



Australian Capital Territory

# **Public Sector Management Act 1994**

**A1994-37**

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## **About this republication**

### **The republished law**

This is a republication of the *Public Sector Management Act 1994* effective from 1 July 1995 to 20 December 1995.

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Australian Capital Territory  
**PUBLIC SECTOR MANAGEMENT ACT 1994**

This consolidation has been prepared by the ACT Parliamentary Counsel's Office  
Updated as at 1 July 1995

**TABLE OF PROVISIONS**

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Operation of Act
5. Application

PART II—ADMINISTRATION OF THE PUBLIC SECTOR

*Division 1—Values and general principles*

6. Values and principles
7. General principles of public administration
8. General principles of management in employment matters
9. General obligations of public employees
10. Sections 6, 7, 8 and 9 subject to other provisions
11. Legal effect

*Division 2—Constitution of the Service*

12. ACT Government Service

*Division 3—Administrative Arrangements*

13. Constitution of administrative units
14. Ministerial responsibility and functions of administrative units
15. Machinery of government changes—officers
16. Machinery of government changes—employees

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS**—continued

Section

PART III—MANAGEMENT OF THE SERVICE

*Division 1—Preliminary*

17. Interpretation

*Division 2—Role of the Commissioner*

18. Appointment of Commissioner for Public Administration

19. Acting appointment

20. General functions

21. Review of government agencies or functions

22. Investigative powers

23. Records of members

*Division 3—Exercise of Chief Executive Powers  
in relation to certain public employees*

24. Powers of chief executive officers of certain Territory instrumentalities

25. Powers of certain statutory office holders

26. Powers relating to certain staff providing services for Calvary Hospital

*Division 4—Chief Executives*

27. Office of Chief Executive

28. Appointment

29. Responsibilities

30. Transfer

31. Effects of defects or irregularities

32. Acting appointment

33. Part-time offices

34. Dual appointment of Chief Executives

35. Remunerative employment outside the Service

*Division 5—Powers of delegation*

36. Delegation by Commissioner or Chief Executives

37. Delegation by autonomous instrumentality

*Division 6—Constitution and role of the Senior Executive  
Service*

38. The Senior Executive Service

*Division 7—Whole of government management  
responsibilities*

39. Interpretation

40. Equal employment opportunity programs

41. Access and equity programs

42. Industrial democracy programs

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section	
43.	Application of subsections 40 (1), 41 (1) and 42 (1) to autonomous instrumentalities
44.	Joint Council <i>Division 8—Clerk of the Legislative Assembly</i>
45.	Interpretation
46.	Office
47.	Leave of absence
48.	Disclosure of interests
49.	Resignation
50.	Suspension and removal from office
51.	Retirement
52.	Terms and conditions generally
53.	Acting appointment
54.	Staff
	<b>PART IV—CREATION, CLASSIFICATION AND ABOLITION OF OFFICES IN THE SERVICE</b>
	<i>Division 1—Creation and abolition of offices</i>
55.	Creation and abolition of offices
56.	Classification of offices and officers
57.	Senior Executive Service classifications
58.	Re-classification of offices
59.	Application of subsection 58 (2) to Office of the Director of Public Prosecutions <i>Division 2—Part-time offices</i>
60.	Part-time offices
61.	Hours of attendance of part-time officers
62.	Hours of attendance of certain unattached officers
	<b>PART V—EMPLOYMENT IN THE SERVICE</b>
	<i>Division 1—Preliminary</i>
63.	Interpretation
64.	Application <i>Division 2—Personnel management</i>
65.	Application of merit principle
66.	Notification of certain matters related to appointment, transfer or promotion <i>Division 3—Appointment of officers other than Chief Executives</i>
67.	Employment in the Service

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section	
68.	Appointments—generally
69.	Classification of unattached officers
70.	Appointments to be on probation
71.	Appointments on probation—training offices and teaching offices <i>Division 4—Appointment, transfer and promotion of Senior Executive Service officers</i>
72.	Notification of vacancies in Senior Executive Service offices
73.	Chief Executive to consider recommendation
74.	Executive Staffing Committee
75.	Appointment or promotion of SES officers in Office of Director of Public Prosecutions
76.	Transfer of Senior Executive Service officers
77.	Duties to be performed by Senior Executive Service officers
78.	Cancellation
79.	No appeals
80.	Fixed-term appointments
81.	Superannuation arrangements
82.	Temporary performance of duties <i>Division 5—Promotions and transfers of officers other than Chief Executives and Senior Executive Service officers</i>
83.	Transfers and promotions
84.	Appeals
85.	Determination of appeals
86.	Promotion appeal rights of certain officers
87.	Review of non-appellable promotion decisions by Merit Protection Agency
88.	Transfer or promotion on advice of Joint Selection Committee
89.	Transfer or promotion on advice of management-initiated Joint Selection Committee
90.	Procedure of Joint Selection Committee
91.	Taking effect etc. of promotions and transfers
92.	Death of officer before appeal determined
93.	Cancellation of promotion or transfer
94.	Transfer of officers by Chief Executive from one administrative unit to another
95.	Simultaneous transfers within an administrative unit
96.	Transfers of officers and employees between administrative units
97.	Transfers and promotions to specified offices may be made in accordance with order of passing examinations
98.	Promotion of officers who complete courses of training for special positions

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section

*Division 6—Temporary performance of duties—offices other than Senior Executive Service offices*

- 99. Interpretation
- 100. Directions to act
- 101. Directions to act in certain offices for more than 3 months or until the occurrence of an event
- 102. Appeals against directions
- 103. Lapsing of appeals
- 104. Determination of appeal
- 105. Procedure where appeal is successful

*Division 7—Temporary employment*

- 106. Power to engage employees
- 107. Overseas employment
- 108. Temporary employment—generally
- 109. Entry to the workforce programs
- 110. Casual employment
- 111. Employment of unsuccessful election candidates
- 112. Termination of employment
- 113. Work performed after termination of temporary employment
- 114. Engagement of certain former officers as employees, and contracts with certain former officers, prohibited

*Division 8—Miscellaneous*

- 115. Officers of Australian Public Service to have certain rights of entry to ACT Public Service
- 115A. Mobility rights of certain persons
- 116. Officers of the Australian Public Service appointed to Chief Executive or Senior Executive Service offices
- 117. Reappointment of retired officers
- 118. Reappointment of unsuccessful election candidates
- 119. Unattached officers
- 120. Arrangements with other governments and bodies for the provision of services by employees to the Territory
- 121. Arrangements with other governments for the provision of services by officers and employees of the Service

**PART VI—RETIREMENT AND REDEPLOYMENT**

*Division 1—Retirement and redeployment of Chief Executives*

- 122. Interpretation
- 123. Retirement—minimum retiring age

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS**—continued

Section	
124.	Retirement—maximum retiring age
125.	Retirement of Chief Executives on the ground of incapacity
126.	Termination of appointment
127.	Redeployment of unattached Chief Executives
128.	Special benefits available to retiring unattached Chief Executives



*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section

*Division 2—Retirement and redeployment of Senior Executive Service officers*

- 129. Interpretation
- 130. Retirement—minimum retiring age
- 131. Retirement—maximum retiring age
- 132. Preliminary steps in relation to officers whose services cannot reasonably be used in an SES office at the same or equal classification
- 133. Officers whose services cannot reasonably be used in an SES office at the same or equal classification
- 134. Appeal to Appeal Committee
- 135. Retirement with consent of officer on grounds of incapacity
- 136. Unattachment of Senior Executive Service officers
- 137. Special benefits available to retiring officers
- 138. Limitation on retirement on ground of invalidity

*Division 3—Retirement and redeployment of officers other than Chief Executives and Senior Executive Service officers*

- 139. Interpretation
- 140. Power to reduce officer's classification
- 141. Retirement—minimum retiring age
- 142. Retirement—maximum retiring age
- 143. Action by Chief Executive to reduce an officer's classification or retire an officer from the Service
- 144. Action by Commissioner to reduce an officer's classification
- 145. Limitation on retirement on ground of invalidity
- 146. Unattachment of officers
- 147. Appeals

**PART VII—LONG SERVICE LEAVE**

- 148. Interpretation
- 149. Meaning of public authority
- 150. Management standards with respect to previous employment with prescribed authorities etc.
- 151. Meaning of salary
- 152. Certain payments not included in salary
- 153. Persons taken to be employed by the Territory
- 154. Period of employment
- 155. Continuity of employment
- 156. Status of periods of absence
- 157. Concurrent employment
- 158. Long service leave and payments in lieu of long service leave

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section	
159.	Extended leave or pay in lieu of leave for officers not entitled to long service leave
160.	Calculation of long service leave credit
161.	Application of section 160
162.	Rate of salary while absent on long service leave
163.	Rate of salary in relation to pay in lieu of leave
164.	Long service leave benefits not to be granted under other laws
165.	Additional provisions relating to death of an officer
166.	Provisions relating to members of the Australian Capital Territory Teaching Service

**PART VIII—MATERNITY LEAVE**

167.	Interpretation
168.	Persons in relation to whom this Part applies
169.	Absence on maternity leave
170.	Entitlement to paid maternity leave
171.	Unauthorised absences
172.	Absence on leave without pay
173.	Officers may continue to perform, or resume, duty in certain circumstances
174.	Other applications to resume duty
175.	Grant of maternity leave not to affect continuity of service
176.	Officers on maternity leave
177.	Temporary employees on maternity leave

**PART IX—DISCIPLINE**

*Division 1—Preliminary*

178.	Interpretation
179.	Meaning of failure to fulfil duty as officer
	<i>Division 2—Chief Executives and certain unattached officers</i>

180.	Interpretation
181.	Disciplinary action in respect of Chief Executives
182.	Conviction by courts of Chief Executives
183.	Suspension of Chief Executives
184.	Removal and variation of suspension relating to Chief Executives

*Division 3—Officers other than Chief Executives*

185.	Interpretation
186.	Disciplinary action
187.	Inquiries into misconduct
188.	Convictions by courts

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS**—continued

Section	
189.	Suspension
190.	Removal and variation of suspension
191.	Appeals
192.	Nullification of conviction
193.	Review of findings <i>Division 4—Officers employed otherwise than in the Service</i>
194.	Interpretation
195.	Misconduct committed before becoming detached officer
196.	Misconduct while detached officer
197.	Criminal offences
198.	When directions for dismissal take effect
199.	Appeals
200.	Reasons to be given for making finding or giving direction etc. <i>Division 5—Employees</i>
201.	Interpretation
202.	Application of Part to employees <i>Division 6—Boards of Inquiry and Disciplinary Appeal Committees</i>
203.	Interpretation
204.	Manner of appeal to Disciplinary Appeal Committee
205.	Time for appealing to Disciplinary Appeal Committee
206.	Furnishing of documents to appellants and persons requesting a review
207.	Hearing to be in public except in special circumstances
208.	Witnesses
209.	Witnesses expenses
210.	Representation of parties
211.	Protection of members of Boards of Inquiry, witnesses etc.
212.	Notification of findings of Board of Inquiry
213.	Payment of costs
214.	Costs of lapsed inquiry
215.	Recording of action taken
216.	Amendment of official conduct record
217.	Delegation <i>Division 7—Miscellaneous</i>
218.	Imprisonment
219.	Application to unattached officers performing duty in administrative unit
220.	Deduction of pecuniary penalty from salary

*Public Sector Management Act 1994*

**TABLE OF PROVISIONS—continued**

Section

**PART X—FORFEITURE OF OFFICE**

- 221. Forfeiture of office
- 222. Reappointment of officers taken to have retired under section 221

**PART XI—REVIEW OF CERTAIN DECISIONS AND INVESTIGATION OF GRIEVANCES**

*Division 1—Preliminary*

- 223. Interpretation
  - Division 2—Review of certain decisions*
- 224. Application
- 225. Review by the internal appeal officer
- 226. Review by the Merit Protection Agency
- 227. Documents to be furnished by the internal appeal officer
- 228. Review to be under section 42 or 43 of the Merit Protection Act
- 229. Official directions to be carried out

*Division 3—Investigation of grievances by the Merit Protection Agency*

- 230. Application
- 231. Investigation by the internal appeal officer
- 232. Investigation by the Merit Protection Agency
- 233. Documents to be furnished by the internal appeal officer
- 234. Official directions to be carried out

*Division 4—Merit protection*

- 235. Application of provisions of Merit Protection Act

**PART XIII—MISCELLANEOUS**

- 241. Returns and information generally
- 242. Improper influence
- 243. Protection of persons in respect of work reports on officers or employees
- 244. Second jobs
- 245. Remuneration additional to salary
- 246. Payments to officers
- 247. Personation etc. at examinations
- 248. Contracts
- 249. Occupational health and safety
- 250. Attachment of salary of officers and employees
- 251. Management standards
- 252. Numbering and citation of standards
- 253. Notification and publication of standards

SCHEDULE 1  
MODIFICATIONS AND ADAPTATIONS OF THE  
PROVISIONS OF PART IX IN THEIR APPLICATION TO  
EMPLOYEES

SCHEDULE 2  
MODIFICATIONS OF THE MERIT PROTECTION ACT  
IN ITS APPLICATION UNDER SECTION 235

SCHEDULE 3  
MODIFICATIONS AND ADAPTATIONS OF THE  
OCCUPATIONAL HEALTH AND SAFETY ACT 1989 IN  
ITS APPLICATION TO PUBLIC EMPLOYEES



Australian Capital Territory

## **PUBLIC SECTOR MANAGEMENT ACT 1994**

An Act to regulate the administration of the public sector of the Territory and for related purposes

### **PART I—PRELIMINARY**

#### **Short title**

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

#### **Commencement**

2.<sup>1</sup> (1) Section 1 and this section commence on the day on which this Act is notified in the Territory Gazette.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the Territory Gazette.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the Territory Gazette, that provision, by force of this subsection, commences on the first day after the end of that period.

#### **Interpretation**

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

“administrative unit” means a unit of the Service established under paragraph 13 (1) (a);

“authorised medical practitioner” means a medical practitioner authorised by the Chief Executive of the administrative unit primarily responsible for public health matters, or the Commissioner, to—

(a) perform medical examinations under this Act;

*Public Sector Management Act 1994*

- (b) make recommendations under this Act in relation to redeployment or retirement; and
- (c) make recommendations under this Act in relation to the health and physical fitness of officers whose appointment to the Service on probation has not been confirmed;

“autonomous instrumentality” means the Office of the Director of Public Prosecutions;

“Chief Executive” means a person appointed under section 28 who has control of an administrative unit;

“chief executive officer”, in relation to a Territory instrumentality, means the person who has responsibility for managing the affairs of the instrumentality;

“classification” means—

- (a) in relation to a Senior Executive Service office—a description that identifies the class of offices to which the office belongs, being a class of offices with the same range of salaries;
- (b) in relation to an office that is not a Senior Executive Service office—a description that identifies the class of offices to which the office belongs, being a class of offices that are of a similar kind, that have responsibilities of a similar level, the performance of the duties of which requires work of similar value and the salary, or range of salaries, applicable to which are the same;
- (c) in relation to an officer who holds an office—the classification of that office; and
- (d) in relation to an unattached officer—the classification that the officer has as an unattached officer determined in accordance with subsection 56 (4) or section 69;

“Commissioner” means the Commissioner for Public Administration appointed under subsection 18 (1);

*Public Sector Management Act 1994*

“Commonwealth officer” means an officer of the Australian Public Service constituted by section 10 of the *Public Service Act 1922* of the Commonwealth;

“criminal offence” means—

- (a) an offence against a law of the Territory or the Commonwealth; or
- (b) an offence against a law of, or of a part of, a foreign country, being an offence of a kind which if committed in, or within the jurisdiction of, the Territory would constitute an offence against a law of the Territory or the Commonwealth;

“Director” means the Director of the Merit Protection Agency;

“employee” means—

- (a) a person who is an employee by virtue of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*; or
- (b) a person engaged under Division 7 of Part V;

“Gazette” means the *Commonwealth of Australia Gazette*;

“government agency” means—

- (a) an administrative unit;
- (b) a Territory instrumentality; or
- (c) a statutory office holder and the staff required to assist the statutory office holder;

“industrial award” means—

- (a) an award under the *Industrial Relations Act 1988* of the Commonwealth;
- (b) an award or order under the *Conciliation and Arbitration Act 1904* of the Commonwealth; or
- (c) a determination, award or order made by a prescribed person, tribunal or body under a law of the Commonwealth or the Territory;



*Public Sector Management Act 1994*

“management standards” means the management standards made under section 251;

“medical practitioner” means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- (b) who is to be deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth;

“Merit Protection Act” means the *Merit Protection (Australian Government Employees) Act 1984* of the Commonwealth;

“Merit Protection Agency” means the Merit Protection and Review Agency established by the Merit Protection Act;

“non-appellable promotion” means a promotion under section 83 to an office having—

- (a) a classification equal to or higher than the classification of Senior Officer Grade C; or
- (b) a classification equivalent to a classification referred to in paragraph (a), being a classification prescribed, or included in a class of classifications prescribed, by the management standards not being an office for appointment to which teaching qualifications are required;

“officer” means—

- (a) a person who is an officer by virtue of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*;
- (b) a Chief Executive;
- (c) a person appointed to be an officer under Division 3 or 8 of Part V; or
- (d) a person who is to be taken to be an officer in accordance with section 115A;

“overseas” means outside Australia and the Territories;

“part-time office” means an office in relation to which a declaration under section 33 or 60 is in force;

“prescribed” means prescribed by the management standards;

*Public Sector Management Act 1994*

“promotion”, in relation to an officer, means a movement of the officer within the Service for the purpose of holding an office of a higher classification than the office held by the officer immediately before being so moved;

“Promotion Appeal Committee” means a Promotion Appeal Committee established under Subdivision B of Division 2 of Part II of the Merit Protection Act;

“public employee” means a person—

- (a) employed in the Service; or
- (b) employed by a Territory instrumentality or a statutory office holder;

“public sector” means all government agencies and public employees;

“relevant Chief Executive” means—

- (a) in relation to an officer or employee employed in an administrative unit—the Chief Executive who has control of the administrative unit;
- (b) in relation to an officer or employee employed in a Territory instrumentality—the person who has the powers of a Chief Executive in relation to that person;
- (c) in relation to an officer or employee who is required to assist a statutory office holder—the office holder; or
- (d) in relation to an unattached officer—the Chief Executive who has control of the administrative unit in which the officer last held an office;

“relevant staff organisation”, in relation to an office or a position in a government agency, means an organisation—

- (a) that is an organisation within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;
- (b) for membership of which a person holding the office or performing the duties of the position, as the case may be, would be entitled; and

*Public Sector Management Act 1994*

- (c) that is a party to an industrial award that applies in relation to the remuneration payable in respect of the office or position, as the case may be, being an industrial award to which the Minister who is responsible for the agency is also a party;

“Senior Executive Service office” means an office that has a classification declared under section 57 to be a Senior Executive Service classification;

“Senior Executive Service officer” means—

- (a) an officer who holds a Senior Executive Service office; or
- (b) an unattached officer who has a Senior Executive Service classification;

“Service” means the Australian Capital Territory Government Service established by section 12;

“statutory office holder” means the holder of an office established by an Act, and includes all persons who at any time occupy for the time being, or perform for the time being the duties of, such an office;

“Territory Gazette” means the *Australian Capital Territory Gazette*;

“Territory instrumentality” means a body corporate that is established by or under an Act, or under the Corporations Law, and—

- (a) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by a Minister or an agency or instrumentality of the Territory;
- (b) is subject to control or direction by a Minister; or
- (c) is declared under subsection (2) to be a Territory instrumentality;

but does not include—

- (d) an administrative unit; or
- (e) a body declared under subsection (2) not to be a Territory instrumentality;

“unattached officer” means an officer who does not hold an office but does not include a person who is a detached officer within the meaning of Division 4 of Part IX.

