to that employee;
- (b) reduce the level of classification of that employee; or
- (c) terminate the employment in the Public Sector of that employee.

(4) The Governor may, on the recommendation of the Minister of the Crown responsible for the relevant public sector body, terminate the employment in the Public Sector of an employee —

- (a) who was appointed to his or her employment by the Governor; and
- (b) whose performance is in the opinion of his or her employing authority substandard for the purposes of this section.

(5) If an employee does not admit to his or her employing authority that his or her performance is substandard for the purposes of this section, that employing authority shall, before forming the opinion that the performance of the employee is substandard for those purposes, cause an investigation to be held into whether or not the performance of the employee is substandard.

(6) If an employee to whose performance this section is applied is a chief executive officer —

- (a) the reference in subsection (4) to the Minister of the Crown responsible for the relevant public sector body shall be taken to be a reference to the Minister; and

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- (b) an investigation held under subsection (5) into whether or not the performance of the chief executive officer is substandard shall take the form of an assessment referred to in section 48 (1) (d), and for that purpose section 48 (1) (d) and (2) applies to and in relation to the chief executive officer as if references to non-recommendation of reappointment or to removal from office were references to termination of the employment in the Public Sector of the chief executive officer under subsection (4).

Division 3 — Disciplinary matters

Breaches of discipline

80. An employee who —

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

commits a breach of discipline.

Procedure when breach of discipline suspected

81. (1) An employing authority may, when it suspects that a person has committed a breach of discipline whilst serving as an

employee in its public sector body and has given the person such notice in writing of the nature of the suspected breach of discipline as is prescribed, give the person a reasonable opportunity to submit an explanation to the employing authority.

(2) After having given the respondent the reasonable opportunity referred to in subsection (1), the employing authority may —

- (a) if it is not the Minister, investigate or direct another person to investigate; or
- (b) if it is the Minister, direct another person to investigate,

the suspected breach of discipline in accordance with prescribed procedures.

(3) A person to whom a direction is given under subsection (2) shall comply with that direction.

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

Suspension without pay

82. (1) If an investigation is initiated under section 81, the employing authority may at any time before proceedings against the respondent are terminated within the meaning of subsection (2) suspend the respondent, if still its employee, without pay.

(2) When proceedings against a respondent for a suspected breach of discipline are terminated by —

- (a) the taking of action under section 83 or 84 that is not cancelled under section 85, or the taking of action under section 86 (3), 88 (1) or 89; or

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- (b) a finding that no breach of discipline was committed by the respondent,

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

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

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

83. (1) If, following the investigation of an alleged breach of discipline under section 81, an employing authority which is not the Minister finds, whether as a result of its own investigation or that of a person directed under section 81 (2) (a), that —

- (a) a minor breach of discipline was committed by the respondent, that employing authority may in accordance with prescribed procedures —
 - (i) reprimand the respondent;
 - (ii) impose on the respondent a fine not exceeding an amount equal to the amount of remuneration received by the respondent in respect of the last day during which he or she was at work as an employee before the day on which that finding was made; or
 - (iii) both reprimand, and impose the fine referred to in subparagraph (ii) on, the respondent;

- (b) a serious breach of discipline appears to have been committed by the respondent, that employing authority shall cause the respondent to be charged in accordance with prescribed procedures with having committed that alleged breach of discipline; or
- (c) no breach of discipline was committed by the respondent, notify the respondent of that finding and that no further action will be taken in the matter.

(2) For the purposes of this section, a breach of discipline committed as a result of disobedience to, or disregard of, a lawful order referred to in section 94 (4) is a serious breach of discipline.

Powers of Minister as employing authority after investigation of alleged breach of discipline

84. (1) If, following the investigation of an alleged breach of discipline under section 81, a person directed under section 81 (2) (b) to investigate that breach of discipline finds that —

- (a) a minor breach of discipline was committed by the respondent, that person shall submit that finding to the Minister and recommend to the Minister that the Minister act in relation to the respondent in the manner referred to in section 83 (1) (a) (i), (ii) or (iii);
- (b) a serious breach of discipline appears to have been committed by the respondent, that person shall submit that finding to the Minister and recommend to the Minister that the Minister act in relation to the respondent in the manner referred to in section 83 (1) (b) as if the Minister were the relevant employing authority referred to in that section; or
- (c) no breach of discipline was committed by the respondent, that person shall submit that finding to the Minister and recommend to the Minister that the

Minister notify the respondent of that finding and that no further action will be taken in the matter.

(2) On receiving a finding and recommendation made under subsection (1), the Minister shall —

- (a) accept that finding; and
- (b) in the case of a recommendation made under —
 - (i) subsection (1) (a), may accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that subsection; or
 - (ii) subsection (1) (b) or (c), shall accept that recommendation and act accordingly in relation to the respondent.

(3) For the purposes of subsection (1), a breach of discipline committed as a result of disobedience to, or disregard of, a lawful order referred to in section 94 (4) is a serious breach of discipline.

Procedure if respondent objects to certain findings or actions

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

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

within 7 days after being notified in writing of that finding or action, as the case requires, that finding or action is cancelled by virtue of this section and the respondent may be charged in

accordance with the prescribed procedures with having committed the alleged breach of discipline.

Procedure when charge of breach of discipline brought

86. (1) A charge under section 83 (1) (b), 84 (2) (b) (ii) or 85 shall —

- (a) be in writing;
- (b) contain the prescribed details of the alleged breach of discipline; and
- (c) require the respondent to indicate within such period of not less than 7 days as is specified in the charge whether or not he or she admits or denies the charge.

(2) A respondent charged under section 83 (1) (b), 84 (2) (b) (ii) or 85 shall admit or deny the charge within the relevant period referred to in subsection (1) (c).

(3) Subject to section 89, if a respondent admits a charge under subsection (2) and the employing authority finds the charge to be proved, the employing authority —

- (a) shall, if the charge is a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94 (4), dismiss the respondent; or
- (b) may —
 - (i) reprimand the respondent;
 - (ii) transfer the respondent to another public sector body with the consent of the employing authority of that public sector body or, if the respondent is an employee other than a chief executive officer or chief employee, transfer him or her to another

office, post or position in the public sector body in which he or she is currently employed;

- (iii) impose on the respondent a fine not exceeding an amount equal to the amount of remuneration received by the respondent in respect of the period of 5 days during which he or she was at work as an employee immediately before the day on which the finding of a breach of discipline was made;
- (iv) reduce the monetary remuneration of the respondent;
- (v) reduce the level of classification of the respondent; or
- (vi) dismiss the respondent,

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

(4) If a respondent denies a charge under subsection (2) and the employing authority is not the Minister, the employing authority may —

- (a) hold, or direct a person to hold, a disciplinary inquiry into the charge in accordance with prescribed procedures; or
- (b) if it considers that a special disciplinary inquiry should be held into the charge, request the Minister to direct that a special disciplinary inquiry be held into the charge by a person named in that direction.

(5) A directed person shall, subject to subsections (6) and (7), comply with the relevant direction given under subsection (4) (a).

(6) If, at any time after the commencement of a disciplinary inquiry held under subsection (4) (a), the employing authority or directed person considers that a special disciplinary inquiry should be held into the charge, the employing authority may request the Minister to direct that —

- (a) a special disciplinary inquiry be held into the charge by a person named in that direction; or
- (b) the disciplinary inquiry be converted into a special disciplinary inquiry and that the person holding the disciplinary inquiry hold the resulting special disciplinary inquiry.

(7) If the Minister complies with a request made under subsection (4) (b) or (6) and makes a direction referred to in —

- (a) subsection (4) (b), the person named in that direction shall comply with that direction;
- (b) subsection (6) (a), the person named in that direction shall comply with that direction and the relevant disciplinary inquiry being held under subsection (4) (a) is terminated; or
- (c) subsection (6) (b), the disciplinary inquiry concerned is converted into a special disciplinary inquiry and the person holding that disciplinary inquiry shall hold the resulting special disciplinary inquiry.

(8) If a directed person finds at the conclusion of a disciplinary inquiry that —

- (a) a breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it act in relation to the respondent under subsection (3) as if the respondent had admitted the charge under subsection (2); or

- (b) no breach of discipline was committed by the respondent, the directed person shall submit that finding to the employing authority and recommend to the employing authority that it notify the respondent of that finding and that no further action will be taken in the matter.

(9) On receiving a finding and recommendation under subsection (8), the employing authority shall —

- (a) accept the finding; and
- (b) in the case of a recommendation made under —
 - (i) subsection (8) (a) in relation to a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94 (4), dismiss the respondent;
 - (ii) subsection (8) (a) in relation to a charge other than a charge referred to in subparagraph (i), accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action in relation to the respondent as could have been recommended under that subsection; or
 - (iii) subsection (8) (b), accept that recommendation and act accordingly in relation to the respondent.

(10) If an employing authority finds at the conclusion of a disciplinary inquiry held by itself that —

- (a) a breach of discipline was committed by the respondent, the employing authority shall act under subsection (3) as if the respondent had admitted the charge under subsection (2); or

- (b) no breach of discipline was committed by the respondent, the employing authority shall notify the respondent of that finding and that no further action will be taken in the matter.

(11) If a respondent denies a charge under subsection (2) and the employing authority is the Minister, the Minister shall direct a person to hold a special disciplinary inquiry into the charge and the person shall comply with that direction.

(12) A direction shall not be given under this section to the Commissioner.

(13) In this section —

“directed person” means person directed under subsection (4) (a) to hold a disciplinary inquiry into the charge concerned;

“disciplinary inquiry” means disciplinary inquiry held or directed to be held under subsection (4) (a).

Special disciplinary inquiries

87. (1) The provisions of sections 12 and 13 apply to and in relation to a person holding a special disciplinary inquiry as if references in those sections and Schedule 3 to a special inquirer and to a special inquiry were references to that person and to the special disciplinary inquiry, respectively.

(2) Without limiting the generality of subsection (1), a person holding a special disciplinary inquiry may have regard to any information elicited, or findings made, in another special disciplinary inquiry, in a special inquiry or in an investigation held under section 24.

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(3) If a person holding a special disciplinary inquiry finds at the conclusion of the special disciplinary inquiry that —

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

Procedure on receipt of finding and recommendation from special disciplinary inquiry

88. (1) On receiving a finding and recommendation made under section 87 (3), the employing authority shall, subject to section 89 —

- (a) accept that finding; and
- (b) in the case of a recommendation made under —
 - (i) section 87 (3) (a) in relation to a charge of committing a breach of discipline consisting of disobedience to, or disregard of, a lawful order referred to in section 94 (4), dismiss the respondent;
 - (ii) section 87 (3) (a) in relation to a charge other than a charge referred to in subparagraph (i), accept that recommendation and act accordingly in relation to the respondent, or decline to accept that recommendation and take such other action

in relation to the respondent as could have been recommended under that section; or

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

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

Dismissal of chief executive officer on disciplinary grounds

89. (1) If —

- (a) a respondent who is a chief executive officer —
 - (i) admits a charge under section 86 (2); or
 - (ii) is the subject of a recommendation made under section 87 (3) (a);

and

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

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

(2) If —

- (a) a respondent who is a chief executive officer —
 - (i) admits a charge under section 86 (2); or

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

and

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

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

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

Employing authority to notify respondents of outcomes of disciplinary proceedings against them

90. The employing authority of a respondent shall notify the respondent —

(a) whether or not the respondent has been found under this Division to have committed any breach of discipline alleged against him or her; and

(b) if such a finding has been made against the respondent, what action has been taken under this Division in relation to the respondent,

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

Payment of fines

91. When a fine is imposed on a respondent under this Division, the respondent shall forthwith pay the amount of the fine to the Treasurer of the State and, if the respondent does not

do so, that amount may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the Crown.

Powers of employing authorities in respect of certain offences committed by employees

92. (1) Notwithstanding the provisions of *The Criminal Code*, if an employee during his or her period of service is convicted —

- (a) on indictment or otherwise, of an indictable offence; or
- (b) of such other offence as is prescribed or of an offence of such class of offence as is prescribed,

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

(2) An employing authority —

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

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

**PART 6 — REDEPLOYMENT AND REDUNDANCY OF
EMPLOYEES**

Administration of Part 6

93. (1) The employing authority of an affected department or organization may, with the approval of the Minister, exercise such powers and perform such duties as are conferred or imposed on such an employing authority by any regulations referred to in section 94 (2).

(2) An approval given by the Minister under subsection (1) shall not be made subject to any conditions, qualifications, limitations or exceptions.

(3) In subsection (1) —

“affected department or organization” means department or organization the whole or any part of —

- (a) the undertaking of which is, or is to be, sold or otherwise disposed of to; or
- (b) the production or provision of goods or services or both by which is, or is to be, replaced by the production or provision of goods or services or both by,

a person outside the Public Sector.

(4) As soon as practicable after regulations referred to in section 94 (3) are made, and whenever required by subsection (5) (d) thereafter, the Minister shall in writing delegate to the person specified in the instrument of delegation (not being a person who is another Minister of the Crown or the Commissioner) the exercise and performance of all powers and duties conferred or imposed on the Minister by those regulations.