*Public Sector Management Act 1994*

(2) The Minister may, by notice in the Territory Gazette declare that a specified body is or is not a Territory instrumentality for the purposes of this Act.

**Operation of Act**

4. This Act operates both within and outside the Territory.

**Application**

5. Unless the contrary intention appears, the provisions of this Act do not apply to—

- (a) a Judge of the Supreme Court;
- (b) the Master of the Supreme Court;
- (c) a Magistrate;
- (d) a person engaged in an honorary capacity;
- (e) a person remunerated by fees, allowances or commissions only; or
- (f) the Legal Aid Commission (A.C.T.);
- (g) ACTEW Corporation Limited.

**PART II—ADMINISTRATION OF THE PUBLIC SECTOR**

*Division 1—Values and general principles*

**Values and principles**

6. Government agencies shall have an objective of implementing the following values and principles:

- (a) service to the public;
- (b) responsiveness to—
  - (i) the requirements of the government; and
  - (ii) the needs of the public;
- (c) accountability to the government for the ways in which functions are performed;
- (d) fairness and integrity;
- (e) efficiency and effectiveness.

**General principles of public administration**

7. The public sector shall be administered with an objective of giving effect to the following principles:

- (a) the public sector shall be administered to provide quality services to the public;
- (b) decisions shall be as fair as possible;
- (c) the best management practices shall be used;
- (d) the public sector shall be structured and organised to facilitate the timely and effective performance of its functions;
- (e) there shall be a clear and explicit delineation of the responsibilities and accountabilities of public employees, administrative units and Territory instrumentalities;
- (f) the public sector shall be managed in accordance with principles of access and equity by giving all members of the public the opportunity to have a fair share of the resources which the Territory manages on their behalf and an opportunity to gain access to the resources to which they are entitled;
- (g) the public sector shall be administered to minimise the possibility of unlawful discrimination.

**General principles of management in employment matters**

8. In employment matters, government agencies shall be administered with an objective of giving effect to the following principles:

- (a) selection processes shall be directed towards and based on a proper assessment of merit;
- (b) all officers shall be afforded equal opportunities to secure promotion and advancement in their employment on the basis of relative merit;
- (c) best practices shall be adopted in the training and development of staff;
- (d) public employees shall be provided with safe and healthy working conditions;
- (e) public employees shall be afforded opportunities for appropriate participation in the decision-making processes relating to the administration of the government agencies in which they work.

**General obligations of public employees**

9. A public employee shall, in performing his or her duties:
- (a) exercise reasonable care and skill;
  - (b) act impartially;
  - (c) act with probity;
  - (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
  - (e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the laws of the Territory and to understand any requirements which they are obliged to satisfy under those laws;
  - (f) not harass a member of the public or another public employee, whether sexually or otherwise;
  - (g) not unlawfully coerce a member of the public or another public employee;
  - (h) comply with this Act, the management standards and all other laws of the Territory;
  - (j) comply with any lawful and reasonable direction given by a person having authority to give the direction;
  - (k) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties—
    - (i) disclose the interest to his or her supervisor; and
    - (ii) take reasonable action to avoid the conflict;as soon as possible after the relevant facts come to the employee's notice;
  - (m) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
  - (n) not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;

*Public Sector Management Act 1994*

- (p) not disclose, without lawful authority—
  - (i) any information acquired by him or her as a consequence of his or her employment; or
  - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;
- (q) not make a comment which he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (r) not make improper use of the property of the Territory;
- (s) avoid waste and extravagance in the use of the property of the Territory;
- (t) report to an appropriate authority—
  - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
  - (ii) any possible maladministration in the public sector that he or she has reason to suspect.

**Sections 6, 7, 8 and 9 subject to other provisions**

**10.** Sections 6, 7, 8 and 9 have effect subject to the other provisions of this Act and any other Act.

**Legal effect**

**11. (1)** Nothing in this Division is to be taken to create any legal rights not in existence before the enactment of this Part or to affect any rights in existence before that enactment or that would, but for this Part, have come into existence after that enactment.

**(2)** Subsection (1) does not prevent a contravention of paragraphs 9 (a) to (s) (inclusive) by an officer or employee from being dealt with under Part IX.

***Division 2—Constitution of the Service***

**ACT Government Service**

**12. (1)** The Australian Capital Territory Government Service is established.

**(2)** The Service is constituted by—

*Public Sector Management Act 1994*

- (a) the Chief Executives;
  - (b) the Senior Executive Service officers;
  - (c) other officers; and
  - (d) employees.
- (3) The Territory is the employer of all members of the Service.

***Division 3—Administrative Arrangements***

**Constitution of administrative units**

**13. (1)** The Chief Minister may, from time to time, in writing—

- (a) establish administrative units; and
- (b) place Chief Executives in control of the administrative units.

**(2)** An administrative unit consists of the offices within that administrative unit.

**(3)** The Chief Minister shall publish particulars of arrangements provided for under subsection (1) in the Territory Gazette.

**Ministerial responsibility and functions of administrative units**

**14.** The Chief Minister may, from time to time, by notice in the Territory Gazette—

- (a) allocate to a Minister responsibility for 1 or more administrative units; and
- (b) allocate to an administrative unit responsibility for all or any of the enactments and matters for which the relevant Minister is responsible.

**Machinery of government changes—officers**

**15. (1)** Where an administrative unit is abolished, the Chief Minister or the Commissioner may, in writing, transfer an office in the administrative unit to another administrative unit.

**(2)** Where, by virtue of administrative arrangements approved by the Chief Minister, a matter that immediately before those arrangements took effect was the responsibility of an administrative unit (in this subsection called the “losing area”) becomes the responsibility of another administrative unit (in this section called the “gaining area”), the Commissioner may, in writing, transfer an office



*Public Sector Management Act 1994*

in the losing area to the gaining area where the holder of the office is required to perform duties that—

- (a) relate wholly or mainly to that matter; or
- (b) are certified by the Chief Minister to be ancillary to, or attributable to, that matter.

(3) The transfer of an office under subsection (1) or (2) does not affect the identity of that office or anything done in relation to the office before the transfer.

(4) Without limiting the operation of subsection (3)—

- (a) where immediately before its transfer, an office was occupied by a person—the office continues to be occupied by the person; and
- (b) where immediately before its transfer, an office was a part-time office—the office continues to be a part-time office.

(5) A person occupying an office that has been transferred to an administrative unit under subsection (1) or (2) shall be taken to have been transferred to the administrative unit.

(6) Where immediately before the transfer of an office to an administrative unit (in this subsection called the “gaining area”)—

- (a) the office was vacant;
- (b) a person had been selected to fill the office following action taken for that purpose in accordance with this Act and the management standards and notification in writing of his or her selection had been forwarded to the person; and
- (c) the remaining steps necessary to fill the office in accordance with this Act and the management standards had not been taken;

those steps shall be taken in the gaining area.

(7) Where immediately before the transfer of an office from one administrative unit (in this subsection called the “losing area”) to another administrative unit (in this subsection called the “gaining area”)—

- (a) the office was vacant; and

- (b) steps had been taken in the losing area to fill the office in accordance with this Act and the management standards but no notification of the selection of a person had been forwarded;

the remaining steps necessary to fill the office in accordance with this Act and the management standards may be taken in the gaining area.

(8) Subsection (7) does not impose an obligation on the gaining area, or on an officer in the gaining area, to take the remaining steps necessary to fill the office.

(9) An instrument under subsection (1) which is expressed to transfer an office on the abolition of an administrative unit may be made before the abolition takes effect.

### **Machinery of government changes—employees**

**16. (1)** Where—

- (a) an administrative unit is abolished; or
- (b) by virtue of administrative arrangements approved by the Chief Minister, a matter that was the responsibility of an administrative unit (in this section called the “losing area”) immediately before those arrangements took effect becomes the responsibility of another administrative unit (in this section called the “gaining area”);

subsection (2) has effect.

(2) The Commissioner may direct in writing that—

- (a) where paragraph (1) (a) applies—an employee who was employed in the administrative unit immediately before the abolition is to be employed in another administrative unit; or
- (b) where paragraph (1) (b) applies—an employee who was employed in the losing area immediately before the arrangements took effect is to be employed in the gaining area;

and, if such a direction is given, an employee shall be taken as from that time to be employed as so directed, in the same capacity and subject to the same conditions as were applicable immediately before that time.

(3) Without limiting the generality of subsection (2), that subsection does not extend the term of employment of a person beyond the time at which it

would have expired if the employment had not been affected by a direction under that subsection.

(4) An instrument made for the purposes of subsection (2) may be made before the abolition takes effect.

## **PART III—MANAGEMENT OF THE SERVICE**

### *Division 1—Preliminary*

#### **Interpretation**

17. In this Part, unless the contrary intention appears—  
“officer” includes an employee.

### *Division 2—Role of the Commissioner*

#### **Appointment of Commissioner for Public Administration**

18. (1) The Chief Minister may, by writing, appoint a person to be Commissioner for Public Administration.

(2) The Chief Minister shall notify an appointment under subsection (1) in the Gazette.

#### **Acting appointment**

19. (1) The Chief Minister may appoint a person to act in the office of Commissioner.

(2) Section 65 does not apply in relation to an appointment under this section.

#### **General functions**

20. (1) The Commissioner shall—

- (a) advise the Chief Minister on the management of the Service as a whole;
- (b) implement administrative rearrangements at the direction of the Chief Minister; and
- (c) perform any other functions conferred on the Commissioner by this Act or any other law.

(2) The Commissioner may exercise the powers of any person on whom Chief Executive powers have been conferred other than the chief executive officer of an autonomous instrumentality.

**Review of government agencies or functions**

21. (1) In this section, a reference to the Service shall be taken to include a reference to a government agency but does not include an autonomous instrumentality.

(2) Subject to subsection (3), the Commissioner, with the approval of the Chief Minister, may authorise management reviews to be undertaken in relation to—

- (a) the Service or a part of the Service;
- (b) the functions of the Service or a part of the Service; or
- (c) the possible variation of the functions referred to in paragraph (b) including the addition of functions to the Service or a part of the Service.

(3) Where a proposed review would relate to the staff required to assist the Clerk of the Legislative Assembly, the Commissioner shall consult with the Speaker before the review is undertaken.

(4) The Commissioner shall notify the relevant Chief Executive in writing before the commencement of the review.

(5) On completion of the review, the Commissioner may make recommendations to the relevant Chief Executive on the action that should be taken, or could be taken, to give effect to any proposals arising from that review.

(6) If the relevant Chief Executive disagrees with the recommendations or does not within a reasonable time take action to implement them, the Chief Executive shall—

- (a) notify the relevant Minister and the Chief Minister of his or her reasons for disagreeing with the recommendations or not taking action to implement them; and
- (b) provide a copy of those reasons to the Commissioner.

(7) The Commissioner shall, from time to time, report to the Chief Minister on the operation of this section.

### **Investigative powers**

**22. (1)** The Commissioner may, for the purpose of carrying out his or her functions—

- (a) conduct inspections of, or inquiries or investigations into the operations of, government agencies and for that purpose may—
  - (i) summon any person whose evidence appears to be material;
  - (ii) take evidence on oath; and
  - (iii) require the production of documents; and
- (b) enter premises occupied by a government agency at any time.

**(2)** An officer shall not, without reasonable excuse, neglect or fail to attend in obedience to a summons, or to be sworn, or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(3)** A person, other than an officer, shall not, after payment or tender of reasonable expenses, neglect or fail, without reasonable excuse, to attend in obedience to a summons, or to be sworn, or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(4)** Nothing in this section shall be construed as compelling a person to answer any question which would tend to incriminate the person.

### **Records of members**

**23. (1)** The Commissioner shall cause to be kept a record of each member of the Service, showing—

- (a) the date of birth of the member;
- (b) in the case of each officer—
  - (i) the date on which the officer was appointed to the Service; and
  - (ii) the classification of the officer; and
- (c) in the case of each employee—the date on which the employee was engaged.

(2) Where, under this Act, a period of service of a person otherwise than in the Service is to be reckoned as employment in the Service, the record shall show, in relation to that person, the date on which that period of service commenced and concluded.

(3) In the application of this section to an officer, or employee, of an autonomous instrumentality, the reference to the Commissioner shall be read as a reference to the chief executive officer of the instrumentality.

***Division 3—Exercise of Chief Executive Powers in relation to certain public employees***

**Powers of chief executive officers of certain Territory instrumentalities**

**24.** (1) Where an Act provides that the staff of a Territory instrumentality shall be employed under this Act, the chief executive officer of the instrumentality has all the powers of a Chief Executive in relation to that staff as if—

- (a) the instrumentality were an administrative unit under the control of the chief executive officer; and
- (b) the staff were employed in an administrative unit.

(2) For the purpose of the administration of the Service in relation to a Territory instrumentality referred to in subsection (1), references in this Act to an administrative unit shall be read as including a reference to such an instrumentality.

**Powers of certain statutory office holders**

**25.** (1) Where an Act provides that the staff assisting a statutory office holder shall be employed under this Act, the Chief Minister may, by writing, declare that the office holder has all the powers of a Chief Executive in relation to that staff as if that staff was employed in an administrative unit under the control of the office holder.

(2) A declaration under subsection (1) has effect subject to the Act under which the statutory office holder holds his or her office.

(3) For the purpose of the administration of the Service in relation to a statutory office holder referred to in subsection (1) and the staff assisting the office holder, references in this Act to an administrative unit shall be read as including a reference to that office holder and that staff.

**Powers relating to certain staff providing services for Calvary Hospital**

**26. (1)** Where an agreement is in force between the Territory and Calvary Hospital for staff at the hospital to be employed under this Act, the following provisions apply.

**(2)** The Chief Executive Officer, Calvary Hospital has all the powers of a Chief Executive in relation to the officers employed in the branch of the Service that provides services required to enable Calvary Hospital to perform its public hospital functions as if those officers were employed in an administrative unit under the control of the Chief Executive Officer.

**(3)** For the purpose of the administration of the Service in relation to the branch referred to in subsection (2), references in this Act to an administrative unit shall be read as including a reference to that branch.

**(4)** In this section—

“Calvary Hospital” means the body known as Calvary Hospital A.C.T. Incorporated;

“Chief Executive Officer, Calvary Hospital” means the person for the time being—

- (a) holding or performing the duties of a Senior Executive Service office; and
- (b) holding the position of Chief Executive Officer under the rules of Calvary Hospital.

***Division 4—Chief Executives***

**Office of Chief Executive**

**27.** The Chief Minister may, by writing, create or abolish an office of Chief Executive in an administrative unit.

**Appointment**

**28. (1)** The Chief Minister may, by writing, appoint a person to an office of Chief Executive.

**(2)** The Chief Minister shall notify an appointment under subsection (1) in the Gazette.

**(3)** Subsections 65 (1), (3) and (4) do not apply in relation to an appointment under this section.

### **Responsibilities**

**29. (1)** A Chief Executive, other than a Chief Executive assigned under subsection (2), shall, in relation to each administrative unit under his or her control—

- (a) be responsible, under the relevant Minister, for its administration and its business;
- (b) advise that Minister on all matters relating to the unit; and
- (c) have regard to the interests of the Government and the Service as a whole.

**(2)** The Chief Minister may assign a Chief Executive (including an unattached Chief Executive) to special duties on behalf of the Territory.

### **Transfer**

**30. (1)** The Chief Minister may—

- (a) transfer a Chief Executive from one office of Chief Executive to another; or
- (b) place an unattached Chief Executive in an office of Chief Executive.

**(2)** Section 65 does not apply in relation to a transfer under this section.

### **Effects of defects or irregularities**

**31.** The appointment or transfer of a person to an office of Chief Executive, or the placement of an unattached Chief Executive in an office of Chief Executive, is not invalid, and shall not be called into question, by reason only of a defect or irregularity in connection with the appointment, transfer or placement.

### **Acting appointment**

**32. (1)** The Chief Minister may appoint a person to act in an office of Chief Executive.

**(2)** Subsections 65 (1), (3) and (4) do not apply in relation to an appointment under this section.

### **Part-time offices**

**33. (1)** The Chief Minister may, with the consent of the holder (if any) of an office of Chief Executive, by writing—



- (a) declare the office to be a part-time office; and
- (b) specify the terms and conditions on which the office is to be held as a part-time office.

(2) An instrument under subsection (1) shall not be varied, amended or revoked without the consent of the person holding the office.

### **Dual appointment of Chief Executives**

**34. (1)** In this section—

“second office”, in relation to a person who holds, or holds an appointment to act in, an office of Chief Executive, means a further office of Chief Executive;

“substantive office” means an office of Chief Executive.

(2) Where a person who holds a substantive office is appointed to hold a second office, the person shall, unless the instrument of appointment to the second office otherwise provides, continue to hold the substantive office upon being so appointed.

(3) A person who at any time holds a substantive office may be appointed to act in a second office and shall not, by reason only of being so appointed, cease to hold the substantive office.

(4) Where a person who holds an appointment to act in a substantive office is appointed to act in a second office, the person shall, unless the instrument of appointment to act in the second office otherwise provides, continue to act in the substantive office upon being so appointed.

(5) If—

- (a) a person who holds, or holds an appointment to act in, a substantive office is appointed under subsection (2), (3) or (4) to hold, or to act in, a second office; and
- (b) the person does not cease to hold, or to hold the appointment to act in, the substantive office;

the person shall be paid remuneration, whether by way of salary, annual allowance or otherwise, in respect of his or her holding, or holding the appointment to act in, the second office in accordance with subsection (6).

*Public Sector Management Act 1994*

(6) For the purposes of subsection (5), the person shall be paid remuneration in respect of—

- (a) except where paragraph (b) applies—only 1 of those offices; or
- (b) if the remuneration payable in respect of 1 or more of those offices is higher than the remuneration payable in respect of the other office or other offices—the office or 1 of the offices in respect of which that higher remuneration is payable.

(7) This section has effect notwithstanding anything contained in any other section of this Act.

**Remunerative employment outside the Service**

35. A Chief Executive shall not, except in accordance with the written approval of the Chief Minister, accept or engage in any remunerative employment other than in connection with the performance of his or her duties in the Service.

*Division 5—Powers of delegation*

**Delegation by Commissioner or Chief Executives**

36. (1) In this section—

“public sector officer” means—

- (a) an officer or employee;
- (b) a statutory office holder; or
- (c) a person performing a function on behalf of the Territory otherwise than as—
  - (i) an officer or employee; or
  - (ii) a statutory office holder.

(2) Subject to subsections (3) and (5), the Commissioner may—

- (a) delegate to a public sector officer all or any of his or her powers under this Act or under any other law; or
- (b) sub-delegate to a public sector officer all or any of the powers delegated to him or her under a law other than this Act.

*Public Sector Management Act 1994*

(3) Subsection (2) does not extend to powers exercisable by the Commissioner under subsection 20 (2).

(4) Subject to subsection (5), a Chief Executive may—

- (a) delegate to a public sector officer all or any of his or her powers under this Act or under any other law; or
- (b) sub-delegate to a public sector officer all or any of the powers delegated to him or her under a law other than this Act.

(5) A power shall not be delegated or sub-delegated under subsection (2) or (4) to a person performing a function on behalf of the Territory unless the Commissioner or Chief Executive, as the case may be, considers that the tasks to be undertaken by the person require the exercise of that power.

(6) If the Commissioner has delegated or sub-delegated a power under subsection (2) or a Chief Executive has delegated or sub-delegated a power under subsection (4), the Commissioner or the Chief Executive, as the case may be, may give directions to the delegate or sub-delegate with respect to the exercise of the power.

(7) If—

- (a) the Commissioner gives a delegation or sub-delegation under subsection (2) or a Chief Executive gives a delegation or sub-delegation under subsection (4); and
- (b) the delegation or sub-delegation is expressed to be given to persons each of whom occupies or performs the duties of an office of a kind described in the delegation or sub-delegation;

the delegation or sub-delegation extends to any person who occupies, or performs the duties of, an office of a kind described in the delegation or sub-delegation, even though the office does not come into existence until after the delegation or sub-delegation is given.

**Delegation by autonomous instrumentality**

**37.** An autonomous instrumentality may delegate to its chief executive officer all or any of its powers under this Act.

***Division 6—Constitution and role of the Senior Executive Service***

**The Senior Executive Service**

**38. (1)** The officers in the Service who are Senior Executive Service officers constitute the Senior Executive Service.

**(2)** The Senior Executive Service is established in order to provide for a group of officers who—

- (a)** may undertake higher level policy advice, managerial and professional responsibilities in administrative units; and
- (b)** may be deployed by the Commissioner within the Service so as best to promote the values and principles of the Service.

***Division 7—Whole of government management responsibilities***

**Interpretation**

**39.** In this Division, unless the contrary intention appears—

“access and equity principle” means the principle mentioned in paragraph 7 (f);

“access and equity program” means a program to promote the access and equity principle;

“designated group” means any of the following classes of persons:

- (a)** Aboriginal persons, being persons who are descended from, identify as, and are accepted by an Aboriginal community as, Aboriginal persons;
- (b)** Torres Strait Islanders, being persons who are descendants of an indigenous inhabitant of the Torres Strait Islands;
- (c)** persons who have migrated to Australia and whose first language is a language other than English, and the children of such persons;
- (d)** persons who have an impairment within the meaning of the *Discrimination Act 1991*;

“discrimination” means discrimination that is unlawful under the *Discrimination Act 1991*;

“employment matters” means—

*Public Sector Management Act 1994*

- (a) the selection of persons for appointment as officers, or for employment as employees, in the Service;
- (b) the promotion and transfer of officers to offices in the Service;
- (c) training and staff development for officers and employees in the Service;
- (d) terms or conditions of service of officers and employees in the Service; and
- (e) any other matter related to the employment of officers and employees in the Service;

“equal employment opportunity program” means a program designed to ensure that—

- (a) appropriate action is taken to eliminate discrimination against women and persons in designated groups in relation to employment matters in the Service; and
- (b) measures are taken to enable women and persons in designated groups to—
  - (i) compete for promotion and transfer in the Service; and
  - (ii) pursue careers in the Service;as effectively as other persons;

“industrial democracy program” means a program designed to achieve appropriate participation by officers in the decision-making processes relating to the administration of the government agencies in which they work.

**Equal employment opportunity programs**

**40. (1)** As soon as practicable, and in any event, within 12 months after the commencement of this section, the Commissioner shall—

- (a) after giving relevant staff organisations and such other persons as the Commissioner considers appropriate an opportunity to put their views, cause to be developed an equal employment opportunity program for the Service;
- (b) cause to be prepared a statement in writing setting out the program so developed; and

- (c) give a copy of the statement to the Chief Minister.

(2) The management standards may provide for an equal opportunity program for the Service to implement a statement provided to the Chief Minister under subsection (1).

### **Access and equity programs**

**41. (1)** As soon as practicable, and in any event, within 12 months after the commencement of this section, the Commissioner shall—

- (a) after giving relevant staff organisations and such other persons as the Commissioner considers appropriate an opportunity to put their views, cause to be developed an access and equity program for the Service;
- (b) cause to be prepared a statement in writing setting out the program so developed; and
- (c) give a copy of the statement to the Chief Minister.

(2) The management standards may provide for an access and equity program for the Service to implement a statement provided to the Chief Minister under subsection (1).

### **Industrial democracy programs**

**42. (1)** As soon as practicable, and in any event, within 12 months after the commencement of this section, the Commissioner shall—

- (a) in consultation with the Joint Council, relevant staff organisations and with such other persons as the Commissioner considers appropriate, cause to be developed an industrial democracy program for the Service;
- (b) cause to be prepared a statement in writing setting out the program so developed; and
- (c) give a copy of the statement to the Chief Minister.

(2) The management standards may provide for an industrial democracy program for the Service to implement a statement provided to the Chief Minister under subsection (1).

**Application of subsections 40 (1), 41 (1) and 42 (1) to autonomous instrumentalities**

**43.** In the application of subsections 40 (1), 41 (1) and 42 (1) to an officer, or employee, of an autonomous instrumentality—

- (a) the reference to the Commissioner shall be taken to be a reference to the instrumentality;
- (b) the reference to the Service shall be taken to be a reference to the staff of the instrumentality; and
- (c) the reference to the Chief Minister shall be taken to be a reference to the Chief Minister and the relevant Minister.

**Joint Council**

**44. (1)** The management standards shall provide for the establishment of a joint union-management consultative forum to be known as the Joint Council.

**(2)** The Joint Council shall be representative of the Commissioner, government agencies and relevant staff organisations.

**(3)** The Joint Council shall be constituted in such manner as is prescribed.

**(4)** The Joint Council shall have such functions in relation to the Service as are prescribed.

***Division 8—Clerk of the Legislative Assembly***

**Interpretation**

**45.** In this Division, unless the contrary intention appears—

“Clerk” means the Clerk of the Legislative Assembly;

“Speaker” means the Presiding Officer elected under section 11 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

**Office**

**46. (1)** There shall be an office of Clerk of the Legislative Assembly.

**(2)** The office of Clerk is an office to which section 73 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth applies.

(3) The Clerk shall be appointed by the Executive on the advice of the appropriate Standing Committee of the Legislative Assembly and the appointment of the Clerk shall be exercised in accordance with the merit principles laid down in section 65 insofar as they relate to an appointment.

(4) The Clerk is not subject to direction by the Executive in relation to the performance of his or her duties.

### **Leave of absence**

47. (1) The Speaker may grant leave of absence to the Clerk on such terms and conditions as are prescribed.

(2) Management standards for the purposes of subsection (1), shall not provide for the remuneration or allowances payable to the Clerk in respect of his or her leave of absence.

### **Disclosure of interests**

48. The Clerk shall give notice in writing to the Speaker of all direct or indirect pecuniary interests that he or she has or acquires—

- (a) in a business, whether in the Territory or elsewhere; or
- (b) in a body corporate carrying on such a business.

### **Resignation**

49. (1) The Clerk may resign from office by signed notice given to the Speaker.

(2) The Speaker shall forward to the Executive a copy of a notice received under subsection (1).

### **Suspension and removal from office**

50. (1) The Executive shall remove the Clerk from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Assembly.

(2) The Executive, on the advice of the Speaker, may suspend the Clerk from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Executive suspends the Clerk from office, the Speaker shall cause a statement of the grounds of the suspension to be laid before the Assembly on the first sitting day after the suspension.



(4) Where a statement has been laid before the Assembly under subsection (3), the Assembly may, within 3 sitting days after the day on which the statement has been laid before it, by resolution, declare that the Clerk should be removed from office and, if the Assembly so passes such a resolution, the Executive shall remove the Clerk from office.

(5) If within 3 sitting days of the Assembly after the day on which the statement is laid before it, the Assembly—

- (a) by resolution declares that the Clerk should not be removed from office; or
- (b) rejects a motion for a resolution to declare that the Clerk should be removed from office;

the suspension terminates.

(6) If, at the end of 3 sitting days of the Assembly after the day on which the statement has been laid before it, the Assembly has not passed a resolution declaring that the Clerk should be removed from office, the suspension terminates.

(7) If the Clerk is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any period of 12 months, the Executive, on the advice of the Speaker, may remove the Clerk from office.

(8) The Clerk shall not be removed or suspended from office except as provided by this section.

(9) The suspension of the Clerk from office does not affect any entitlement of the Clerk to be paid remuneration and allowances.

### **Retirement**

**51. (1)** The Executive may, on the advice of the Speaker, retire the Clerk on the ground of physical or mental incapacity.

(2) Notwithstanding anything contained in this section, where the Clerk—

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

the Clerk is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth

*Public Sector Management Act 1994*

Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

- (3) Notwithstanding anything contained in this section, where the Clerk—
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and
  - (b) is under 60 years of age;

the Clerk is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

(4) A person who holds the office of Clerk shall, by force of this subsection, be retired from that office upon attaining the age of 65 years.

(5) Subsection (4) ceases to have effect on the expiration of 4 March 1996.

**Terms and conditions generally**

52. (1) The Clerk holds office on such terms and conditions (if any) in relation to matters not provided for by this Division as are prescribed.

(2) Management standards for the purposes of subsection (1), shall not provide for the remuneration or allowances payable to the Clerk.

**Acting appointment**

53. The Speaker may appoint the person for the time being holding the office of Deputy Clerk to act in the office of Clerk.

**Staff**

54. (1) The staff required to assist the Clerk in the exercise of the Clerk's powers, and the performance of the Clerk's functions, shall be persons employed under this Act.

(2) The Clerk has all the powers of a Chief Executive in relation to the staff assisting him or her as if the staff were employed in an administrative unit under the control of the office holder.

**PART IV—CREATION, CLASSIFICATION AND ABOLITION OF OFFICES IN THE SERVICE**

*Division 1—Creation and abolition of offices*

**Creation and abolition of offices**

**55. (1)** The Chief Executive of an administrative unit, for the purpose of enabling the administrative unit to perform its functions, may, in writing—

- (a) create an office in the administrative unit; or
- (b) abolish an office in the administrative unit.

**(2)** An instrument under subsection (1) creating an office shall specify the classification of the office, being a classification that is an approved classification under subsection 56 (1).

**Classification of offices and officers**

**56. (1)** A classification is an approved classification for the purposes of this Act only if—

- (a) a management standard is in force that specifies the salary payable in respect of offices having that classification; or
- (b) in a case to which paragraph (a) does not apply—the Commissioner declares, in writing, that the classification is an approved classification for the purposes of this subsection.

**(2)** Where the rate of salary, or the maximum rate of salary, as the case requires, payable in respect of 2 offices is the same, the classifications of the 2 offices shall be taken to be equal.

**(3)** Where the rate of salary, or the maximum rate of salary, as the case requires, payable in respect of an office is greater than the rate of salary, or the maximum rate of salary, as the case requires, payable in respect of another office, the classification of the first-mentioned office shall be taken to be higher than the classification of the second-mentioned office.

**(4)** Subject to subsection 127 (2), an unattached officer who held an office immediately before becoming an unattached officer shall, until he or she ceases to be an unattached officer, have a classification corresponding to the classification of that office.

(5) Nothing in subsection (1) shall be taken as limiting in any way the provision that may be made by an industrial award to vary the salary applicable in relation to an office or an officer.

(6) In the application of this section to an officer in an autonomous instrumentality, the reference to the Commissioner shall be read as a reference to the chief executive officer of the instrumentality.

### **Senior Executive Service classifications**

57. (1) The Commissioner may, in writing—

- (a) declare a classification to be a Senior Executive Service classification; or
- (b) declare all classifications included in a specified class of classifications to be Senior Executive Service classifications.

(2) The power of the Commissioner under subsection (1) shall, in relation to the classification of offices in the Office of the Director of Public Prosecutions, be exercised by the Director of Public Prosecutions.

### **Re-classification of offices**

58. (1) Subject to the management standards, the Chief Executive of an administrative unit may, in writing, alter the classification of an office in the administrative unit to the classification specified in the instrument, being a classification that is an approved classification under subsection 56 (1).

(2) Subject to subsection 59 (2), the Commissioner may, by notice in writing to the Chief Executive of an administrative unit, direct the Chief Executive to alter the classification of an office, or a class of offices, in the administrative unit to a classification specified in the notice, being a classification that is an approved classification under subsection 56 (1).

(3) Subject to subsection (4), where—

- (a) the classification of an office is altered; and
- (b) the rate of salary, or the maximum rate of salary, payable in respect of the office immediately after the alteration is different from the rate of salary, or the maximum rate of salary, payable in respect of the office immediately before the alteration;

the office becomes vacant and the officer who held the office immediately before the alteration becomes an unattached officer.

(4) The Commissioner may, in writing, direct that subsection (3) shall not apply in relation to alterations of the classification of offices included in a specified class of alterations of the classification of offices.

**Application of subsection 58 (2) to Office of the Director of Public Prosecutions**

59. The Commissioner shall not give a direction under subsection 58 (2) in relation to an office in the Office of the Director of Public Prosecutions.

*Division 2—Part-time offices*

**Part-time offices**

60. (1) The Chief Executive of an administrative unit may, with the consent of the officer holding an office in an administrative unit, by writing, declare the office to be a part-time office.

(2) A declaration under subsection (1) in relation to an office shall not be varied, amended or revoked without the consent of the officer holding the office.

(3) The management standards may prescribe conditions to be complied with before—

- (a) a declaration may be made in respect of an office under subsection (1); or
- (b) a declaration under subsection (1) may be varied, amended or revoked.

**Hours of attendance of part-time officers**

61. (1) A declaration under subsection 60 (1) in relation to an office shall specify, subject to subsection (2), the hours of attendance that are to be applicable to the officer who occupies the office.

(2) A declaration under subsection 60 (1) in relation to an office shall not specify hours of attendance that are greater than maximum hours of attendance, or less than minimum hours of attendance, prescribed for the purposes of this subsection in relation to that office or in relation to a class of offices in which that office is included.

(3) The management standards shall not prescribe hours of attendance in relation to an office that are greater than the hours of attendance that would be

applicable to the office if a declaration under subsection 60 (1) were not made in relation to the office.

(4) Subject to subsection (2), the hours of attendance applicable to an officer who holds an office in relation to which there is in force a declaration under subsection 60 (1) shall, notwithstanding anything in the management standards, be the hours of attendance specified in the declaration.

### **Hours of attendance of certain unattached officers**

**62. (1)** Subject to subsection (4), where an officer—

- (a) becomes an unattached officer; and
- (b) immediately before becoming an unattached officer, held a part-time office;

the hours of attendance applicable to the unattached officer shall, until he or she ceases to be an unattached officer, be the hours of attendance applicable to the officer immediately before he or she became an unattached officer.

(2) Subject to subsection (4), where—

- (a) a person who had previously ceased to be an officer is re-appointed to the Service as an unattached officer pursuant to section 192 or 193; and
- (b) the person, immediately before he or she ceased, or last ceased, to be an officer—
  - (i) held a part-time office; or
  - (ii) was an unattached officer to whom subsection (1) applied;

the hours of attendance applicable to the person shall, until he or she ceases to be an unattached officer, be the hours of attendance applicable to him or her immediately before he or she ceased, or last ceased, to be an officer.

(3) Subject to subsection (4), where—

- (a) a person is appointed under section 68, or re-appointed under section 118, to the Service as an unattached officer; and
- (b) the relevant Chief Executive is satisfied that the person will, when he or she ceases to be an unattached officer, be appointed to a part-time office;

the relevant Chief Executive may declare, in writing, that the hours of attendance that are applicable to the officer shall, until he or she ceases to be an unattached officer, be those specified in the declaration.

(4) Where the hours of attendance applicable to a person are ascertained in accordance with subsection (1), (2) or (3) or a previous application of this subsection, the relevant Chief Executive may, with the consent of the person, determine, in writing, that the hours of attendance applicable to the person are those specified in the determination and, where such a determination is made, the hours of attendance that are applicable to the person shall, until he or she ceases to be an unattached officer, be those specified in the determination.

(5) A declaration under subsection (3) or a determination under subsection (4) shall not specify hours of attendance that are inconsistent with the requirements of the management standards.