(5) Section 59 of the *Interpretation Act 1984* applies to subsection (4) as if that subsection conferred on the Minister a power of delegation instead of imposing on the Minister a duty of delegation, but a delegation under that subsection —

- (a) precludes the Minister from exercising or performing a power or duty delegated under that subsection;
- (b) shall not be made subject to any conditions, qualifications, limitations or exceptions;
- (c) shall not be amended; and
- (d) shall not be revoked unless, forthwith on that revocation, the exercise and performance of the powers and duties referred to in that subsection are delegated under that subsection to another person.

(6) A person to whom the exercise and performance of powers and duties have been delegated under subsection (4) —

- (a) may, either generally or as otherwise provided by the instrument of delegation, by writing signed by that person, delegate to another person (not being a person who is a Minister of the Crown or the Commissioner) the exercise or performance of any of those powers or duties, other than this power of delegation; and
- (b) shall not exercise the power conferred by regulations referred to in section 94 (3) (c) (ii) without the prior approval of the Minister.

Regulations concerning redeployment and redundancy

94. (1) The Governor may under section 108 make regulations prescribing arrangements for —

- (a) redeployment and retraining; and

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(b) redundancy,

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

(2) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —

(a) the situation in which the whole or any part of —

- (i) the undertaking of a department or organization is, or is to be, sold or otherwise disposed of to; or
- (ii) the production or provision of goods or services or both by a department or organization is, or is to be, replaced by the production or provision of goods or services or both by,

a person outside the Public Sector, and an employee of the department or organization is offered a suitable office, post or position by that person;

(b) an employee referred to in paragraph (a) who —

- (i) refuses the offer of a suitable office, post or position, to be directed by his or her employing authority to accept that offer; or
- (ii) hinders or obstructs the process by which an employee is selected for the making of an offer of a suitable office, post or position, to be directed by his or her employing authority to refrain from that hindrance or obstruction;

(c) the terms and conditions (including remuneration) which are to apply to an employee who accepts an offer referred to in paragraph (a); and

- (d) the terms and conditions (including remuneration) which are to apply to an employee who is dismissed under section 86 (3) (a) or (9) (b) (i), 88 (1) (b) (i) or 89 (1).

(3) Without limiting the generality of subsection (1), regulations referred to in that subsection may provide for —

- (a) the registration of an employee (in this subsection called a **“registered employee”**) who is surplus to the requirements of a department or organization, or whose office, post or position has been abolished, and who cannot be transferred within the department or organization;
- (b) the maximum period for which a registered employee may be registered;
- (c) the circumstances in which the Minister may direct —
 - (i) registered employee to accept redeployment between one department or organization and another; and
 - (ii) the employing authority of a department or organization to accept a registered employee directed under regulations made under this paragraph to accept redeployment to the department or organization, and that employing authority shall comply with that direction;
- (d) the retraining of a registered employee and for the terms and conditions (including remuneration) which are to apply to the registered employee;
- (e) the terms and conditions (including remuneration) which are to apply to a registered employee who, with the prior approval of the Minister, accepts voluntary

severance by resigning his or her office, post or position;

- (f) the terms and conditions (including remuneration) which are to apply to a registered employee who accepts an offer of a suitable office, post or position inside or outside the Public Sector, and those which are to apply to a registered employee who does not; and
- (g) the manner in which employing authorities are to notify the Minister of vacancies in offices, posts or positions within their departments or organizations, and the procedure to be followed before those vacancies can be filled.

(4) A direction referred to in subsection (2) (b) or (3) (c) (i) is, if that direction is —

- (a) given to the employee concerned in accordance with the relevant regulations referred to in this section; and
- (b) upheld by the Industrial Commission on a reference under section 95 (3), or the period referred to in that section has expired without that direction having been so referred,

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

(5) Regulations referred to in subsection (1) cannot provide for an employee to be required to comply with a direction referred to in subsection (2) (b) (i) or (3) (c) (i) unless the employee is offered suitable employment within or outside the Public Sector.

(6) For the purposes of this section, “**suitable office, post or position**” or “**suitable employment**” means office, post or position or employment, as the case requires —

- (a) which is suitable having regard to the respective responsibilities attached to it and to the office, post or position or employment occupied or held by the employee at the time when the relevant offer is made and to the experience, qualifications and competence of the employee;
- (b) which does not require the employee to change his or her place of residence; and
- (c) which satisfies such other criteria as are prescribed.

Status of Part 6, etc. and references by aggrieved employees

95. (1) Subject to subsection (2), to the extent that there is an inconsistency between —

- (a) this Part or regulations referred to in section 94 or both; and
- (b) any other provision of this Act other than section 7, 8 or 9, or an award or order under the *Industrial Relations Act 1979* (including a General Order made under section 50 of that Act),

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

(2) To the extent that there is an inconsistency between section 101 and this Part or regulations referred to in section 94 or both, section 101 prevails.

(3) Despite section 29 of the *Industrial Relations Act 1979*, an employee who is aggrieved by a decision made under

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regulations referred to in section 94 (other than a decision which is a lawful order by virtue of section 94 (4)) may refer that decision within such period after the making of that decision as is prescribed to the Industrial Commission as if that decision were an industrial matter mentioned in section 29 (b) of that Act, and, subject to subsection (4), that Act applies to and in relation to that decision accordingly.

(4) In exercising its jurisdiction in relation to a decision referred to in subsection (3), the Industrial Commission shall confine itself to determining whether or not regulations referred to in section 94 have been fairly and properly applied to or in relation to the employee by whom that decision was referred.

Public Sector Management Act 1994

**PART 7 — PROCEDURES FOR SEEKING RELIEF IN
RESPECT OF BREACH OF PUBLIC SECTOR STANDARDS**

[**Part 7** — Sections 96, 97 and 98 not yet in operation².]

PART 8 — MISCELLANEOUS

Matters that cannot be the subject of industrial agreements or workplace agreements

99. There are excluded from the operation of sections 41, 41A and 43 of the *Industrial Relations Act 1979* and of Part 3 of the *Workplace Agreements Act 1993* —

- (a) any matters dealt with by a public sector standard or code of ethics, except —
 - (i) rates of remuneration;
 - (ii) leave;
 - (iii) hours of duty; and
 - (iv) such other matters as are prescribed for the purposes of this subparagraph;
- (b) any matters dealt with by a provision of this Act relating to —
 - (i) employment tenure in the Public Service; or
 - (ii) approved classification systems or procedures in the Public Sector;and
- (c) such other matters concerning the management or structure of the Public Sector as are prescribed for the purposes of this paragraph.

Powers of employing authorities

100. (1) An employing authority may in accordance with approved procedures engage a person under a contract for services on such terms and conditions, including the rate of remuneration, as the employing authority determines.

(2) An employing authority may in accordance with approved procedures appoint a person on a casual employment basis on such terms and conditions as the employing authority, subject to any relevant written law or any binding award, order or industrial agreement under the *Industrial Relations Act 1979*, determines.

(3) If the chief executive officer or chief employee of a department or organization is not its employing authority, the employing authority of the department or organization may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to that chief executive officer or chief employee any of its powers or duties under this Act.

(4) Section 33 applies to and in relation to a chief executive officer or chief employee to whom a power or duty is delegated under subsection (3) as if the power or duty were one of his or her own powers or duties under this Act.

(5) The powers conferred on an employing authority by this section are in addition to, and not in derogation from, any powers conferred on the employing authority by any other written law.

Restriction on compensation payable for early termination of employment

101. Subject to section 23A (4) of the *Industrial Relations Act 1979* and section 58 of the *Workplace Agreements Act 1993*, the maximum compensation payable under this Act or any other written law in respect of the termination of the employment of an employee in the Public Sector by —

- (a) the employing authority of a department or organization; or

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(b) the employee,

is an amount equal to the amount of the remuneration to which the employee is entitled for the period of one year ending immediately before the day on which that employment is terminated.

Employees not to engage in activities unconnected with their functions

102. (1) Except with the written permission of his or her employing authority, which permission may at any time be withdrawn, an employee shall not —

- (a) accept or continue to hold an office, post or position under the Government or a paid office, post or position in or under any municipality or regional council established under the *Local Government Act 1960* or any other public body corporate;
- (b) accept or continue to hold or discharge the duties of or be employed in a paid position in connection with any banking, insurance, mining, mercantile or other commercial business, whether it be carried on by any corporation, company, firm or individual;
- (c) engage in or undertake any business referred to in paragraph (b), whether as principal or agent;
- (d) engage or continue in the private practice of any profession; or
- (e) accept or engage in any employment for reward other than in connection with the functions of his or her office, post or position under the State.

(2) Subsection (1) does not apply to or in relation to any case or class of case specified in public sector standards for the purposes of this section.

Reappointment of unsuccessful electoral candidates

103. (1) This section applies to a person who —

- (a) resigned by writing under his or her hand from employment in the Public Sector within the period of 2 months ending on the date for the close of nominations for a candidate for election as a member of —
 - (i) the Legislative Council;
 - (ii) the Legislative Assembly;
 - (iii) either House of the Parliament of the Commonwealth;
 - (iv) the Parliament (or either House of the Parliament) of another State;
 - (v) the Legislative Assembly of the Australian Capital Territory; or
 - (vi) the Legislative Assembly of the Northern Territory;
- (b) included in that writing notification of his or her intention to become a candidate at that election;
- (c) was a candidate at that election; and
- (d) failed to be elected at that election.

(2) A person to whom this section applies is entitled to be reappointed as an employee in the public sector body in which that person was employed immediately before his or her resignation if that person applies to be so reappointed not later than 2 months after the declaration of the result of the election concerned.

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(3) On making an application under subsection (2), a person to whom this section applies is to be reappointed to perform —

- (a) the functions that he or she was required to perform immediately before resigning; or
- (b) other functions,

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

(4) The reference in subsection (2) to the declaration of the result of the election concerned is, if the result of that election is challenged, to be read as a reference to —

- (a) the determination of that challenge by a court of disputed returns (by whatever name called); or
- (b) the lapsing of that challenge,

whichever happens first.

Time between resignation and reappointment not to count as service

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

Restriction on communications by members of Parliament, etc.

105. (1) Subject to this section, a person who is a member of Parliament or ministerial officer shall not interview or communicate with —

- (a) an employing authority or its delegate concerning the selection or appointment of any person to an office, post or position in the Public Sector; or

- (b) the Commissioner or his or her delegate concerning the selection, appointment or reappointment of a chief executive officer.

Penalty: \$1 000.

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

(a) between —

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

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

(b) between —

- (i) the Minister and other Ministers of the Crown;
or
- (ii) the Commissioner and a Minister of the Crown,

concerning the selection, appointment or reappointment of a chief executive officer.

(3) A reference in subsection (1) to a member of Parliament or a ministerial officer includes a reference to a person acting on behalf of a member of Parliament or a ministerial officer, as the case requires.

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(4) In this section —

“ministerial officer” includes —

- (a) person occupying a special office created under section 36 as read with section 75 (1); and
- (b) person engaged under section 100 (1) under a contract for services to assist a political office holder.

Immunity

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

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

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

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

107. (1) If under any written law or contract or agreement any functions, obligations or rights are imposed or conferred on the holder of an office, post or position in a department or

organization (in this section called “**the incumbent**”) in his or her capacity as such —

- (a) the Minister may direct a chief executive officer, or an employee whilst directed under section 51; or
- (b) the employing authority of any employee may direct that employee,

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

(2) The functions, obligations and rights directed to be performed or exercised under subsection (1) shall be performed or exercised in the same manner and to the same extent in all respects as those functions, obligations or rights might have been respectively performed or exercised by the incumbent.

(3) Everything done under a direction under this section shall be as good and effectual for all purposes and against all persons whomsoever as if done by the incumbent.

Regulations

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

- (a) amending Schedule 1 or 2;
- (b) managing the Public Sector or any part thereof;
- (c) amending or supplementing, with effect from a time which is not earlier than the commencement of this section, the transitional provisions set out in Schedule 5 or 6 for the purpose of providing an effective and

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efficient transition from the operation of the repealed Act or from the circumstances of ministerial staff before the commencement of Part 4, as the case requires, to the operation of this Act;

- (d) prescribing public service holidays; or
- (e) matters in respect of which the Governor is empowered by other provisions of this Act to make regulations under this section.

(2) To the extent that regulations made under subsection (1) are inconsistent with a public sector standard, code of ethics or code of conduct, those regulations prevail.

Review of Act

109. (1) The Minister shall carry out a review of the operation and effectiveness of this Act not later than 5 years after its commencement.

(2) The Minister shall prepare a report based on the review carried out under subsection (1) and shall, as soon as practicable after that preparation, cause that report to be laid before each House of Parliament.

PART 9 — REPEAL AND TRANSITIONAL PROVISIONS

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

110. (1) The *Public Service Act 1978* is repealed.

(2) The transitional provisions set out in Schedule 5 have effect.

Transitional provisions related to Part 4

111. The transitional provisions set out in Schedule 6 have effect.

References to certain words or expressions in written laws, etc.

112. (1) A reference in a written law or book, document or writing to the *Public Service Act 1978* or the *Public Service Act 1904* is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be read as a reference to this Act.

(2) A reference in a written law or book, document or writing to the Public Service Commissioner or the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be read as a reference to the Minister for Public Sector Management.