## **PART V—EMPLOYMENT IN THE SERVICE**

### *Division 1—Preliminary*

#### **Interpretation**

**63. (1)** In this Division—

“employment matters” means—

- (a) the selection of persons for appointment as officers, or for employment as employees, in the Service;
- (b) the transfer or promotion of officers to offices in the Service; and
- (c) any other prescribed matters related to the employment of officers or employees in the Service.

(2) In this Part, unless the contrary intention appears, a reference to a vacant office includes a reference to an office that is expected to become vacant and a reference to a vacancy includes a reference to a vacancy that is expected to occur.

(3) In this Part, a reference to the determination of an appeal against the promotion of an officer is a reference to the allowing or disallowing of the appeal under section 85.

*Public Sector Management Act 1994*

(4) For the purposes of this Part, an appeal shall be taken to become inoperative if—

- (a) the appeal is withdrawn;
- (b) the appeal lapses by virtue of section 92 or 93;
- (c) the appellant or the officer against whose promotion the appeal was made ceases to be an officer;
- (d) the appellant or the officer against whose promotion the appeal was made ceases, by reason of his or her promotion to another office having taken effect or for any other reason, to be eligible for promotion to the office concerned; or
- (e) the promotion against which the appeal was made lapses under management standards made for the purposes of section 91.

**Application**

64. (1) Unless the contrary intention appears, the provisions of this Part apply, subject to subsection (2), in relation to the Office of the Director of Public Prosecutions as if a reference in those provisions to the Commissioner were a reference to the Director of Public Prosecutions.

(2) Sections 73 and 74 do not apply in relation to the Office of the Director of Public Prosecutions.

***Division 2—Personnel management***

**Application of merit principle**

65. (1) Powers under this Act in relation to employment matters shall be exercised in accordance with procedures designed to ensure that in each case where—

- (a) an appointment;
- (b) a temporary transfer to an office of a higher classification for a period of not less than 3 months; or
- (c) a promotion;

is to be made—

- (d) all persons who are eligible for the relevant appointment, transfer or promotion have, so far as is practicable, a reasonable opportunity to apply; and



*Public Sector Management Act 1994*

- (e) the selection of a person for the relevant appointment, transfer or promotion is made on the basis of an assessment of the relative efficiency of the several applicants, having regard to—
  - (i) the nature of the duties to be performed; and
  - (ii) the abilities, qualifications, experience, personal qualities and potential for development of the several applicants that are relevant to the performance of the relevant duties, as the case may be.

(2) Without limiting the generality of subsection (1), the powers under this Act shall be exercised—

- (a) without patronage or favouritism; and
- (b) without discrimination that is unlawful under the *Discrimination Act 1991*.

(3) For the purposes of paragraph (2) (b), an appointment, promotion or transfer that is in accordance with a program to encourage the appointment to, or the promotion or transfer within, the Service of women or persons in a designated group, being a program that is declared by the management standards to be an approved program for the purposes of this subsection, shall be taken to be not unlawful under the *Discrimination Act 1991*.

(4) In this section—

“designated group” has the same meaning as in section 39.

**Notification of certain matters related to appointment, transfer or promotion**

66. The Commissioner shall cause notice of—

- (a) the appointment, transfer or promotion of an officer in the Service; or
- (b) the retirement or dismissal of an officer from the Service;

to be published in the Gazette.

***Division 3—Appointment of officers other than Chief Executives***

**Employment in the Service**

67. A person may be employed in the Service in accordance with this Act—

- (a) by appointment to an office or as an unattached officer; or
- (b) by engagement for temporary employment in accordance with Division 7.

**Appointments—generally**

**68. (1)** Subject to subsection (2), the appointment of a person to the Service shall be made—

- (a) in the case of an appointment, other than an appointment in the Office of the Director of Public Prosecutions, as a Senior Executive Service officer or as an unattached Senior Executive Service officer, being an appointment that has been endorsed by an Executive Staffing Committee in accordance with section 74—by the Commissioner;
- (b) in the case of an appointment as a Senior Executive Service officer or as an unattached Senior Executive Service officer in the Office of the Director of Public Prosecutions, being an appointment in respect of which the Commissioner has been consulted in accordance with section 75—by the Director of Public Prosecutions; or
- (c) in any other case—by the relevant Chief Executive.

**(2)** A person shall not be appointed to the Service unless—

- (a) he or she has been selected for appointment in accordance with the provisions of this Act and the management standards;
- (b) the person is an Australian citizen or a permanent resident of Australia; and
- (c) the Commissioner, or the Chief Executive making the appointment, as the case may be, has certified in writing that after due inquiry he or she is satisfied that the person is a fit and proper person to be so appointed having regard to—
  - (i) verification of the person’s identity;
  - (ii) whether the person has any prior criminal convictions;
  - (iii) the previous employment record of the person;
  - (iv) the need for suitable references in support of the person’s application for appointment; and

- (v) verification of the person's educational qualifications required for the appointment.

**Classification of unattached officers**

**69.** A person shall not be appointed as an unattached officer under subsection 68 (1) unless the Commissioner or the Chief Executive making the appointment—

- (a) determines the classification of the person as an unattached officer having regard to the duties to be performed by the officer; and
- (b) the person is qualified for appointment to an office having a classification corresponding to his or her classification as an unattached officer.

**Appointments to be on probation**

**70. (1)** Subject to subsection (2), the appointment of a person to the Service as an officer, other than as a Chief Executive, shall in the first instance be an appointment on probation.

**(2)** Where the Commissioner, or the relevant Chief Executive, is satisfied that—

- (a) a person selected for appointment has passed a medical examination to determine the person's standard of health and fitness; or
- (b) it is unnecessary, in the circumstances, to require the person to undergo a medical examination;

the appointment of the person may be made without probation if—

- (c) the Commissioner, or the relevant Chief Executive, as the case may be, is satisfied that the person merits appointment without probation and that such appointment would be in the public interest;
- (d) the person was engaged in prescribed employment and had been so engaged for a period of not less than 12 months immediately preceding the date of his or her appointment; or
- (e) the appointment of the person without probation is otherwise permitted under this Act.

**(3)** Subject to subsection (8), the appointment of an officer on probation may be confirmed—

*Public Sector Management Act 1994*

- (a) by the Commissioner at any time within the period of 6 months after the date of the appointment; and
- (b) in the case of an officer other than a Senior Executive Service officer—by the relevant Chief Executive at any time after the expiration of the period of 6 months after the date of the appointment.

(4) The appointment of an officer to the Service on probation may be terminated in accordance with subsection (9) by the Commissioner, or the relevant Chief Executive, as the case may be, at any time before the appointment has been confirmed.

(5) Where an officer was appointed on probation and at the expiration of the period of 12 months after the date of the appointment on probation, the appointment has been neither confirmed nor terminated—

- (a) in the case of a Senior Executive Service officer—the Commissioner; and
- (b) in any other case—the relevant Chief Executive;

shall, as soon as practicable after the expiration of that period, either confirm the appointment or terminate the appointment in accordance with subsection (9).

(6) The appointment of an officer on probation shall not be terminated under subsection (4) or (5) unless the officer has been given not less than 14 days notice in writing of the date of termination of the appointment.

(7) If the appointment of an officer on probation has not been confirmed or terminated before the expiration of the period of 2 years after the date of the appointment, the appointment shall be taken to have been confirmed at the expiration of that period.

(8) Subject to subsections (7) and (11), the appointment of an officer shall not be confirmed, or be taken to be confirmed, under this section, unless the Commissioner, or the relevant Chief Executive, as the case may be, is satisfied that—

- (a) the person selected for appointment has undergone a medical examination to determine the person's standard of health and fitness; and
- (b) on the basis of the results of such examination, the standard of health and fitness of the officer is satisfactory.

*Public Sector Management Act 1994*

**(9)** The Commissioner or the relevant Chief Executive, as the case requires, shall not terminate the appointment of an officer under subsection (4) or (5) except upon the following grounds:

- (a) that he or she is not satisfied, after receiving a report from an authorised medical practitioner, as to the officer's health and fitness;
- (b) that he or she considers, after receiving a report from the officer's supervisor or another appropriate officer, that performance of the officer's duties has not been satisfactory;
- (c) that he or she considers that the officer is not a fit and proper person to remain an officer of the Service;
- (d) that he or she is satisfied that the officer is an excess officer.

**(10)** Unless otherwise determined by the Commissioner, an officer whose appointment has been terminated in accordance with this section is not eligible for re-appointment to the Service within the period of 12 months immediately following such termination.

**(11)** Subsection (8) does not apply in relation to confirmation of the appointment of an officer who is absent on specified defence service.

**(12)** In subsection (11)—

“specified defence service” means—

- (a) continuous full-time service in a part of forces that are—
  - (i) the Emergency Forces; or
  - (ii) the Reserve Forces;

within the meaning of the *Defence Act 1903* of the Commonwealth; or

- (b) service in a part of those Forces for such periods as are fixed by or in accordance with the regulations made under the *Defence Act 1903* of the Commonwealth, the *Naval Defence Act 1910* of the Commonwealth or the *Air Force Act 1923* of the Commonwealth;

but does not include service rendered by a member of a part of those Forces by virtue of a voluntary undertaking by him or her to render

continuous full-time service for a period for which he or she is not otherwise bound so to serve under any of those Acts.

**Appointments on probation—training offices and teaching offices**

**71. (1)** Section 70 applies in relation to an officer—

- (a) who is appointed to the Service on probation; and
- (b) who holds a prescribed training office;

as if—

- (c) the reference in paragraph 70 (3) (b) to the period of 6 months after the date of appointment were a reference to the period starting when the officer is appointed and ending when the officer completes the relevant course of training;
- (d) the reference in subsection 70 (5) to the period of 12 months after an officer is appointed on probation were a reference to the period starting when the officer is appointed and ending 6 months after the officer completes the relevant course of training; and
- (e) the reference in subsection 70 (7) to the period of 2 years after an officer is appointed on probation were a reference to the period starting when the officer is appointed and ending 12 months after the officer completes the relevant course of training.

**(2)** Section 70 applies in relation to an officer—

- (a) who is appointed to the Service on probation; and
- (b) who holds an office which the officer is not entitled to occupy unless he or she possesses prescribed teaching qualifications;

as if—

- (c) the reference in paragraph 70 (3) (b) to the period of 6 months after the date of appointment were a reference—
  - (i) in the case of a probation period of 12 months—to the period of 12 months after the date of appointment; and
  - (ii) in the case of a probation period of 12 months that has been extended by a further 12 months—to the period of 24 months after the date of appointment;

*Public Sector Management Act 1994*

- (d) the reference in subsection 70 (5) to the period of 12 months after an officer is appointed on probation were a reference—
  - (i) in the case of a probation period of 12 months—to the period of 18 months after the date of appointment of the officer; and
  - (ii) in the case of a probation period of 12 months that has been extended by a further 12 months—to the period of 2 years and 6 months after the date of appointment; and
- (e) the reference in subsection 70 (7) to the period of 2 years after the date of appointment on probation were a reference—
  - (i) in the case of a probation period of 12 months—to the period of 2 years and 6 months after the date of appointment; and
  - (ii) in the case of a probation period of 12 months that has been extended for a further period of 12 months—to the period of 3 years and 6 months after the date of the appointment.

***Division 4—Appointment, transfer and promotion of Senior Executive Service officers***

**Notification of vacancies in Senior Executive Service offices**

**72. (1)** Where a vacancy exists, or is expected to occur within the prescribed period, in a Senior Executive Service office in an administrative unit, the relevant Chief Executive shall—

- (a) notify the Commissioner of the vacancy; and
- (b) subject to subsection (3), ensure that the vacancy is filled in accordance with the requirements of this Act and the prescribed selection procedures.

**(2)** Where a vacancy exists, or is expected to occur within the prescribed period, in the office referred to in paragraph (a) of the definition of “Chief Executive Officer, Calvary Hospital” in subsection 26 (4), the Commissioner shall ensure that the vacancy is filled in accordance with the requirements of this Act and the prescribed selection procedures.

**(3)** Except where a vacancy in a Senior Executive Service office is to be filled by transferring an officer to the office in accordance with section 76, the Commissioner shall—

- (a) cause notification of the vacancy to be published in the Gazette; and

(b) arrange, as prescribed, for a recommendation for filling the vacancy.

(4) Where a vacancy in a Senior Executive Service office is notified in the Gazette in accordance with subsection (3)—

(a) any person (not being an officer) who is eligible for appointment to the Service as a Senior Executive Service officer may apply for appointment to the office; and

(b) any officer may apply for transfer or promotion to the office.

#### **Chief Executive to consider recommendation**

73. On receiving a recommendation for filling a vacancy in a Senior Executive Service office, the relevant Chief Executive shall, after considering the recommendation—

(a) accept the recommendation and cause it to be given to the Commissioner to be dealt with—

(i) in the case of a recommendation for filling the vacancy by appointment or promotion—in accordance with section 74; and

(ii) in the case of a recommendation for filling the vacancy by transfer—in accordance with section 76; or

(b) reject the recommendation.

#### **Executive Staffing Committee**

74. (1) Where the Commissioner receives a recommendation for filling a vacancy in a Senior Executive Service office by appointment or promotion, he or she shall arrange, as soon as practicable, for the establishment of an Executive Staffing Committee for the purpose of deciding whether to endorse the recommendation.

(2) Subject to subsection (3), an Executive Staffing Committee shall be constituted for the purpose of this section by—

(a) the Commissioner or an officer nominated by the Commissioner;

(b) the relevant Chief Executive or an officer nominated by that Chief Executive; and

(c) a person chosen by the Commissioner and the relevant Chief Executive from a list of persons whom they consider to be—



*Public Sector Management Act 1994*

- (i) independent of the administrative unit in which the vacancy exists or is expected to occur; and
- (ii) suitably qualified for membership of a Committee;

being a list of persons approved by the Chief Minister following consultation with the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to Senior Executive Service offices.

**(3)** Where the Commissioner receives a recommendation for filling a vacancy in the office referred to in subsection 72 (2) by appointment or promotion, the Executive Staffing Committee arranged under subsection (1) shall be constituted for the purpose of this section by—

- (a) the Commissioner or an officer nominated by the Commissioner;
- (b) a person nominated by Calvary Hospital A.C.T. Incorporated; and
- (c) the Chief Executive of the administrative unit known as the Chief Minister's Department or an officer nominated by that Chief Executive.

**(4)** The Chairperson of an Executive Staffing Committee shall be—

- (a) in the case of a committee referred to in subsection (2) that is to consider a recommendation for filling a vacancy in the administrative unit to which responsibility for the administration of this Part is allocated under section 14—the member of the committee referred to in paragraph (2) (c);
- (b) in the case of a committee referred to in subsection (2) that is to consider any other recommendation—the member of the committee referred to in paragraph (2) (a); or
- (c) in the case of a committee referred to in subsection (3)—the member referred to in paragraph (3) (a).

**(5)** Where an Executive Staffing Committee, either unanimously or by a majority of its members, endorses a recommendation for the appointment or promotion of a person to a Senior Executive Service office, the Commissioner shall give effect to the recommendation by appointing or promoting the person to that office, as the case requires.

(6) Where an Executive Staffing Committee does not, either unanimously or by a majority of its members, endorse a recommendation, the recommendation lapses.

### **Appointment or promotion of SES officers in Office of the Director of Public Prosecutions**

75. Where the Director of Public Prosecutions receives a recommendation for the appointment or promotion of a person to a Senior Executive Service Office in the Office of the Director of Public Prosecutions, the Director may, after consultation with the Commissioner, appoint or promote the person to fill that office.

### **Transfer of Senior Executive Service officers**

76. (1) The Commissioner may, subject to the management standards, transfer a Senior Executive Service officer in an administrative unit to a Senior Executive Service office in that unit or in another administrative unit.

(2) The Commissioner shall not transfer a Senior Executive Service officer under subsection (1) unless—

- (a) in the case of a transfer to a Senior Executive Service office in that unit—the relevant Chief Executive agrees to the transfer; or
- (b) in the case of a transfer to a Senior Executive Service office in another administrative unit—the Commissioner has consulted with each of the relevant Chief Executives in relation to the transfer.

(3) An officer who is transferred under subsection (1) shall be given notice in writing of the transfer.

### **Duties to be performed by Senior Executive Service officers**

77. (1) A Senior Executive Service officer of a particular classification in an administrative unit may—

- (a) be directed by the relevant Chief Executive—
  - (i) to perform the duties of any Senior Executive Service office of the same or equal classification in the administrative unit; or
  - (ii) to perform specified duties in the administrative unit, being duties that would be appropriate for a Senior Executive Service office of the same or equal classification; or
- (b) be directed by the Commissioner—

*Public Sector Management Act 1994*

- (i) to perform the duties of any Senior Executive Service office of the same or equal classification in another administrative unit; or
- (ii) to perform specified duties in another administrative unit, being duties that would be appropriate for a Senior Executive Service office of the same or equal classification.

(2) Where it is proposed to give a direction to an officer under subsection (1), the Commissioner or the relevant Chief Executive, as the case requires, shall have regard to—

- (a) the effect that the proposed direction would have on—
  - (i) the efficiency of the Service; and
  - (ii) the career development of the officer; and
- (b) the views of the officer in relation to the proposed direction.

(3) Where the Commissioner or the relevant Chief Executive proposes to give a direction under subsection (1) which would involve directing—

- (a) a Senior Executive Service officer, other than a Senior Executive Service (Specialist) officer, to perform the duties of a Senior Executive Service (Specialist) office or to perform specified duties, being duties that would be appropriate for a Senior Executive Service (Specialist) office of equal classification; or
- (b) a Senior Executive Service (Specialist) officer to perform the duties of a Senior Executive Service office, other than a Senior Executive Service (Specialist) office, or to perform specified duties, being duties that would be appropriate for a Senior Executive Service office, other than a Senior Executive Service (Specialist) office of equal classification;

the Commissioner or the relevant Chief Executive, as the case requires, may give the direction only if, in addition to having regard to the matters referred to in subsection (2), he or she is satisfied that the officer to be given the direction is capable of performing the duties of the office in which the officer is directed to act or the specified duties the officer is directed to perform, as the case may be.

(4) Where a Senior Executive Service officer in an administrative unit is directed by the Commissioner under subsection (1) to perform the duties of an

office in another administrative unit or to perform specified duties in another administrative unit—

- (a) the Chief Executive of the first-mentioned administrative unit ceases to have power to give a direction to the officer under subsection (1) until the officer resumes performing duties in that administrative unit; and
- (b) the Chief Executive of the second-mentioned administrative unit may give a direction to the officer under subsection (1) as if the officer were a Senior Executive Service officer in that administrative unit until the officer ceases to perform duties in that administrative unit.