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SCHEDULE 1

[sections 3 and 108]

ENTITIES WHICH ARE NOT ORGANIZATIONS

<i>Column 1 Item</i>	<i>Column 2 Entity</i>
1	The Governor's Establishment referred to in the <i>Governor's Establishment Act 1992</i>
2	A department of the staff of Parliament referred to in the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i>
3	The electorate office of a member of Parliament
4	Any court or tribunal established or continued under a written law and any judge or officer exercising a judicial function as a member of that court or tribunal
5	The Police Force within the meaning of the <i>Police Act 1892</i>
6	Curtin University of Technology established under the <i>Curtin University of Technology Act 1966</i>
7	Edith Cowan University established under the <i>Edith Cowan University Act 1984</i>
8	Murdoch University established under the <i>Murdoch University Act 1973</i>
9	The University of Notre Dame established under the <i>University of Notre Dame Australia Act 1989</i>
10	The University of Western Australia established under the <i>University of Western Australia Act 1911</i>
11	Gold Corporation and Goldcorp Australia established under the <i>Gold Corporation Act 1987</i> and the Mint within the meaning of that Act
12	R & I Holdings within the meaning of the <i>R & I Bank Act 1990</i>
13	The R & I Bank of Western Australia Ltd within the meaning of the <i>R & I Bank Act 1990</i>
14	SGIO Insurance Limited established under the <i>SGIO Privatisation Act 1992</i>
15	Any municipality or regional council established under the <i>Local Government Act 1960</i>

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16. Gas Corporation established by the *Gas Corporation Act 1994*
17. Electricity Corporation established by the *Electricity Corporation Act 1994*

[*Schedule 1 amended by No. 89 of 1994 s.109 and in Gazette 16 September 1994 p.4803.*]

SCHEDULE 2

[sections 3 and 108]

ENTITIES WHICH ARE SES ORGANIZATIONS

<i>Column 1 Item</i>	<i>Column 2 Entity</i>
1	Albany Port Authority, constituted under the <i>Albany Port Authority Act 1926</i>
2	Animal Resources Authority, established by the <i>Animal Resources Authority Act 1981</i>
3	Bunbury Port Authority, constituted under the <i>Bunbury Port Authority Act 1909</i>
4	Country High School Hostels Authority, established under the <i>Country High School Hostels Authority Act 1960</i>
5	Commissioner of Main Roads, appointed under the <i>Main Roads Act 1930</i>
6	Dairy Industry Authority of Western Australia, established under the <i>Dairy Industry Act 1973</i>
7	Dampier Port Authority, established under the <i>Dampier Port Authority Act 1985</i>
8.	Disability Services Commission, continued under the <i>Disability Services Act 1993</i>
9	East Perth Redevelopment Authority, established under the <i>East Perth Redevelopment Act 1991</i>
10	Esperance Port Authority, established under the <i>Esperance Port Authority Act 1968</i>
11	Fremantle Hospital Board, constituted under the <i>Hospitals and Health Services Act 1927</i>
12	Fremantle Port Authority, constituted under the <i>Fremantle Port Authority Act 1902</i>
13	Gascoyne Development Commission, established under the <i>Regional Development Commissions Act 1993</i>
14	Geraldton Port Authority, established under the <i>Geraldton Port Authority Act 1968</i>
15	Goldfields-Esperance Development Commission, established under the <i>Regional Development Commissions Act 1993</i>

- 16 Government Employees Superannuation Board, established under the *Government Employees Superannuation Act 1987*
- 17 Great Southern Development Commission, established under the *Regional Development Commissions Act 1993*
- 18 Hedland College, established under the *Colleges Act 1978*
- 19 Herd Improvement Service of Western Australia, established under the *Herd Improvement Service Act 1984*
- 20 Kalgoorlie College, established under the *Colleges Act 1978*
- 21 Karratha College, established under the *Colleges Act 1978*
- 22 Keep Australia Beautiful Council (W.A.), established under the *Litter Act 1979*
- 23 Kimberley Development Commission, established under the *Regional Development Commissions Act 1993*
- 24 King Edward Memorial Hospital for Women Board, constituted under the *Hospitals and Health Services Act 1927*
- 25 Kings Park Board, constituted under the *Parks and Reserves Act 1895*
- 26 Lotteries Commission, continued under the *Lotteries Commission Act 1990*
- 27 Metropolitan Cemeteries Board, established under the *Cemeteries Act 1986*
- 28 Metropolitan (Perth) Passenger Transport Trust, constituted under the *Metropolitan (Perth) Passenger Transport Trust Act 1957*
- 29 Mid West Development Commission, established under the *Regional Development Commissions Act 1993*
- 30 Minerals and Energy Research Institute of Western Australia established under the *Minerals and Energy Research Act 1987*
- 31 Nurses Board of Western Australia, established under the *Nurses Act 1968*
- 32 Peel Development Commission, established under the *Regional Development Commissions Act 1993*
- 33 Perth Dental Hospital Board, constituted under the *Hospitals and Health Services Act 1927*

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- 34 Perth Market Authority, preserved and continued under the *Perth Market Act 1926*
- 35 Perth Theatre Trust, established under the *Perth Theatre Trust Act 1979*
- 36 Pilbara Development Commission, established under the *Regional Development Commissions Act 1993*
- 37 Princess Margaret Hospital for Children Board, constituted under the *Hospitals and Health Services Act 1927*
- 37A Port Hedland Port Authority, established by the *Port Hedland Port Authority Act 1970*
- 38 Pundulmurra College, established under the *Colleges Act 1978*
- 39 Rottnest Island Authority, established under the *Rottnest Island Authority Act 1987*
- 40 Royal Perth Hospital Board, constituted under the *Hospitals and Health Services Act 1927*
- 41 Rural Adjustment and Finance Corporation of Western Australia, preserved and continued under the *Rural Adjustment and Finance Corporation Act 1993*
- 42 Secondary Education Authority, established under the *Secondary Education Authority Act 1984*
- 43 Sir Charles Gairdner Hospital Board, constituted under the *Hospitals and Health Services Act 1927*
- 44 Small Business Development Corporation, established under the *Small Business Development Corporation Act 1983*
- 45 South West Development Commission, established under the *Regional Development Commissions Act 1993*
- 46 State Government Insurance Commission, established under the *State Government Insurance Commission Act 1986*
- 47 State Housing Commission, continued under the *Housing Act 1980*
- 47A State Supply Commission established under the *State Supply Commission Act 1991*
- 47A Subiaco Redevelopment Authority, established under the *Subiaco Redevelopment Act 1994*

- 48 The Agriculture Protection Board of Western Australia, constituted under the *Agriculture Protection Board Act 1950*
- 49 The Board of the Art Gallery of Western Australia, referred to in the *Art Gallery Act 1959*
- 50 The Library Board of Western Australia, constituted under the *Library Board of Western Australia Act 1951*
- 51 The National Trust of Australia (W.A.), established under the *National Trust of Australia (W.A.) Act 1964*
- [52 *deleted*]
- 53 The Western Australian Government Railways Commission, constituted under the *Government Railways Act 1904*
- 54 The Western Australian Museum, constituted under the *Museum Act 1969*
- 55 Totalisator Agency Board, constituted under the *Totalisator Agency Board Betting Act 1960*
- 56 Water Authority of Western Australia, established under the *Water Authority Act 1984*
- 57 Waterways Commission, established under the *Waterways Conservation Act 1976*
- 58 Western Australian Alcohol and Drug Authority, established under the *Alcohol and Drug Authority Act 1974*
- [59 *deleted*]
- 60 Western Australian Fire Brigades Board, constituted under the *Fire Brigades Act 1942*
- 61 Western Australian Land Authority, established under the *Western Australian Land Authority Act 1992*
- 62 Western Australian Meat Commission, constituted under the *Abattoirs Act 1909*
- 63 Western Australian Tourism Commission, established under the *Western Australian Tourism Commission Act 1983*
- 64 Wheatbelt Development Commission, established under the *Regional Development Commissions Act 1993*
- 65 Workers' Compensation and Rehabilitation Commission, continued under the *Workers' Compensation and Rehabilitation Act 1981*

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- 66 Zoological Gardens Board, established under the *Zoological Gardens Act 1972*

[*Schedule 2 amended by No. 89 of 1994 s.109; No. 97 of 1994 s.16; No. 103 of 1994 s.18 and in Gazettes 9 December 1994 p.6716; 23 December 1994 p.7122; 7 February 1995 p.423.*]

SCHEDULE 3

[sections 12 (2), 24 (1) and 87 (1)]

**PROVISIONS APPLICABLE TO AND IN RELATION TO
SPECIAL INQUIRERS**

Power to summon witnesses and documents

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

Duty of witnesses to continue in attendance

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

Power to examine on oath or affirmation

3. (1) A special inquirer may administer an oath to any person appearing as a witness before the special inquirer, whether the witness has been served with a summons under clause 1 or appears without having been so served, and may examine the witness on oath.

(2) If a witness to be examined before a special inquirer conscientiously objects to taking an oath, the witness may make an affirmation that he or she so objects and that he or she will state the truth, the whole truth and nothing but the truth to all questions that may be asked of him or her.

(3) An affirmation made under subclause (2) is of the same force and effect and entails the same liabilities as an oath.

(4) A person who, without reasonable excuse, refuses or fails —

(a) to be sworn or make an affirmation; or

(b) to answer a question,

when required to do so by a special inquirer commits an offence and is liable to a penalty of \$1 000.

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(5) In subclause (4), subject to subclause (6) —

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

(6) Notwithstanding clause 6, a person is not excused from answering any question when required to do so by a special inquirer on the ground that the answer to the question might incriminate or tend to incriminate the person or render the person liable to a penalty, but that answer is not admissible in evidence against the person who gives it in any proceedings, whether civil or criminal, in any court.

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

4. (1) A person who, having been served with a summons under clause 1, does not without reasonable excuse —

- (a) attend as required by the summons and clause 2; or
- (b) produce any books, documents or writings in his or her control or custody which he or she was required by the summons to produce,

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

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

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

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

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

Hindering or misleading special inquirers

5. (1) A person who hinders or obstructs a special inquirer in the exercise of any power conferred on him or her by this Act commits an offence and is liable to a penalty of \$1 000.

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

Protection to special inquirers and witnesses

6. (1) A special inquirer has in the performance of his or her functions as a special inquirer the same protection and immunity as a Judge has in the performance of his or her functions as a Judge.

(2) A witness summoned to attend or appearing before a special inquirer has the same protection and is, in addition to the penalties provided by clauses 3 (4), 4 (1) and 5, subject to the same liabilities in any civil or criminal proceeding as a witness in any case tried in the Supreme Court.

SCHEDULE 4

[section 26]

FORM OF DECLARATION

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

.....
(Signature of declarant)

.....
(Date)

SCHEDULE 5

[sections 108 and 110 (2)]

GENERAL TRANSITIONAL PROVISIONS

References to Commissioner and Assistant Commissioner in Schedule 5

1. In this Schedule, a reference to —
 - (a) the Commissioner is a reference to the Commissioner; or
 - (b) the Assistant Commissioner is a reference to the Assistant Commissioner,

within the meaning of the repealed Act.

Public Service notices

2. (1) Any Public Service notices having effect under the repealed Act immediately before the commencement of this clause continue in effect, with such modifications as are necessary, after that commencement as if they were public service notices having effect under this Act until repealed by public service notices so having effect.

(2) The repeal under subclause (1) of any Public Service notices shall be accompanied on the day of that repeal by a notification of that repeal made by the Minister in public service notices.

Public Service Commissioner and Assistant Public Service Commissioner

3. (1) Until the expiry date of his or her contract of service in force immediately before the commencement of this clause, the Commissioner or the Assistant Commissioner is entitled to employment in the Public Service at the same level of classification as he or she held under that contract of service.

(2) If the Commissioner or the Assistant Commissioner, immediately before his or her appointment under section 6 (1) or 6 (3), as the case requires, of the repealed Act, held an office in the Public Service under and subject to the repealed Act, he or she is entitled to employment in the Public Service, at a level of classification determined by the Governor, on and from the expiry date referred to in subclause (1).

(3) The level of classification determined under subclause (2) shall not be lower than the level that the person concerned held immediately before being appointed to the office of Commissioner or Assistant Commissioner, as the case may be.

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(4) A person who has an entitlement under subclause (2) to employment may elect in writing to take compensation under section 59 of this Act instead of exercising that entitlement.

(5) On an election under subclause (4) taking effect, the person concerned —

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

General savings

4. Subject to this Act —

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

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

Administrative instructions

5. (1) Administrative instructions which were in operation under section 19 of the repealed Act immediately before the commencement of

this clause continue in operation, with such modifications as are necessary, after that commencement until repealed by —

- (a) a public sector standard or code of ethics established under this Act;
- (b) approved procedures under this Act; or
- (c) regulations made under section 108 of this Act.

(2) The repeal under subclause (1) of any administrative instructions shall be accompanied on the day of that repeal by a notification of that repeal made by the Minister in public service notices.

Departments and sub-departments

6. (1) A department in existence under section 21 of the repealed Act immediately before the commencement of this clause continues in existence, subject to this Act, as a department under this Act.

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

Absorbed personnel

7. (1) If section 25 of the repealed Act applied to an appointment or right of appeal referred to in that section immediately before the commencement of this clause, section 37 of this Act applies after that commencement to —

- (a) that appointment as if that appointment were an appointment to which section 37 (1); or
- (b) that right of appeal as if that right of appeal were a right of appeal to which section 37 (2),

of this Act applies.