(5) The Commissioner shall not direct a Senior Executive Service officer in an administrative unit to perform the duties of an office in another administrative unit or to perform specified duties in another administrative unit unless the Commissioner has consulted each of the relevant Chief Executives in relation to the proposed direction.

(6) Nothing in this section shall be taken to limit the operation of section 82.

(7) This section applies to an employee—

- (a) who is employed in an administrative unit; and
- (b) the agreement for whose employment specifies that he or she is employed to perform duties appropriate to an office having a specified Senior Executive Service classification;

as if the employee were a Senior Executive Service officer of that classification in the administrative unit.

### **Cancellation**

**78.** Before the appointment, transfer or promotion of an officer to a vacant Senior Executive Service office takes effect, the Commissioner may—

- (a) in the case of an appointment, a promotion or a transfer within an administrative unit—after consulting the relevant Chief Executive; or
- (b) in the case of a transfer of an officer from one administrative unit to another—after consulting each of the relevant Chief Executives;

cancel the relevant appointment, transfer or promotion.

**No appeals**

**79.** An appointment, promotion or transfer of an officer to a vacant Senior Executive Service office (including a cancellation in accordance with section 78) shall not be subject to appeal.

**Fixed-term appointments**

**80. (1)** Where a person is appointed to a Senior Executive Service office, the Commissioner may, by writing, determine that the person is appointed to hold the office for a specified period not exceeding 5 years and, where such a determination is made in relation to an appointment, the appointment is a fixed-term appointment for the purposes of this section.

**(2)** If—

- (a)** the period of a person's fixed-term appointment under subsection (1) is less than 5 years; and
- (b)** the relevant Chief Executive recommends to the Commissioner that the period of the appointment should be extended;

the Commissioner may, by written determination, extend the period of the appointment for a further period.

**(3)** An extension of the period of a fixed-term appointment under subsection (2) shall not be made before the end of the relevant appointment.

**(4)** The Commissioner shall not extend the period of a fixed-term appointment of a person so that the period as so extended ends later than 5 years after the appointment started.

**(5)** The Commissioner may, at the time of making a fixed-term appointment for the purposes of this section, determine that, subject to any specified conditions, if the person is taken to be retired from the Service in accordance with subsection (7) before the end of the period of the appointment, the person is entitled to such compensation as is specified in the determination.

**(6)** For the purposes of making a determination under subsection (5), the compensation and any conditions to be specified in the determination shall be in accordance with the requirements, if any, of the management standards.

**(7)** A fixed-term appointment of a Senior Executive Service officer terminates and the officer shall be taken to have retired, if—

- (a)** the period for which the appointment was made expires; or

- (b) the Commissioner, before expiration of the period for which the appointment was made, terminates the appointment by giving reasonable notice in writing to the officer concerned.

(8) The Commissioner shall not terminate an appointment under subsection (7) by reason only of the fact that the person has done, or omitted to do, an act or thing in respect of which a charge could be laid against the person under Part IX, or on the ground that a court has convicted the person of a criminal offence or found, without recording a conviction, that the person has committed such an offence.

(9) A person who is to be taken to have retired from the Service by virtue of subsection (7) is eligible for re-appointment to the Service.

(10) Division 2 of Part VI does not apply in relation to a Senior Executive Service officer appointed for a fixed-term.

### **Superannuation arrangements**

**81.** A person who is appointed for a fixed term to a Senior Executive Service office and who, for the purposes of that employment—

- (a) is not an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (b) is not a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth;

shall, by notice in writing to the Commissioner, nominate a superannuation fund that is an approved superannuation fund within the meaning of the *Superannuation (Productivity Benefit) Act 1988* of the Commonwealth for the purpose of enabling the Territory to satisfy its obligation to contribute to a superannuation fund for the benefit of that person.

### **Temporary performance of duties**

**82. (1)** The Commissioner may, on the recommendation of the Chief Executive of an administrative unit, give a direction in writing to an officer in that unit or in another administrative unit to perform temporarily the whole, or a specified part, of the duties of a Senior Executive Service office in the first-mentioned unit, being an office the classification of which is higher than, or equal to, the classification of the officer.

(2) A direction takes effect on the day it is given or, where a later day is specified, on that day.

(3) A direction shall be expressed to continue in force until—

- (a) the expiration of a specified day; or
- (b) the occurrence of a specified event;

and, subject to subsection (8), shall cease to have effect accordingly.

(4) A direction shall not—

- (a) be expressed to operate until a notice is given terminating its effect; or
- (b) be expressed to have a similar operation.

(5) The selection of an officer for a direction to perform temporarily the duties of an office shall be made in accordance with the management standards.

(6) Notwithstanding subsection (1), the Commissioner shall not give a direction to an officer in an administrative unit to perform temporarily the duties of a Senior Executive Service office in another unit without the approval of the Chief Executive of that other unit.

(7) A Chief Executive of an administrative unit may withhold his or her approval of a direction to perform duties where the Chief Executive considers that the performance of those duties by that officer would give rise to substantial difficulties or inefficiencies in the management or functioning of that unit.

(8) Where an officer is given a direction to perform the duties of a Senior Executive Service office in an administrative unit, the Commissioner may, by writing—

- (a) revoke the direction at any time; and
- (b) vary the direction at any time by requiring the officer not to perform, or to cease performing, part of those duties.

***Division 5—Promotions and transfers of officers other than Chief Executives and Senior Executive Service officers***

**Transfers and promotions**

**83. (1)** The Chief Executive of an administrative unit in which a vacant office (other than a Senior Executive Service office) exists may, subject to this Act and the management standards, transfer or promote an officer to fill the vacant office.

*Public Sector Management Act 1994*

(2) The Chief Executive of an administrative unit shall not, except in prescribed circumstances, fill, by promotion, a vacant office in the administrative unit (other than a Senior Executive Service office) unless the Chief Executive has caused the vacancy to be notified in the Gazette.

(3) The Chief Executive of an administrative unit shall not transfer an officer to fill a vacant office in the administrative unit unless the Chief Executive has—

- (a) given the officer an opportunity to state his or her views in relation to the transfer; and
- (b) considered those views, if any.

(4) Where 2 or more officers have applied for promotion or transfer to a vacant office, the Chief Executive of the administrative unit in which the office exists shall, for the purposes of exercising the power under subsection (1), select from those officers the officer who is, in the opinion of the Chief Executive, the more or most efficient.

(5) An officer who is transferred or promoted under this section shall be given notice in writing of the transfer or promotion.

### **Appeals**

**84.** (1) An officer who considers that he or she is more entitled than another officer to promotion to a vacant office to which the other officer has been promoted under section 83 may, subject to subsections (2) and (3) and the management standards, appeal to a Promotion Appeal Committee against the promotion of the other officer to that office.

(2) Except as prescribed, an officer is not entitled to appeal against a promotion unless he or she applied for the promotion.

(3) An officer is not entitled to appeal against a promotion that is a non-appellable promotion.

(4) The only ground of appeal under subsection (1) shall be the greater efficiency of the officer appealing.

(5) An appeal under subsection (1) shall be made in such manner, and within such period, as are prescribed.



**(6)** Where the Commissioner considers it appropriate to do so, he or she may, before the expiration of the period prescribed under subsection (5), extend that period.

### **Determination of appeals**

**85. (1)** Where an appeal is, or appeals are, brought under section 84 in respect of a promotion, the Promotion Appeal Committee shall form an opinion as to the more or most efficient of the officers concerned.

**(2)** For the purpose of forming an opinion as to the more or most efficient of the officers concerned, the Promotion Appeal Committee shall have regard to—

- (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the Committee considers that those matters are relevant to the performance of the duties of the office;
- (b) such matters, if any, as are prescribed; and
- (c) if, and only if, the Chief Executive who made the promotion has indicated that, for the purpose of forming an opinion under section 83, he or she had regard to the potential of officers for further career development in the Service, or the ability of officers to perform the duties of other offices in the administrative unit of the same or equal classification—that matter.

**(3)** Where the Promotion Appeal Committee has formed an opinion as to the more or most efficient of the officers concerned, the Committee shall—

- (a) unless paragraph (b) applies—allow or disallow the appeal or appeals so as to give effect to its opinion; or
- (b) if the Committee has also formed the opinion that none of the officers concerned is capable of efficiently performing the duties of the office—disallow the appeal or appeals and cancel the promotion.

**(4)** Where an appeal against a promotion is allowed—

- (a) the promotion is, by force of this subsection, cancelled; and
- (b) the officer whose appeal is allowed is, by force of this subsection, promoted to the office.

(5) Where a promotion is cancelled under subsection (3) or by force of subsection (4), or an officer is promoted to an office by force of subsection (4), the relevant Chief Executive shall cause notification of the cancellation, or of the promotion, to be published in the Gazette.

**Promotion appeal rights of certain officers**

**86. (1)** This section applies to an officer who has been advised in writing by the relevant Chief Executive that the relevant Chief Executive is satisfied that the officer is an excess officer within the meaning of subsection 139 (2).

(2) An officer to whom this section applies has a right under this section to appeal against the promotion under section 83 of another person to a vacant office the classification of which is equal to or lower than the classification of the office occupied by the officer to whom this section applies.

(3) Subsection (2) does not apply in relation to a promotion that is a non-appellable promotion.

(4) Where an officer to whom this section applies is an unattached officer, the reference in subsection (2) to a vacant office the classification of which is equal to or lower than the classification of the office occupied by the officer to whom this section applies shall be read as a reference to a vacant office the salary, or the maximum rate of salary, applicable to which is equal to or lower than the salary, or the maximum rate of salary, applicable to the officer to whom this section applies as an unattached officer.

(5) Subsections 84 (4), (5) and (6) apply in relation to an appeal under this section as if the appeal were an appeal under subsection 84 (1).

(6) Where an officer to whom this section applies appeals under this section against the promotion of another officer, then, in relation to that appeal—

- (a) references in this Act to promotion shall, in relation to the officer to whom this section applies, be read as references to the transfer of the officer; and
- (b) references in this Act to an appeal under section 84 shall be read as references to an appeal under this section.

(7) An appeal under this section or section 84 by an officer to whom this section applies does not affect the operation of Division 3 of Part VI.

**Review of non-appellable promotion decisions by Merit Protection Agency**

**87. (1)** An officer who applied unsuccessfully for a non-appellable promotion (not being a promotion to an office of Chief Executive or a Senior Executive Service office) may, within the prescribed period, apply to the Merit Protection Agency for review of the promotion on the ground that it would be unreasonable for the promotion to stand because of—

- (a) a breach of section 65 in connection with the making of the promotion; or
- (b) a serious defect in the selection process.

**(2)** An application for review of a promotion shall be in writing and shall include particulars of the alleged breach of section 65 or the alleged defect in the selection process.

**(3)** Where an application is made to the Merit Protection Agency for review of a promotion, the Agency shall—

- (a) make such inquiries as it considers necessary to determine whether a recommendation should be made under subsection (4) in relation to the promotion; and
- (b) make a decision in writing either—
  - (i) affirming the promotion; or
  - (ii) making a recommendation under subsection (4) in relation to the promotion.

**(4)** Where an application is made to the Merit Protection Agency for review of a promotion, the Agency shall, if it is satisfied that it would be unreasonable for the promotion to stand because of—

- (a) a breach of section 65 in connection with the making of the promotion; or
- (b) a serious defect in the selection process;

recommend to the Chief Executive who made the promotion that the promotion be cancelled.

**(5)** The Merit Protection Agency shall cause a copy of its decision to be given to—

- (a) the officer who made the application;

- (b) the officer promoted; and
- (c) the Chief Executive who made the promotion.

(6) Where the Merit Protection Agency recommends to the Chief Executive that a promotion be cancelled, the Chief Executive—

- (a) shall, having regard to the recommendation, reconsider the promotion; and
- (b) may cancel the promotion.

(7) Where a Chief Executive cancels a promotion under subsection (6)—

- (a) the officer promoted shall, for all purposes, be treated as having held the office concerned during the period beginning when the promotion took effect and ending when the promotion is cancelled; and
- (b) upon the cancellation of the promotion, the Chief Executive shall transfer the officer to an office in the Chief Executive's administrative unit having a classification that is the same as, or equal to, the classification that the officer had immediately before the promotion took effect, and, if necessary, the Chief Executive shall create such an office for the purpose.

(8) The Merit Protection Agency shall refuse to consider or further consider an application for review of a promotion if the Agency is satisfied that the application is frivolous or vexatious or was not made in good faith.

(9) Where 2 or more applications are made to the Merit Protection Agency for review of the same promotion, the Agency may consider those applications concurrently.

(10) Division 7 of Part II of the Merit Protection Act applies in relation to a review under this section of a promotion in the same manner as it applies to a review of a decision under Division 3 of Part II of that Act.

### **Transfer or promotion on advice of Joint Selection Committee**

**88. (1)** In this section—

“teaching office” means an office for appointment to which teaching qualifications are required.

(2) Subject to subsection (5) and the management standards, the Chief Executive of an administrative unit in which an office (other than an office of Chief Executive or a Senior Executive Service office) is vacant may, instead of

*Public Sector Management Act 1994*

transferring or promoting an officer to fill the vacant office under section 83, transfer or promote an officer to fill the vacant office under this section.

(3) A transfer or promotion of an officer under this section shall be a transfer or promotion made in accordance with the advice of a Joint Selection Committee.

(4) Where a Chief Executive proposes that a vacant office be filled by a transfer or promotion under this section, the Chief Executive shall—

- (a) give notice in writing of the proposal to the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office; and
- (b) if there is another relevant staff organisation or there are other relevant staff organisations—give notice in writing of the proposal to the other relevant staff organisation or organisations, including a statement to the effect that a relevant staff organisation may, by notice in writing to the Chief Executive before the expiration of the period prescribed by the management standards for the purposes of this paragraph, object to the proposal.

(5) Where the principal relevant staff organisation consents to the proposal and—

- (a) there is no other relevant staff organisation; or
- (b) in a case to which paragraph (a) does not apply—no other relevant staff organisation objects to the proposal before the expiration of the period referred to in paragraph (4) (b);

the Chief Executive shall—

- (c) cause notice of the vacancy, being a notification indicating that the Chief Executive proposes that the vacant office be filled by a transfer or promotion under this section, to be published in the Gazette; and
- (d) arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Chief Executive with respect to the filling of the vacant office.

(6) A Joint Selection Committee established for the purpose of giving advice to a Chief Executive with respect to the filling of a vacant office (not being a teaching office) under this section shall be constituted by—

- (a) a Convenor nominated by the Merit Protection Agency;

*Public Sector Management Act 1994*

- (b) a person nominated by the Chief Executive of the administrative unit in which the vacant office exists; and
- (c) a person nominated by the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office.

**(7)** A Joint Selection Committee established for the purpose of giving advice to a Chief Executive with respect to the filling of a vacant teaching office under this section shall be constituted by—

- (a) a Convenor nominated by the relevant Chief Executive; and
- (b) not fewer than 2 or more than 3 other persons nominated by the relevant Chief Executive with the approval of the organisation that is, in accordance with the management standards, the principal relevant staff organisation in relation to the office.

**(8)** If a Chief Executive—

- (a) is unable to arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Chief Executive with respect to the filling of the vacant office; or
- (b) having arranged for the establishment of a Joint Selection Committee for such a purpose, is unwilling to transfer or promote an officer in accordance with the advice of the Committee;

the Chief Executive may transfer or promote an officer to fill the vacant office under section 83.

**(9)** A promotion of an officer under this section in accordance with the advice of a Joint Selection Committee—

- (a) shall be notified in the Gazette as a promotion made in accordance with the advice of a Joint Selection Committee; and
- (b) is not subject to appeal under section 84 or review under section 87.

**(10)** An officer who is transferred under subsection (2) shall be given notice in writing of the transfer.

**(11)** Where a Joint Selection Committee has been constituted for the purpose of giving advice to a Chief Executive with respect to the filling of a vacant office under this section but, before the Committee gives advice with respect to the filling of that vacant office, a member of the Committee ceases to

take part in the deliberations of the Committee, the Committee shall be reconstituted by the remaining members and another member appointed or nominated in accordance with subsection (6) or (7), as the case requires.

**(12)** For the purpose of giving advice to a Chief Executive with respect to the filling of a vacant office (not being a teaching office) under this section, where the members of the Committee do not concur in the advice—

- (a) if a majority of the members concur in the advice—the advice of the majority shall be deemed to be the advice of the Committee; and
- (b) in any other case—the advice of the Convenor of the Committee shall be deemed to be the advice of the Committee.

**(13)** For the purpose of giving advice to a Chief Executive with respect to the filling of a vacant teaching office under this section, where the members of the Committee do not concur in the advice—

- (a) if a majority of the members concur in the advice—the advice of the majority shall be deemed to be the advice of the Committee;
- (b) if the members are equally divided in their advice—the advice of the Convenor of the Committee shall be deemed to be the advice of the Committee; and
- (c) if 2 members only concur in their advice and the remaining members are divided in their advice—the advice of the first-mentioned 2 members shall be deemed to be the advice of the Committee.

### **Transfer or promotion on advice of management-initiated Joint Selection Committee**

**89. (1)** Subject to subsections (2) and (3) and the management standards, the Chief Executive of an administrative unit in which an office (other than an office of Chief Executive or a Senior Executive Service office) is vacant may, instead of transferring or promoting an officer to fill the vacant office under section 83 or 88, transfer or promote an officer to fill the vacant office under this section.

**(2)** A vacant office shall not be filled by a transfer or promotion under this section except in prescribed circumstances.

**(3)** Where a Chief Executive proposes that a vacant office be filled by a transfer or promotion under this section, the Chief Executive shall—

*Public Sector Management Act 1994*

- (a) cause notice of the vacancy, and of the Chief Executive's proposal that the office be filled by a transfer or promotion under this section, to be published in the Gazette;
- (b) notify the organisation that is, under the management standards, the principal relevant staff organisation of the Chief Executive's proposal that the office be filled by a transfer or promotion under this section; and
- (c) arrange for the establishment of a Joint Selection Committee for the purpose of giving advice to the Chief Executive with respect to the filling of the office.

**(4)** A Joint Selection Committee shall be constituted for the purposes of this section by—

- (a) a Convenor nominated by the Merit Protection Agency;
- (b) a person nominated by the Chief Executive of the administrative unit in which the vacant office exists; and
- (c) if, within the prescribed period after being notified under paragraph (3) (b), the principal relevant staff organisation nominates a person— that person.