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

Inefficiency

8. (1) If proceedings under section 26 of the repealed Act (including any appeal referred to in subsection (5) of that section) have not been —

- (a) completed under that section; or
- (b) abandoned,

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

(2) An increment of remuneration which was being withheld under section 26 (3) (a) of the repealed Act immediately before the commencement of this clause shall, subject to the outcome of any appeal referred to in section 26 (5) of the repealed Act, continue to be withheld for the remainder of the period for which it would, but for the repeal of the repealed Act, have been withheld.

(3) For the purposes of this clause, a reference in section 26 of the repealed Act to the Commissioner shall be construed as a reference to the employing authority of the public service officer concerned.

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

Section 30 appointments and engagements

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

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

Section 30A appointments

10. (1) If an appointment of a person made under section 30A of the repealed Act subsists immediately before the commencement of this clause —

- (a) the appointment continues in force; and
- (b) the person has the same right of reappointment or appointment,

after that commencement, as if section 30A of the repealed Act were still in force.

(2) For the purposes of subclause (1), a reference in section 30A of the repealed Act to the Commissioner is a reference to the employing authority of the person concerned.

Section 31 appointments

11. An appointment referred to in section 31 of the repealed Act which is continued in force under this Schedule is not subject to the provisions of Division 4 of Part IIA of the *Industrial Relations Act 1979*.

Temporary officers and section 32 applications

12. (1) A person who was, immediately before the commencement of this clause, a temporary officer within the meaning of the repealed Act is a term officer whose term of appointment expires 3 months after that commencement.

(2) If an application made under section 32 of the repealed Act has not been —

- (a) determined under that section; or
- (b) abandoned,

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

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

Senior Executive Service

13. (1) After the commencement of this clause, the Senior Executive Service referred to in section 35 of the repealed Act continues in existence under Division 2 of Part 3 of this Act.

(2) A declaration in force under section 35 (3) or (5) of the repealed Act immediately before the commencement of this clause continues in force after that commencement as if it were a declaration in force under section 43 (3) or (4) of this Act and may be repealed or amended accordingly.

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

- (a) serving in a department, sub-department or organization within the meaning of the repealed Act; and
- (b) employed by the Commissioner by virtue of section 35 (8) of the repealed Act,

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

(4) A person who becomes by virtue of subclause (3) an executive officer retains, despite any provision of this Act but subject to Part 6 and regulations referred to in section 94, his or her terms and conditions of service as if the repealed Act had not been repealed, and sections 52, 56 and 57 of this Act do not apply to him or her, until the person is —

- (a) in the case of a chief executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
- (b) in the case of a senior executive officer, reappointed to the office that he or she was holding when this clause commenced or appointed to another office, or to the performance of other functions, in the Senior Executive Service,

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

(5) A person who becomes by virtue of subclause (3) a chief executive officer shall, within 12 months after the commencement of this clause and as soon as practicable after the commencement of each financial year afterwards, enter in accordance with approved procedures

into an agreement with the responsible authority of his or her agency concerning the performance criteria to be met by the chief executive officer during the period to which that agreement relates, and section 47 (2), (3) and (4) applies with any necessary modifications to and in relation to that person.

(6) When the term of office of a person who becomes by virtue of subclause (3) an executive officer expires or is terminated and that person is neither reappointed nor appointed as referred to in subclause (4) (a) or (b), whichever is applicable, that person is entitled to employment in a department or organization at the same level of classification as he or she held immediately before the expiry or termination of that term of office.

(7) When the term of office of a person who becomes by virtue of subclause (3) an executive officer, and who enters into a contract of employment as referred to in subclause (4), expires or is terminated and that person —

- (a) in the case of a chief executive officer, is neither reappointed to the same office of chief executive officer nor appointed to another office of chief executive officer or to the performance of other functions in the Senior Executive Service; or
- (b) in the case of a senior executive officer, is neither reappointed to the same office of senior executive officer nor appointed to another office of senior executive officer or to the performance of other functions in the Senior Executive Service,

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

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

(9) On an election under subclause (8) taking effect, the person concerned —

- (a) ceases to have the entitlement under subclause (6) or (7); and
- (b) becomes entitled to compensation under section 59 of this Act as if he or she were a person to whom that section applied.

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(10) A person is not entitled to employment in a department or organization under subclause (6) or (7) if —

- (a) his or her employment in the Public Sector was terminated under this Act for substandard performance or he or she was dismissed under this Act for breach of discipline; or
- (b) he or she held, immediately before the commencement of this clause, an appointment under section 41 (1) (b) or 42C (2) (b) of the repealed Act.

(11) A person —

- (a) who held, immediately before the commencement of this clause, an appointment under section 41 (1) (b) or 42C (2) (b) of the repealed Act; and
- (b) whose contract of employment is, after the commencement of this clause, terminated otherwise than by the effluxion of time,

is entitled to such compensation, if any, as the Minister determines.

(12) A person is not entitled to compensation under subclause (11) if his or her employment in the Public Sector was terminated under this Act for substandard performance or he or she was dismissed under this Act for breach of discipline.

(13) The maximum compensation payable to a person under subclause (11) is an amount equal to the remuneration to which the person is entitled for the period of one year ending immediately before the day on which his or her contract of employment was terminated.

(14) A person to whom compensation is paid under subclause (11) and who is subsequently —

- (a) employed in a department or organization; or
- (b) engaged by an employing authority under a contract for services, whether under section 100 (1) or another written law,

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

(14a) If the process of appointing or reappointing a chief executive officer under Division 2, Part III of the repealed Act has been commenced but not completed or discontinued before the

commencement of this clause, that Division continues to apply to that process as if this Act had not been enacted.

(14b) Subclause (3) applies to a person who is appointed under a process referred to in subclause (14a) if, on being appointed, the person becomes an employee of the Commissioner by virtue of section 35 (8) of the repealed Act.

(14c) Subclause (5) applies to a person who is appointed under a process referred to in subclause (14a).

(14d) For the purposes of subclause (14a), the Commissioner is taken to continue in office under the repealed Act until the process referred to in that subclause has been completed under Division 2 of Part III of the repealed Act or discontinued.

(15) If proceedings under section 42A of the repealed Act have not been —

- (a) completed under that section; or
- (b) abandoned,

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

(16) An increment of remuneration that was being withheld under section 42A (1) (a) of the repealed Act immediately before the commencement of this clause shall continue to be withheld for the remainder of the period for which it would, but for the repeal of the repealed Act, have been withheld.

(17) For the purposes of subclauses (15) and (16), a reference in section 42A of the repealed Act to the Commissioner shall be construed as a reference to the employing authority of the executive officer concerned.

(18) An officer directed to act under section 42B of the repealed Act for a particular period and acting under that direction immediately before the commencement of this clause shall be regarded —

- (a) in the case of an officer directed to act in the office of a chief executive officer, as directed under section 51 (1) of this Act to act in the office; or
- (b) in the case of an officer directed to act in the office of a senior officer within the meaning of the repealed Act, as directed under section 107 (1) of this Act to perform the functions under this Act,

of the corresponding executive officer for the remainder of that period.

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(19) On the commencement of this clause, the powers conferred by section 42E of the repealed Act are to be exercised by the relevant employing authority in accordance with such arrangements as are prescribed for the purposes of section 57 (1) (b) of this Act.

(20) This clause does not prevent the application of the provisions of this Act relating to the management of redeployment and redundancy of employees to a person who is entitled to employment in a department or organization under this clause.

(21) Subsections (9) and (10) of section 43 of this Act apply to a person referred to in subclause (3) as if those subsections had been in operation when the person became employed by virtue of section 35 (8) of the repealed Act.

Senior officers

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

Proceedings on charges

15. (1) If proceedings under Part IV of the repealed Act (including any appeal referred to in section 47 of the repealed Act) have not been —

- (a) completed under that Part; or
- (b) abandoned,

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

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

(2a) For the purposes of conducting proceedings under subclause (1), the Commissioner may continue to exercise all his functions under the repealed Act, including his power of delegation under section 12 of the repealed Act.

(3) This Act applies to the result of proceedings completed under subclause (1) as if that result had occurred under Part 5 of this Act.

Long service leave and recreation leave

16. (1) An officer within the meaning of the repealed Act to whom had accrued, immediately before the commencement of this clause, an entitlement to —

- (a) a particular period of long service leave; or
- (b) a particular period of recreation leave,

or both, retains his or her entitlement to that period or those periods as a public service officer within the meaning of this Act.

(2) If an officer referred to in subclause (1) had not, immediately before the commencement of this clause, completed the period of service required for the accrual of an entitlement referred to in that subclause, that incomplete period of service shall, after that commencement, be taken into account for the purpose of ascertaining the date of accrual of that entitlement.

Intergovernmental arrangements

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

Regulations

18. (1) Section 38 of the *Interpretation Act 1984* applies to regulations in force under section 60 of the repealed Act immediately before the commencement of this clause.

(2) Without limiting subclause (1), regulations made for a particular purpose under the repealed Act have effect for a similar purpose under this Act.

Employment of public service officers other than executive officers

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

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Public Service Award 1992

20. References to the Commissioner in the award —

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

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

Schedule 5 supplementary to *Interpretation Act 1984*

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

[Schedule 5 amended in Gazettes 16 September 1994 p.4804; 9 December 1994 p.6715; 2 May 1995 p.1691.]

SCHEDULE 6

[sections 108 and 111]

**TRANSITIONAL PROVISIONS RELATING TO
MINISTERIAL STAFF**

Ministerial staff

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

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

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

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

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

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

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

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

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- (c) assisting the political office holder referred to in paragraph (b),

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

(4) A person who was, immediately before the commencement of this clause, engaged under a contract for services to assist a political office holder within the meaning of this Act is taken to be engaged under a contract for services under section 100 (1) of this Act to assist that political office holder.

Remuneration and terms and conditions of ministerial staff

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

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

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

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

(5) Any period —

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

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

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

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

Restriction on subsequent employment in departments or organizations

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

Schedule 6 supplementary to *Interpretation Act 1984*

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

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NOTES

^{1.} This reprint is a compilation as at 16 May 1995 of the *Public Sector Management Act 1994* and includes the amendments effected by the other Acts referred to in Part I of the following Table and by the regulations referred to in Part II of the following Table³.

TABLE 1 — ACTS

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Public Sector Management Act 1994</i>	31 of 1994	8 July 1994	Sections 3, 16, 19, 20, 26, 28 and Schedule 4: 20 August 1994 (see <i>Gazette</i> 19 August 1994 p.4155): sections 4, 5 and 6, Divisions 1, 2 and 4 of Part 2, sections 17, 18, 21, 22, 23, 24, 25 and 27, Parts 3, 4, 5, 6, 8, and 9 and Schedules 1, 2, 3, 5 and 6: 1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948); Part 7 to be proclaimed	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994, section 109</i>	89 of 1994	15 December 1994	1 January 1995 (see <i>Gazette</i> 23 December 1994 p.7069)	
<i>State Supply Commission Amendment Act (No. 2) 1994, section 16</i>	97 of 1994	30 December 1994	18 March 1995 (see <i>Gazette</i> 17 March 1995 p.1011)	
<i>Hospitals Amendment Act 1994, section 18 item 19 of Table</i>	103 of 1994	11 January 1995	3 February 1995 (see <i>Gazette</i> 3 February 1995 p.333)	

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TABLE 2 — REGULATIONS

Regulations	Gazettal	Commencement	Miscellaneous
<i>Public Sector Management (General) Regulations 1994</i> regulation 27	16 September 1994 p.4803	1 October 1994 (see regulation 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Public Sector Management (Transitional) Regulations 1994</i>	16 September 1994 p.4804	1 October 1994 (see regulation 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Public Sector Management (Transitional) Regulations (No. 2) 1994</i>	9 December 1994 p.6715	9 December 1994	
<i>Public Sector Management (SES Organizations) Regulations 1994</i>	9 December 1994 p.6716	9 December 1994	
<i>Public Sector Management (SES Organizations) Regulations (No. 2) 1994</i>	23 December 1994 p.7122	23 December 1994	
<i>Public Sector Management (SES Organizations) Regulations 1995</i>	7 February 1995 p.423	7 February 1995	
<i>Public Sector Management (Transitional) Regulations 1995</i>	2 May 1995 pp.1690-91	2 May 1995	

² Part 7 of the *Public Sector Management Act 1994* (Act No. 31 of 1994) reads as follows —

“

Application of Part 7

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

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Functions of Commissioner concerning relief in respect of breach of public sector standards

97. (1) The functions of the Commissioner under this Part are —

- (a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards;
- (b) to appoint persons for the purpose of implementing procedures referred to in paragraph (a); and
- (c) to monitor the operation of procedures referred to in paragraph (a).

(2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Commissioner set out in subsection (1).

Regulations relating to relief in respect of breach of public sector standards

98. The Governor may under section 108 make regulations —

- (a) prescribing procedures referred to in section 97 (1) (a) and specifying those employees and persons, if any, who are not eligible to seek relief in accordance with those procedures;
- (b) conferring powers on persons referred to in section 97 (1) (b); and
- (c) for the remuneration, and the terms and conditions of appointment, of persons referred to in paragraph (b) who are not employees.

³

As at 16 May 1995 section 35 of the *Industrial Legislation Amendment Act 1995* (Act No. 1 of 1995) was not in operation.