**(5)** A promotion or transfer of an officer made in accordance with the unanimous advice of the members of a Joint Selection Committee constituted for the purposes of this section shall be deemed to have been made under section 88, and a promotion so made is not subject to appeal under section 84 or review under section 87.

**(6)** Where a Joint Selection Committee constituted for the purposes of this section gives advice to a Chief Executive with respect to the filling of a vacant office and—

- (a) the Chief Executive promotes or transfers an officer to fill the vacant office otherwise than in accordance with the advice; or
- (b) the advice is not unanimous, but the Chief Executive transfers or promotes an officer to fill the vacant office;

the promotion or transfer shall be deemed to have been made under section 83, and a promotion so made is subject to appeal under section 84 or review under section 87, as the case requires.



*Public Sector Management Act 1994*

(7) A promotion of an officer under this section shall be notified in the Gazette, and the notice in the Gazette shall state whether or not the promotion is subject to appeal under section 84 or review under section 87.

(8) An officer who is transferred as mentioned in this section shall be given notice in writing of the transfer.

(9) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the Convenor ceases to take part in the deliberations of the Committee, the Committee shall be reconstituted by the remaining member or members and another Convenor nominated by the Agency.

(10) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the member of the Committee nominated under paragraph (4) (b) ceases to take part in the deliberations of the Committee—

- (a) if, within the prescribed period after the member so ceases to take part, the Chief Executive nominates another person—the Committee shall be reconstituted by the remaining members or member and that other person; or
- (b) in any other case, if there are 2 members of the Committee remaining—the Committee shall be reconstituted by the remaining members.

(11) Where a Joint Selection Committee has been constituted for the purpose of giving advice under this section but, before the Committee gives that advice, the member of the Committee nominated under paragraph (4) (c) (if any) ceases to take part in the deliberations of the Committee, the Chief Executive shall notify the principal relevant staff organisation that the member has ceased to take part in those deliberations and—

- (a) if, within the prescribed period after being so notified by the Chief Executive, the principal relevant staff organisation nominates another person—the Committee shall be reconstituted by the remaining members and that other person; or
- (b) in any other case—the Committee shall be reconstituted by the remaining members.

### **Procedure of Joint Selection Committee**

**90. (1)** A Joint Selection Committee established for the purpose of giving advice to a Chief Executive with respect to the filling of a vacant office under section 88 or 89 shall assess the claims of the applicants for promotion or transfer to the office in such manner as the Committee considers necessary to establish their relative efficiency.

**(2)** A Joint Selection Committee shall conduct its proceedings with as little formality and technicality, and as quickly, as a proper consideration of the applications permits.

**(3)** Where a Joint Selection Committee is reconstituted pursuant to subsection 88 (11) or 89 (9), (10) or (11), the Committee as reconstituted may have regard to the evidence given, the argument adduced and the reasons for any decision given during proceedings before the Committee as previously constituted.

**(4)** A transfer or promotion made under section 88 or 89 shall not be called in question because of a defect or irregularity in connection with the nomination of a member of the Joint Selection Committee.

**(5)** A member of a Joint Selection Committee, while acting as such, is not subject to direction by any other person or by any body or authority other than a court.

### **Taking effect etc. of promotions and transfers**

**91. (1)** A promotion or transfer of an officer to an office takes effect as provided by the management standards.

**(2)** Where a promotion under section 83 or 88 of an officer to an office takes effect, salary at the rate applicable to that office is payable to the officer on and from the prescribed day.

**(3)** Where, upon the determination of an appeal against the promotion under section 83 of an officer to an office, another officer is promoted to that office by force of subsection 85 (4), salary at the rate applicable to that office is payable to that other officer on and from the prescribed day in respect of the first-mentioned promotion.

### **Death of officer before appeal determined**

**92.** Where, before an appeal under section 84 against the promotion of an officer has been determined, the officer dies, the appeal shall be deemed to

lapse on the date of his or her death but the promotion shall not take effect unless the death occurred on or after the prescribed day in respect of the promotion.

**Cancellation of promotion or transfer**

**93. (1)** Before the promotion or transfer of an officer to a vacant office in an administrative unit takes effect, the Chief Executive of the administrative unit may cancel the promotion or transfer.

**(2)** If a promotion of an officer under section 83 or 88 that has not taken effect ceases, by reason of a change in rates of salary, to be a promotion of that officer, the promotion shall be deemed to be cancelled.

**(3)** Where a promotion is cancelled, or is to be deemed to be cancelled, under this section, any appeal under section 84 against the promotion lapses on the day of the cancellation.

**Transfer of officers by Chief Executive from one administrative unit to another**

**94. (1)** Where—

- (a) an officer whom it is proposed to transfer to a vacant office under section 83 or 88 is an officer performing duties in an administrative unit other than the administrative unit in which the vacant office exists; and
- (b) the officer or the Chief Executive of the first-mentioned administrative unit does not approve of the transfer;

the transfer shall not be made without the Commissioner's approval.

**(2)** The Commissioner shall not approve the transfer of an officer performing duties in an administrative unit to a vacant office in another administrative unit unless—

- (a) a reasonable opportunity has been given to the Chief Executive of each administrative unit and to the officer to furnish submissions to the Commissioner either in support of or against the making of the transfer; and
- (b) the Commissioner has considered any submissions so furnished.

**Simultaneous transfers within an administrative unit**

**95.** Where 2 or more officers hold offices in the one administrative unit having the same classification and it is proposed to transfer each of those officers to the office held by the other officer or to an office held by another of those officers, the relevant Chief Executive may, by instrument in writing, declare the offices to be offices to which this section applies and, upon the making of such a declaration, each office to which the declaration relates shall, for the purposes of the application of sections 83 and 88 and any management standards made for the purposes of those sections in giving effect to the proposed transfers, be deemed to be vacant.

**Transfers of officers and employees between administrative units**

**96. (1)** Where, in the opinion of the Commissioner, it is necessary in the interests of the efficient administration of the Service to transfer an officer temporarily from one administrative unit to another, the Commissioner may direct that that officer be so transferred and as from such date (if any) as the Commissioner specifies.

**(2)** The Commissioner shall not give a direction under subsection (1) in relation to an officer unless the Commissioner has—

- (a) given the officer an opportunity to state his or her views in relation to the transfer; and
- (b) considered those views, if any.

**(3)** The Commissioner shall notify in writing the Chief Executive of each of the administrative units concerned of any direction under subsection (1) and, upon being so notified, the Chief Executive of the administrative unit from which the officer is to be transferred temporarily shall forthwith release the officer.

**(4)** Where, in the opinion of the Commissioner, it is necessary in the interests of the efficient administration of the Service to do so, the Commissioner may, after consulting with the Chief Executive of each of the administrative units concerned—

- (a) transfer an officer who holds an office, or is included, in an administrative unit—
  - (i) to a specified office in another administrative unit; or
  - (ii) to another administrative unit as an unattached officer; or

- (b) direct that an employee who is employed in a particular capacity in an administrative unit be employed in an equivalent capacity in another administrative unit.

(5) Notwithstanding section 91, a transfer under paragraph (4) (a) takes effect as specified by the Commissioner.

**Transfers and promotions to specified offices may be made in accordance with order of passing examinations**

97. (1) The management standards may specify, in relation to a specified class of offices, circumstances in which a vacancy in an office or offices included in that class of offices may be filled by a transfer or promotion under this section.

(2) The Commissioner may, from time to time, by notice published in the Gazette, notify, for the purposes of this section, an examination in relation to offices included in a specified class of offices.

(3) Where—

- (a) in circumstances specified in relation to a class of offices under subsection (1) there is a vacancy in an office or offices included in that class; and
- (b) an examination is specified in a notice under subsection (2) in relation to that class of offices;

then, if the Chief Executive of the administrative unit in which the vacant office exists or the vacant offices exist—

- (c) in a case where only 1 officer has passed the examination and is otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes that officer to that office or to one of those offices; or
- (d) in a case where 2 or more officers have passed the examination and are otherwise eligible for transfer or promotion to that office or those offices—transfers or promotes those officers to that office or those offices in accordance with the order of merit in which they passed the examination;

the transfer or promotion, or each of the transfers or promotions, shall be taken to have been made under this section and not under section 83.

(4) The promotion of an officer to an office under this section takes effect on the day on which the promotion is made, and salary at the rate applicable to that office is payable to the officer on and from that day.

(5) In this section—

- (a) a reference to an examination shall be read as including a reference to a test; and
- (b) a reference to passing an examination shall be read as including a reference to completing satisfactorily any task required to be performed for the purposes of assessment.

**Promotion of officers who complete courses of training for special positions**

**98. (1)** The management standards may provide that—

- (a) a specified office (in this section referred to as a “training office”) is an office the occupant of which is required to undergo a course of training for the purpose of enabling him or her to perform duties that require professional, technical or other knowledge; and
- (b) an officer who has completed that course of training to the satisfaction of the Commissioner is entitled to occupy an office (in this section referred to as the “relevant higher office”) having a specified classification.

(2) Where an officer is transferred or promoted under section 83 to a training office, another officer—

- (a) who holds an office the classification of which is not higher than the classification of the relevant higher office; or
- (b) who, being an unattached officer, performs duties in respect of which there is payable to him or her a salary that is, or the maximum rate of which is, not higher than the salary or the maximum rate of salary applicable to the relevant higher office;

may appeal against the transfer or promotion of that first-mentioned officer to the training office.

(3) An appeal referred to in subsection (2) shall be made under section 84 and, for all purposes of that appeal—

- (a) in a case where the appeal is an appeal against the transfer of an officer to a training office—

*Public Sector Management Act 1994*

- (i) references in this Act to the promotion of that officer shall be read as references to the transfer of that officer to the training office;
  - (ii) references in this Act to the cancellation of the promotion of that officer shall, in a case where, immediately before that officer was transferred to the training office, he or she occupied another office, be read as references to the transfer of that officer back to that other office; and
  - (iii) references in this Act to the cancellation of the promotion of that officer shall, in a case where, immediately before that officer was transferred to the training office, he or she was an unattached officer performing specified duties in an administrative unit, be read as a reference to that officer's being taken again to have become an unattached officer and to his or her being required to perform those duties in that administrative unit; and
- (b) in a case where the appeal is an appeal by an officer in relation to whom it would constitute a transfer for him or her to occupy the training office—references in this Act to promotion of that officer shall be read as references to the transfer of that officer to the training office.

**(4)** Subject to subsection (5), where there is a vacancy in an office that is, in relation to a training office, a relevant higher office, the Chief Executive of the administrative unit in which the relevant higher office exists shall—

- (a) if, at the time when that relevant higher office becomes vacant, an officer who has completed that course of training is, by virtue of the operation of subsection (8), an unattached officer—transfer that officer to that office under this section;
- (b) if, at the time when that relevant higher office becomes vacant, 2 or more officers who have completed that course of training are, by virtue of the operation of subsection (8), unattached officers—transfer to that office under this section whichever of those officers was the first so to become an unattached officer; or
- (c) if, at the time when the relevant higher office becomes vacant, no officer who has completed that course of training is, by virtue of the operation of subsection (8), an unattached officer—subject to

*Public Sector Management Act 1994*

subsection (9), promote to that office under this section the first officer to complete that course of training.

(5) Subsection (4) does not entitle—

- (a) an officer who holds a part-time office to be transferred or promoted to a full-time office; or
- (b) an officer who holds a full-time office to be transferred or promoted to a part-time office.

(6) The promotion of an officer to an office as referred to in paragraph (4) (c) takes effect on the day on which the promotion is made and salary at the rate applicable to that office is payable to the officer on and from that day.

(7) Where 2 or more officers complete a course of training at the same time or become, by virtue of the operation of subsection (8), unattached officers at the same time, they shall be treated, for the purposes of subsection (4), as having completed that course of training, or as having become unattached officers, as the case requires, in a sequence of time corresponding to the order of merit in which, on the assessment of the person or body conducting the course of training, those officers completed the course.

(8) Where an officer who is entitled, upon completion of a particular course of training to the satisfaction of the Commissioner, to occupy a relevant higher office so completes that course of training but there is, at the time when he or she completes that course, no vacant relevant higher office, or no vacant relevant higher office to which he or she is entitled under paragraph (4) (c) to be promoted—

- (a) he or she becomes forthwith, by force of this subsection, an unattached officer who is required to perform duties corresponding to the duties of such an office; and
- (b) he or she shall have the classification appropriate to the occupant of such an office and shall be entitled to be paid the salary that would, from time to time, be payable to him or her if he or she were the occupant of such an office.

(9) Nothing in subsection (4) shall be taken to prevent a Chief Executive from promoting or transferring an officer under section 83 to an office to which that subsection relates at any time when there is no officer immediately entitled to occupy that office in accordance with the management standards.



*Public Sector Management Act 1994*

**(10)** A transfer of an officer under section 83 to a vacant training office shall be notified in the Gazette.

**(11)** Where an officer is transferred under section 83 from an office held by him or her to a training office, no person shall be appointed or transferred to that first-mentioned office, and no promotion to that first-mentioned office shall take effect, until—

- (a) if paragraph (b) does not apply—the period for appealing against the transfer of that officer to the training office expires without any appeal having been made; or
- (b) if any such appeal is, or 2 or more such appeals are, made within that period—that appeal or each of those appeals has been determined or has become inoperative.

***Division 6—Temporary performance of duties—offices other than Senior Executive Service offices***

**Interpretation**

**99.** In this Division, unless the contrary intention appears—

“appellable promotion” means a promotion under section 83 other than a non-appellable promotion;

“direction” means a direction under subsection 100 (1);

“notified”, in relation to a direction, means notified in accordance with section 101;

“office” means an office other than—

- (a) an office of Chief Executive; or
- (b) a Senior Executive Service office;

“specified”, in relation to a direction, means specified in the direction.

**Directions to act**

**100. (1)** The Chief Executive of an administrative unit may, by writing, direct an officer to perform temporarily the whole, or a specified part, of the duties of an office in that administrative unit.

**(2)** The selection of an officer to be given a direction under subsection (1) shall be made as prescribed.

(3) A direction, other than a direction that is required by subsection 101 (2) to be notified, takes effect on the day it is given or, where a later day is specified for the purpose, on that later day.

(4) A direction shall be expressed to continue in force until—

- (a) the expiration of a specified day; or
- (b) the occurrence of a specified event;

and, subject to subsection (8), shall cease to have effect accordingly.

(5) A direction shall not—

- (a) be expressed to operate until a notice is given terminating its effect; or
- (b) be expressed to have a similar operation.

(6) Notwithstanding subsection (1), the Chief Executive of an administrative unit shall not give a direction to an officer of another administrative unit without the approval of the Chief Executive of that other administrative unit.

(7) The Chief Executive of an administrative unit may, under subsection (6), withhold his or her approval of a proposed direction where he or she considers that the performance of the duties to which the direction would relate by the officer to whom it is proposed that it be given would cause substantial difficulties or inefficiencies in the management or functioning of that administrative unit.

(8) Where an officer is given a direction to perform duties of an office in an administrative unit, the Chief Executive of the administrative unit may, by writing—

- (a) revoke the direction at any time; or
- (b) vary the direction at any time by requiring the officer not to perform, or to cease performing, part of those duties.

**Directions to act in certain offices for more than 3 months or until the occurrence of an event**

**101. (1)** This section applies to an office to which a promotion under section 83 would be an appellable promotion.

*Public Sector Management Act 1994*

(2) Where a Chief Executive gives a direction to an officer to perform the duties of a higher office to which this section applies and the direction is expressed to be given in respect of—

- (a) a period exceeding 3 months;
- (b) a period which, when aggregated with the periods of any previous directions given to the officer to perform the duties of the office, would result in the officer performing the duties of that office for a continuous period exceeding 3 months; or
- (c) a period ending on the occurrence of a specified event;

the Chief Executive shall, as soon as practicable after giving the direction, cause the direction to be notified in accordance with subsection (3).

(3) A notice under subsection (2) shall—

- (a) set out the terms of the direction or specify—
  - (i) the office to which the direction relates;
  - (ii) the duties of that office to which the direction relates;
  - (iii) the day on which the person directed to perform the duties of the office is to commence performing those duties;
  - (iv) the day until which, or the event until the occurrence of which, the person is to continue to perform the duties of that office; and
  - (v) the name and classification of the officer to whom the direction has been given; and
- (b) be circulated or displayed in a manner likely to bring it to the attention of the officers who may appeal against the giving of the direction.

(4) A direction required to be notified under this section takes effect on the day on which it is first so notified or, where a later day is specified, on that later day.

### **Appeals against directions**

**102. (1)** An officer who considers that he or she is more entitled than another officer to be given a direction under subsection 100 (1) which that other officer has been given may, subject to subsections (2) and (3) and the

management standards, appeal to a Promotion Appeal Committee against the giving of the direction to the other officer.

(2) An appeal under subsection (1) against the giving of a direction to an officer to perform duties of an office may only be made—

- (a) by an officer in relation to whom the office is a higher office; and
- (b) on the ground that the appellant would perform the duties with superior efficiency.

(3) An appeal under subsection (1) shall be made in such manner, and within such period, as is prescribed.

### **Lapsing of appeals**

**103. (1)** An appeal under subsection 102 (1) against the giving of a direction shall lapse if—

- (a) the appellant advises the Agency in writing that he or she does not intend to proceed with the appeal;
- (b) the period for which the direction was given has expired;
- (c) the appellant ceases to be an officer;
- (d) the direction is revoked in respect of all of the duties to which it relates;
- (e) the officer directed to perform those duties ceases to be an officer;
- (f) the appellant has been promoted to an office having a classification equal to or higher than the classification of the office to which the direction relates and that promotion takes effect;
- (g) the Chief Executive of an administrative unit affected by the appeal advises the Agency that performance of those duties by the appellant would cause substantial difficulties or inefficiencies in the management or functioning of the administrative unit; or
- (h) in the case of a direction that is expressed to continue in force until the expiration of a specified day—
  - (i) subject to subsection (4), the Chief Executive of an administrative unit affected by the appeal advises the Agency that performance of those duties by the appellant during a period specified in that advice (in this paragraph referred to as

the “period of unavailability”) would cause substantial difficulties or inefficiencies in the management or functioning of the administrative unit; and

- (ii) the effect of removing the period of unavailability from the period for which the direction was given would not leave a continuous period exceeding 3 months in the lastmentioned period.

(2) For the purposes of subsection (1), an administrative unit is to be taken to be affected by an appeal if the appeal is made by an officer of that administrative unit or relates to an office in that administrative unit.

(3) Advice referred to in paragraph (1) (g) that is given in relation to an appeal by an officer does not affect any other appeal by that officer.

(4) Advice given by a Chief Executive for the purpose of subparagraph (1) (h) (i) shall specify the day on which the period of unavailability commences and the day on which it expires.

#### **Determination of appeal**

**104. (1)** Where an appeal is, or appeals are, brought under section 102 against the giving of a direction to perform duties of an office, the Promotion Appeal Committee shall form an opinion as to the more or most efficient of the officers concerned.

(2) For the purpose of forming an opinion as to the more or most efficient of the officers concerned, the Promotion Appeal Committee shall have regard to—

- (a) the abilities, qualifications, experience, standard of work performance and personal qualities of each officer, to the extent that the Committee considers that those matters are relevant to the performance of duties of the office; and
- (b) if, and only if, the Chief Executive who made the selection has indicated that, for the purpose of making that selection, he or she had regard to the potential of officers for further career development in the Service, or the ability of officers to perform the duties of other offices in the administrative unit of the same or equal classification—that matter.

(3) When the Promotion Appeal Committee has formed an opinion as to the more or most efficient of the officers concerned, it shall allow or disallow the appeal so as to give effect to its opinion.

**Procedure where appeal is successful**

**105. (1)** Where an appeal under subsection 102 (1) against the giving of a direction to an officer to perform duties of an office in an administrative unit is allowed by a Promotion Appeal Committee and the period for which those duties are to be performed has not expired, the Chief Executive of the administrative unit shall, as soon as practicable after being advised by the Committee of its decision—

- (a) revoke the direction; and
- (b) give a direction to the successful appellant to perform those duties;

and the direction referred to in paragraph (b) shall be taken to have replaced the direction referred to in paragraph (a).

(2) A direction referred to in paragraph (1) (b)—

- (a) shall be expressed to continue in force until the time at which the direction it replaces was to cease to have effect;
- (b) takes effect as soon as it is given;
- (c) is not subject to appeal; and
- (d) shall be taken, for the purposes of this Act (other than subsections 100 (1) to (7) (inclusive) and sections 101, 102, 103 and 104), to have been given under subsection 100 (1).

***Division 7—Temporary employment***

**Power to engage employees**

**106. (1)** A Chief Executive of an administrative unit, otherwise than to perform the duties of a Senior Executive Service office, may engage a person for temporary employment in that unit in accordance with this Division where he or she is satisfied—

- (a) that there is no officer available in the Service with the expertise, skills or qualifications required for the duties required to be performed; or

- (b) that assistance of a temporary nature is required for the performance of urgent or specialised work in that unit and it is not practical in the circumstances to use the services of an existing officer to perform the relevant duties.

(2) The Commissioner may temporarily employ a person to perform the duties of a Senior Executive Service office in the Service.

(3) A person shall not be engaged for temporary employment under this Division except in accordance with, and subject to, the management standards.

### **Overseas employment**

**107.** (1) A person may be engaged overseas under this Division for temporary employment overseas.

(2) This section shall not be taken to prevent the engagement in Australia, under another provision of this Act, of a person to perform duties overseas.

### **Temporary employment—generally**

**108.** (1) Subject to subsection (2), a person may be engaged for a fixed-term to perform the duties of a position having an existing classification for a period not exceeding 5 years.

(2) A person shall not be engaged under subsection (1) to perform the duties of a position for a period of 12 months or longer unless the principal relevant staff organisation in relation to that position has been consulted in connection with the temporary employment of persons for a fixed-term in that position.

(3) A person engaged under subsection (1) to perform the duties of a position shall be paid at the same rate of remuneration as would be applicable to an officer performing the duties of that position.

(4) Subject to subsection (5), the relevant Chief Executive may extend the period of employment of a person engaged to perform the duties of a position under subsection (1) for a period of less than 12 months, if—

- (a) the total period of employment (including the period as so extended) does not exceed 12 months; and
- (b) the principal relevant staff organisation in relation to the position has agreed to the proposed extension of the term of temporary employment of the person in that position.

(5) The period of temporary employment of a person in a position shall not be extended under subsection (4) if the principal relevant staff organisation in relation to that position has notified the Commissioner that it is opposed to the extension of temporary employment in respect of a class of positions that includes that position.

(6) The engagement of a person under this section may be subject to conditions—

- (a) concluded in accordance with the management standards; or
- (b) approved by the Commissioner.

### **Entry to the workforce programs**

**109. (1)** A person may be engaged for temporary employment in the performance of duties under a prescribed scheme, being a scheme for enabling persons to gain ability for the purposes of participating in the Australian workforce.

(2) A Chief Executive may engage a person for temporary employment under subsection (1) without having to be satisfied about matters referred to in subsection 106 (1).

### **Casual employment**

**110. (1)** A person may be engaged for temporary employment on a casual basis.

(2) Employment of a person under subsection (1) shall not be taken to be employment for a fixed-term.

### **Employment of unsuccessful election candidates**

**111. (1)** Where—

- (a) a person who was an employee—
  - (i) resigned in order to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, or a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory;
  - (ii) was a candidate at the election; and



- (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 6 months before the day on which nominations for the election closed;

the Commissioner shall, upon application by the person within 2 months after the declaration of the result of the election, employ the person in the same or a similar capacity with the same rate of pay as that payable to the person immediately before resigning.

(2) The reference in subsection (1) to the declaration of the result of the election shall, in relation to an election the result of which is challenged, be read as a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

### **Termination of employment**

**112. (1)** Subject to section 177, the temporary employment of a person engaged in an administrative unit may be terminated by the Chief Executive of that unit—

- (a) in the case of casual employment—at any time before the end of that employment; and
- (b) in any other case—by giving reasonable notice in writing to the person at any time before the end of that employment.

(2) Unless terminated in accordance with subsection (1), the temporary employment of a person shall cease upon the expiration of the period for which that person was engaged (including any extension of that period).

### **Work performed after termination of temporary employment**

**113.** Where—

- (a) the temporary employment of a person has been terminated, or has ceased, in accordance with section 112; and
- (b) that person continues to perform work, or render services, after the date on which such employment came to an end;

then any work performed, or services rendered, by that person after that date shall not be taken to renew or extend his or her contract of employment that existed before that date, without prejudice to the right of that person to reasonable remuneration for any work done, or any services rendered, in good faith after that date.

**Engagement of certain former officers as employees, and contracts with certain former officers, prohibited**

**114.** A Chief Executive shall not, without the consent in writing of the Commissioner—

- (a) engage as an employee a person who has, whether before or after the commencement of this section, ceased to be an officer; or
- (b) enter into a contract with a person who has, whether before or after the commencement of this section, ceased to be an officer for the performance of services by that person;

if the person has—

- (c) within the previous year been retired as an officer under section 128 or 137;
- (d) within the previous year been retired from the Service under section 143 as an excess officer without having volunteered to accept retirement on that basis; or
- (e) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;

and received a payment from the Territory or a Territory instrumentality for being so retired.

***Division 8—Miscellaneous***

**Officers of Australian Public Service to have certain rights of entry to ACT Public Service**

**115. (1)** Where, under section 83, 88 or 89 notification of a vacancy in an office in an administrative unit is published in the Gazette, a Commonwealth officer may apply for appointment to the office.

**(2)** Where—

- (a) a Commonwealth officer applies under subsection (1) for appointment to an office in an administrative unit; and
- (b) the Chief Executive of the administrative unit is satisfied that the Commonwealth officer should be appointed to the office;

the Chief Executive may appoint the Commonwealth officer to the office in accordance with section 68.

*Public Sector Management Act 1994*

(3) Subject to subsection (4), an appointment made by virtue of subsection (2) shall be made in accordance with Part V.

(4) Notwithstanding section 70, the appointment of a Commonwealth officer to an office in the Service shall not be an appointment on probation if the Commonwealth officer's appointment to the Australian Public Service—

- (a) was an appointment without probation; or
- (b) was an appointment on probation and has been confirmed.

(5) If, immediately before the appointment of a Commonwealth officer to the Service takes effect—

- (a) the appointee is a Commonwealth officer by virtue of an appointment on probation;
- (b) that appointment has not been confirmed; and
- (c) the appointment of the Commonwealth officer to the Service is an appointment on probation;

section 70 has effect as if the period of probation for the purposes of the appointment to the Service had commenced when the period of probation as a Commonwealth officer commenced.

(6) Where the appointment of a Commonwealth officer to an office in an administrative unit would be a transfer of the officer to that office if the Commonwealth officer had, immediately before being so appointed, been a member of the Service having the same classification as he or she had as a Commonwealth officer, the following provisions have effect:

- (a) the provisions of Division 5 of Part V apply to the appointment as if—
  - (i) the appointment were a transfer (in this subsection referred to as a “deemed transfer”) of the Commonwealth officer to the office by the Chief Executive of the administrative unit, being a transfer—
    - (A) in a case where the appointment is in accordance with the advice of a Joint Selection Committee constituted for the purposes of section 88—made under section 88;
    - (B) in a case where the appointment is in accordance with the unanimous advice of a Joint Selection Committee

*Public Sector Management Act 1994*

constituted for the purposes of section 89—made under section 88; or

(C) in any other case—made under section 83; and

- (ii) the Commonwealth officer were an officer within the meaning of this Act;
- (b) the deemed transfer takes effect as provided under section 91;
- (c) subject to paragraph (d), the appointment takes effect on the day on which the appointee resigns from the Australian Public Service, being a day not earlier than the day on which the deemed transfer takes effect;
- (d) the appointment does not take effect if, when the deemed transfer takes effect, the appointee has already ceased to be a member of the Australian Public Service;
- (e) if the appointee does not commence to perform the duties of the office within a reasonable time after the appointment takes effect, the Chief Executive may cancel the appointment;
- (f) if the appointee had, immediately before his or her appointment to the Service, accrued a period of long service leave or leave of absence on account of illness, he or she becomes eligible, upon his or her appointment, for the grant of an equal period of long service leave or leave of absence on account of illness, as the case may be;
- (g) subject to paragraph (f), the period of continuous service of the Commonwealth officer in the Australian Public Service immediately before his or her appointment to the Australian Capital Territory Government Service shall be recognised as prescribed for the purposes of determining the leave and other benefits to which the Commonwealth officer is entitled under this Act and the management standards.

(7) Where the appointment of a Commonwealth officer to an office in an administrative unit is not an appointment to which subsection (6) applies, the following provisions have effect:

- (a) the provisions of Division 5 of Part V and the provisions of the Merit Protection Act apply to the appointment as if—

*Public Sector Management Act 1994*

- (i) the appointment were a promotion (in this subsection referred to as a “deemed promotion”) of the Commonwealth officer to the office by the Chief Executive of the administrative unit, being a promotion—
    - (A) in a case where the appointment is in accordance with the advice of a Joint Selection Committee constituted for the purposes of section 88—made under section 88;
    - (B) in a case where the appointment is in accordance with the unanimous advice of a Joint Selection Committee constituted for the purposes of section 89—made under section 88; or
    - (C) in any other case—made under section 83; and
  - (ii) the Commonwealth officer were an officer within the meaning of this Act;
- (b) the deemed promotion takes effect according to the following rules:
- (i) if—
    - (A) the deemed promotion is a non-appellable promotion;
    - (B) an application for review of the deemed promotion by the Merit Protection Agency is made under subsection 87 (1); and
    - (C) the Agency makes a decision under paragraph 87 (3) (b) affirming the promotion;

the deemed promotion takes effect on the day after the day on which the Merit Protection Agency makes its decision;

- (ii) if—
  - (A) the deemed promotion is a non-appellable promotion;
  - (B) an application for review of the deemed promotion by the Merit Protection Agency is made under subsection 87 (1);
  - (C) the Agency makes a recommendation under subsection 87 (4) that the promotion be cancelled; and

- (D) the Chief Executive makes a decision under subsection 87 (6) not to cancel the deemed promotion;

the deemed promotion takes effect on the day after the day on which the Chief Executive makes his or her decision;

- (iii) in any other case, the deemed promotion takes effect as provided under section 91;
- (c) subject to paragraph (d), the appointment takes effect on the day on which the appointee resigns from the Australian Public Service, being a day not earlier than the day on which the deemed promotion takes effect;
- (d) the appointment does not take effect if, when the deemed promotion takes effect, the appointee has already ceased to be a member of the Australian Public Service;
- (e) if the appointee does not commence to perform the duties of the office within a reasonable time after the appointment takes effect, the Chief Executive may cancel the appointment;
- (f) if the appointee had, immediately before his or her appointment to the Service, accrued a period of long service leave or leave of absence on account of illness, he or she becomes eligible, upon his or her appointment, for the grant of an equal period of long service leave or leave of absence on account of illness, as the case may be;
- (g) subject to paragraph (f), the period of continuous service of the Commonwealth officer in the Australian Public Service immediately before his or her appointment to the Australian Capital Territory Government Service shall be recognised as prescribed for the purposes of determining the leave and other benefits to which the Commonwealth officer is entitled under this Act and the management standards.

### **Mobility rights of certain persons**

**115A. (1)** Notwithstanding subsection 7 (2) of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*, the following provisions have effect in relation to employees of the Company.

**(2)** A transferred employee of the Company shall, within a period of 3 years commencing on the relevant day, be taken to be an officer within the meaning of this Act for the purposes of the *Australian Capital Territory*

*Government Service (Consequential Provisions) Act 1994* of the Commonwealth.

(3) For the purposes of transfer or promotion to an office in the Service in accordance with this Part, an employee of the Company shall be taken to be an officer within the meaning of this Act.

(4) Unless the contrary intention appears, an expression used in this section has the same meaning as in section 7 of the *Electricity and Water (Corporatisation) (Consequential Provisions) Act 1995*.

**Officers of the Australian Public Service appointed to Chief Executive or Senior Executive Service offices**

**116. (1)** Where the Chief Minister appoints a Commonwealth officer to an office of Chief Executive, paragraphs 115 (7) (f) and (g) applies in respect of the officer unless the Chief Minister, with the consent of the officer, directs that the paragraphs are not to so apply.

(2) Where the Commissioner appoints a Commonwealth officer to a Senior Executive Service office, subsection 115 (4) and paragraphs 115 (7) (f) and (g) apply in respect of the officer unless the Commissioner, with the consent of the officer, directs that those provisions, or any of them, are not to so apply.

**Reappointment of retired officers**

**117. (1)** Subject to this section, the Chief Executive of an administrative unit may reappoint to an office in the administrative unit, under this section, a person who has, whether before or after the commencement of this subsection, ceased to be an officer.

(2) A Chief Executive shall not, without the consent in writing of the Commissioner, reappoint a person to the Service under this section if the person has—

- (a) within the previous year been retired as an officer under section 128 or 137;
- (b) within the previous year been retired from the Service under section 143 as an excess officer without having volunteered to accept retirement on that basis; or
- (c) within the previous 2 years been retired as an officer under section 143 as a result of having volunteered to accept retirement as an excess officer;

and received a payment from the Territory or a Territory instrumentality for being so retired.

**(3)** A Chief Executive shall not reappoint a person to the Service under this section—

- (a) if the person ceased, or last ceased, to be an officer by reason of his or her having been dismissed from the Service for misconduct or inefficiency; or
- (b) if the person has, since ceasing, or last ceasing, to be an officer, been engaged in prescribed employment and been dismissed from that employment for misconduct or inefficiency.

**(4)** Subsection (3) does not apply in relation to a person in relation to whom it would, but for this subsection, apply if—

- (a) the person was dismissed by reason of his or her having been found by a court to have committed a criminal offence; and
- (b) the finding of the court has been nullified.

**(5)** For the purposes of subsection (3)—

- (a) a person shall be taken to have been dismissed from the Service for misconduct if he or she was dismissed from the Service under Part IX; and
- (b) a person shall be taken to have been dismissed from employment prescribed for the purposes of paragraph (3) (b) for misconduct if he or she was dismissed from that employment on grounds similar to the grounds on which an officer may be dismissed from the Service under Part IX.

**(6)** For the purposes of subsection (4), a finding of a court in relation to an offence shall be taken to have been nullified—

- (a) where a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or
- (b) in any other case—if the finding has been set aside.

### **Reappointment of unsuccessful election candidates**

**118. (1)** Where—

- (a) a person who was an officer holding a Senior Executive Service office in an administrative unit—
  - (i) resigned in order to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, of a House of the Parliament of the Commonwealth



*Public Sector Management Act 1994*

or of a State, of the Legislative Assembly for the Northern Territory, or of a prescribed legislative or advisory body for another Territory;

- (ii) was a candidate at the election; and
  - (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 6 months before the day on which nominations for the election closed;

the Commissioner shall, upon application by the person within 2 months after the declaration of the result of the election, reappoint the person to the Service to fill the office occupied by the person immediately before resigning or an equivalent office in the same administrative unit or, if such an office is not available, as an unattached officer having the same classification as the person had immediately before resigning.

**(2) Where—**

- (a) a person who was an officer holding an office (not being a Senior Executive Service office) in an administrative unit—
  - (i) resigned in order to become a candidate for election as a member of the Legislative Assembly for the Australian Capital Territory, of a House of the Parliament of the Commonwealth or of a State, of the Legislative Assembly for the Northern Territory or of a prescribed legislative or advisory body for another Territory;
  - (ii) was a candidate at the election; and
  - (iii) failed to be elected; and
- (b) the resignation took effect not earlier than 6 months before the day on which nominations for the election closed;

the Chief Executive of the administrative unit shall, upon application by the person within 2 months after the declaration of the result of the election, reappoint the person to the Service to fill the office occupied by the person immediately before resigning or an equivalent office in the administrative unit or, if such an office is not available, as an unattached officer having the same classification as the person had immediately before resigning.

**(3)** A reference in subsection (1) or (2) to the declaration of the result of an election shall, in relation to an election the result of which is challenged, be read as a reference to the determination of the challenge by a court of disputed returns or the lapsing of the challenge, whichever happens first.

(4) In this section—

“officer” does not include a Chief Executive or an unattached Chief Executive.

### **Unattached officers**

**119. (1)** The Chief Executive of an administrative unit may, with the consent in writing of an officer who holds an office in the administrative unit, declare, in writing, that the officer shall, on a day specified in the declaration, become an unattached officer and, if the Chief Executive does so, the office so held by the officer becomes vacant on the day so specified.

(2) Except as otherwise directed by the Commissioner under this or another provision of this Act, a person who is, or is deemed to be, an unattached officer of the Service is included in the administrative unit in which the person last held an office.

### **Arrangements with other governments and bodies for the provision of services by employees to the Territory**

**120. (1)** Subject to subsection (4), the Commissioner may enter into an arrangement with an authority of the Commonwealth, a State, another Territory or a place overseas for the services of officers or employees of—

- (a) the public service of the Commonwealth, State, Territory or place; or
- (b) a body established for a public purpose by or under a law of the Commonwealth, State, Territory or place;

to be made available to the Commissioner.

(2) Subject to subsection (4), the Commissioner may enter into an arrangement with a body (other than a body referred to in subsection (1)) for the services of officers or employees of the body to be made available to the Commissioner.

(3) While a person is performing services pursuant to an arrangement under subsection (1) or (2), the person shall perform those services in accordance with the directions of the Commissioner and not otherwise.

(4) The Commissioner shall not enter into an arrangement under subsection (1) or (2) unless the authority or body with whom the arrangement is made acknowledges in writing that while a person is performing services under the arrangement he or she is to perform those services in accordance with the directions of the Commissioner and not otherwise.

**Arrangements with other governments for the provision of services by officers and employees of the Service**

**121. (1)** The Commissioner may enter into an arrangement with an appropriate authority of the Commonwealth, a State, another Territory or a place overseas for an officer of an administrative unit, or an employee performing duties in an administrative unit, to perform any work or services for the government of the Commonwealth, State, Territory or place.

**(2)** An arrangement under subsection (1) may provide that where an officer or employee of the Service is performing work or services under the arrangement, he or she shall perform the work or services in accordance with the directions of a specified officer of the government for which the work or services are being performed and not otherwise.

**PART VI—RETIREMENT AND REDEPLOYMENT**

*Division 1—Retirement and redeployment of Chief Executives*

**Interpretation**

**122.** In this Division, unless the contrary intention appears—  
“Chief Executive” includes an unattached Chief Executive.

**Retirement—minimum retiring age**

**123.** Subject to subsection 127 (3), a Chief Executive who has attained the age of 55 years is entitled to retire from the Service at any time at which he or she desires to do so.

**Retirement—maximum retiring age**

**124. (1)** Subject to subsection (2), a Chief Executive shall, by force of this subsection, be retired from the Service upon attaining the age of 65 years.

**(2)** Where the relevant authority is of the opinion that it is desirable, in the interests of the Territory, that a Chief Executive who has not attained the age of 65 years should continue, after he or she has attained that age, in his or her employment, and the Chief Executive is able and willing so to continue, the relevant authority may determine, in writing, that subsection (1) does not apply to the Chief Executive.

**(3)** A relevant authority may, at the time when it makes, or at any time after it has made, a determination under subsection (2) in respect of a Chief Executive, determine that the Chief Executive shall retire from the Service upon attaining a specified age or upon the expiration of a specified period, and, where such a determination is made, the relevant authority may, at any time

before the Chief Executive attains that age or before the expiration of the period so determined, vary such a determination.

(4) In this section—

“relevant authority” means—

- (a) in relation to an unattached Chief Executive—the Commissioner; and
- (b) in relation to any other Chief Executive—the Chief Minister.

(5) Subsections (1) to (4) (inclusive) cease to have effect on the expiration of 4 March 1996.

### **Retirement of Chief Executives on the ground of incapacity**

**125. (1)** If the Commissioner, after making appropriate enquiries, reports to the Chief Minister that a Chief Executive is, because of physical or mental incapacity, incapable of performing his or her duties, the Chief Minister may, by writing, retire the Chief Executive from the Service with effect on and from a day to be specified by the Chief Minister.

(2) In the case of a retirement of a Chief Executive under subsection (1), the day on and from which he or she is retired may, with the consent of the Chief Executive, be a day that is earlier than the date on which the decision by the Chief Minister to retire the Chief Executive was made.

(3) Notwithstanding anything contained in this section, a Chief Executive who—

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

(4) Notwithstanding anything contained in this section, a Chief Executive who—

- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and

- (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

### **Termination of appointment**

**126. (1)** The Chief Minister may, in writing, terminate the appointment of a person to an office of Chief Executive.

**(2)** Where the appointment of a person to an office is terminated under subsection (1), the office becomes vacant and, unless the person continues to hold another office of Chief Executive, the person becomes an unattached Chief Executive.

### **Redeployment of unattached Chief Executives**

**127. (1)** Where an unattached Chief Executive does not hold an office or employment outside the Service having a salary that is, in the opinion of the Commissioner, comparable with that of the office of Chief Executive last held by the unattached Chief Executive, the Commissioner shall—

- (a) take all reasonable steps to—
  - (i) identify relevant offices that are vacant or about to become vacant; and
  - (ii) bring to the attention of the person or body having the power of appointment in relation to each office referred to in subparagraph (i) the availability of the unattached Chief Executive for appointment, and the qualifications of the unattached Chief Executive that make him or her suitable for appointment, to the office; and
- (b) take all reasonable steps to assign appropriate duties to the unattached Chief Executive while he or she remains an unattached Chief Executive.

**(2)** Where the Commissioner is satisfied that it is likely that an unattached Chief Executive referred to in subsection (1) will not be appointed, within a reasonable time, to a relevant office, the Commissioner may—

- (a) give notice in writing to the unattached Chief Executive that the Commissioner intends to redeploy the unattached Chief Executive into the Senior Executive Service as soon as practicable after the

expiration of the period of 28 days commencing on the day on which the notice is given to the unattached Chief Executive; and

- (b) after the expiration of that period—
  - (i) transfer the unattached Chief Executive to an office having a classification that is the highest Senior Executive Service classification; or
  - (ii) direct that the unattached Chief Executive's classification as an unattached Chief Executive be reduced to the classification that is the highest Senior Executive Service classification.

(3) If an unattached Chief Executive who is given notice under subsection (2) elects, by notice in writing given to the Commissioner within the period referred to in paragraph (2) (a), to retire from the Service, the unattached Chief Executive shall not be redeployed into the Senior Executive Service but shall be taken for all purposes to have been compulsorily retired from the Service at the expiration of the period referred to in paragraph (2) (a) or on such earlier day (not being earlier than the day next following the day of the election) as is specified in the notice of election.

(4) In this section, unless the contrary intention appears—

“relevant office”, in relation to an unattached Chief Executive, means—

- (a) an office of Chief Executive; or
- (b) an office or employment outside the Service for which the unattached Chief Executive is qualified, being an office or employment having a salary that is, in the opinion of the Commissioner, comparable with that of an office of Chief Executive of equal classification to the office of Chief Executive last held by the unattached Chief Executive.

### **Special benefits available to retiring unattached Chief Executives**

**128. (1)** The Commissioner may give notice in writing to an unattached Chief Executive that if the unattached Chief Executive retires from the Service within the period specified in the notice he or she will be entitled to a specified benefit as prescribed.

(2) Where notice is given to an unattached Chief Executive under subsection (1)—

- (a) the unattached Chief Executive may retire from the Service within the period specified in the notice notwithstanding section 123; and
- (b) if the unattached Chief Executive retires from the Service within the period specified in the notice—
  - (i) he or she becomes entitled to the benefit specified in the notice; and
  - (ii) he or she shall be taken for all purposes to have been compulsorily retired from the Service.

***Division 2—Retirement and redeployment of Senior Executive Service officers***

**Interpretation**

**129.** In this Division—

“Appeal Committee” means a Redeployment and Retirement Appeal Committee constituted under Subdivision D of Division 2 of Part II of the Merit Protection Act.

**Retirement—minimum retiring age**

**130.** A Senior Executive Service officer who has attained the age of 55 years is entitled to retire from the Service at any time at which he or she desires to do so.

**Retirement—maximum retiring age**

**131. (1)** Subject to subsection (2), a Senior Executive Service officer shall, by force of this subsection, be retired from the Service upon attaining the age of 65 years.

**(2)** Where the Commissioner is of the opinion that it is desirable, in the interests of the Territory, that a Senior Executive Service officer who has not attained his or her maximum retiring age should continue, after attaining that age, in his or her employment, and the officer is able and willing so to continue, the Commissioner may determine, in writing, that subsection (1) does not apply to the officer.

**(3)** The Commissioner may, at the time when he or she makes, or at any time after he or she has made, a determination under subsection (2) in respect of an officer, determine that the officer shall retire from the Service upon attaining a specified age or upon the expiration of a specified period, and, where such a

determination is made, the Commissioner may, at any time before the officer attains that age or before the expiration of the period so determined, vary such a determination.

(4) Subsections (1) to (3) (inclusive) cease to have effect on the expiration of 4 March 1996.

**Preliminary steps in relation to officers whose services cannot reasonably be used in an SES office at the same or equal classification**

**132. (1)** A reference in this section to a Senior Executive Service officer shall be read as including a reference to a person who becomes a Senior Executive Service officer under section 127.

(2) Where the Commissioner considers that it may be appropriate to take action under subsection 133 (2) in relation to a Senior Executive Service officer, the Commissioner shall take reasonable steps to identify Senior Executive Service offices—

- (a) that are the same as or equal to the classification of the officer;
- (b) to which the officer could be transferred or the duties of which the officer could be directed to perform; and
- (c) the duties of which the officer could, in the opinion of the Commissioner, perform efficiently.

(3) In determining for the purposes of subsection (2) whether an officer could perform the duties of an office in an administrative unit efficiently, the Commissioner shall have regard to—

- (a) the standard of work performed by the officer as a Senior Executive Service officer (including any relevant appraisal of the performance of the officer);
- (b) the experience possessed by the officer relevant to the performance of those duties;
- (c) the training and educational qualifications of the officer;
- (d) any personal qualities of the officer relevant to the performance of those duties;
- (e) any physical or mental incapacity of the officer relevant to the performance of those duties;



*Public Sector Management Act 1994*

- (f) any views of the officer in relation to the matter to be determined given by the officer to the Commissioner in accordance with a notice given to the officer under subsection (4);
- (g) the views of the relevant Chief Executive in relation to that matter; and
- (h) any other matter that the Commissioner considers relevant.

**(4)** Where the Commissioner is considering taking action under subsection 133 (2) in relation to a Senior Executive Service officer, the Commissioner shall give the officer a notice in writing—

- (a) indicating that the Commissioner is considering whether the services of the officer can reasonably be used in the Service in the performance of the duties of, or duties appropriate to, a Senior Executive Service office of the same or equal classification; and
- (b) inviting the officer to give to the Commissioner his or her views in relation to the matter being considered by the Commissioner within a period of 14 days commencing on a day specified in the notice for that purpose being a day not earlier than the day on which the notice is given.

**(5)** Where the Commissioner is satisfied that the services of an officer cannot reasonably be used in the Service in the performance of the duties of, or duties appropriate to, a Senior Executive Service office of the same or equal classification, the Commissioner, after the period mentioned in paragraph (4) (b) has expired, may give to the officer notice in writing—

- (a) indicating that the Commissioner is considering giving the officer notice under subsection 133 (2);
- (b) specifying the effect of the proposed notice under subsection 133 (2); and
- (c) inviting the officer to give to the Commissioner his or her views in relation to the proposed notice under subsection 133 (2) within a period of 14 days commencing on a day specified in the notice for that purpose, being a day not earlier than the day on which the notice is given.

**(6)** A notice under subsection (4) or (5) may be given by post.

**Officers whose services cannot reasonably be used in an SES office at the same or equal classification**

**133. (1)** An officer may, before being given a notice under subsection (2), consent, by notice in writing given to the Commissioner, to the giving of the notice under subsection (2).

**(2)** Where the Commissioner—

- (a) is satisfied that the services of an officer cannot reasonably be used in the Service in the performance of the duties of, or duties appropriate to, a Senior Executive Service office of the same or equal classification;
- (b) has had regard to—
  - (i) the need to promote the efficiency of the Service;
  - (ii) the period within which the officer may reasonably be expected to retire under section 130, 131 or 135;
  - (iii) any views in relation to the proposed action under this subsection given by the officer to the Commissioner in accordance with a notice under subsection 132 (5); and
  - (iv) any other matter that the Commissioner considers relevant; and
- (c) has given notice to the officer under subsection 132 (5) and the period specified in the notice has expired;

the Commissioner may give notice in writing to the officer that—

- (d) the officer is assigned to a specified office of a lower classification;
- (e) the officer is to become an unattached officer of a lower classification or, being an unattached officer, is to have a lower classification and, in either case, that the officer is included in the administrative unit specified in the notice; or
- (f) the officer is to be retired from the Service.

**(3)** Subject to subsection (4), a notice to an officer under subsection (2) shall state that—

- (a) the officer has a right to appeal, within the period of 14 days commencing on the day on which the notice is given to the officer, to

*Public Sector Management Act 1994*

an Appeal Committee under section 134 against the giving of the notice; and

- (b) the notice will, subject to any appeal under section 134, take effect on a specified day, being a day not earlier than the expiration of the period referred to in paragraph (a).

**(4)** A notice under subsection (2) to an officer who has consented to the giving of the notice takes effect on a day specified in the notice and agreed between the officer and the Commissioner, being a day no earlier than the day on which the notice is given to the officer.

**(5)** A notice under subsection (2) to an officer who has not consented to the giving of the notice takes effect—

- (a) on the day specified in the notice as the day on which the notice takes effect being a day not earlier than the expiration of a period fixed by subsection 134 (1);
- (b) where the officer appeals under section 134 against the giving of the notice and withdraws the appeal after the expiration of the period fixed by subsection 134 (1) before the Appeal Committee determines the appeal under that subsection—on the day on which that appeal is withdrawn; or
- (c) where the officer appeals under section 134 against the giving of the notice and the Appeal Committee confirms the notice—on the day on which that notice is confirmed;

whichever occurs last.

**(6)** For the purpose of giving effect to a notice given under subsection (2), the Commissioner may—

- (a) by notice in writing given to the Chief Executive of an administrative unit in which a specified office exists, or in which any offices included in a specified class of offices exist, direct that, until the notice is revoked, a transfer or promotion of an officer to fill a vacancy in the office, or in an office included in the class of offices, shall not be made under section 83 or 88 unless the Commissioner has approved the filling of the vacancy;
- (b) determine, in writing, that a promotion that has been notified under section 83 or 88 but has not taken effect shall not take effect while the determination is in force; and

- (c) cancel a promotion that has been notified under section 83 or 88 but has not yet taken effect, whether or not, in the case of a promotion notified under section 83, an appeal has, or appeals have, been made against the promotion.

(7) The power conferred on the Commissioner by paragraph (6) (a) is in addition to, and not in substitution for, the power conferred on the Commissioner by section 93.

(8) Where, in pursuance of paragraph (6) (b), the Commissioner determines that a promotion shall not take effect while the determination in relation to that promotion is in force, the Commissioner may, at any time while the determination is in force, cancel the promotion in pursuance of paragraph (6) (c).

(9) If the Commissioner revokes a determination made under paragraph (6) (b), the promotion to which the determination relates takes effect on the day on which it would have taken effect if the determination had not been made, but the Commissioner may, in the instrument of revocation, determine that salary at the rate applicable to the office to which the promotion was made is payable to the officer concerned on and from a day (not being a day after the day on which the instrument of revocation was made) after the prescribed day in respect of the promotion.

(10) Where the Commissioner, in the instrument of revocation referred to in subsection (9), specifies a day on and from which salary at a particular rate is payable to an officer, salary at that rate is payable on and from that day notwithstanding anything in the management standards.

(11) In this section—

“prescribed day” means, in relation to a promotion of an officer under section 83 or 88, the later of—

- (a) a day ascertained in accordance with the management standards, being a day occurring not earlier than the day on which the promotion is notified in the Gazette; and
- (b) the day on which the office to which the officer is promoted becomes vacant.

### **Appeal to Appeal Committee**

**134.** (1) A Senior Executive Service officer to whom notice under subsection 133 (2) has been given (other than an officer who has, under

subsection 133 (1), consented to the giving of the notice) may, within the period of 14 days commencing on the day on which the notice is given to the officer, appeal to an Appeal Committee against the giving of the notice.

(2) Where an officer appeals to an Appeal Committee under subsection (1) against the giving of a notice under subsection 133 (2), an Appeal Committee shall hear and determine the appeal and may—

- (a) confirm the notice; or
- (b) revoke the notice.

### **Retirement with consent of officer on grounds of incapacity**

**135. (1)** Where the Commissioner is satisfied that a Senior Executive Service officer should, because of physical or mental incapacity, be retired from the Service, the Commissioner may, with the consent of the officer, retire the officer from the Service on a day to be specified by the Commissioner.

(2) Where an officer is retired under subsection (1), the day as from which he or she is retired may, with the consent of the officer, be a day that is earlier than the day on which the action to retire the officer was taken.

### **Unattachment of Senior Executive Service officers**

**136. (1)** Where an authorised medical practitioner has recommended that an officer should, because of physical or mental incapacity, be redeployed to perform other duties or retired from the Service, the Commissioner may, by writing, declare that the officer shall, on a specified day, become an unattached officer and, if the Commissioner does so, the office held by the officer becomes vacant on that day.

(2) As soon as practicable after a declaration is made under subsection (1) in respect of an officer, a copy of the instrument of declaration shall be given to the officer.

### **Special benefits available to retiring officers**

**137. (1)** The Commissioner may give notice in writing to a Senior Executive Service officer that if the officer retires from the Service within a period specified in the notice the officer will be entitled to a specified benefit as prescribed.

(2) Where notice is given to an officer under subsection (1)—

*Public Sector Management Act 1994*

- (a) the officer may retire from the Service within the period specified in the notice notwithstanding section 130; and
- (b) if the officer retires from the Service within the period specified in the notice—
  - (i) the officer becomes entitled to the benefit specified in the notice; and
  - (ii) the officer shall be taken for all purposes to have been compulsorily retired from the Service.

**Limitation on retirement on ground of invalidity**

**138. (1)** Notwithstanding anything contained in section 132, 133 or 135, a Senior Executive Service officer who—

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

**(2)** Notwithstanding anything contained in section 132, 133 or 135, a Senior Executive Service officer who—

- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and
- (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

***Division 3—Retirement and redeployment of officers other than Chief Executives and Senior Executive Service officers***

**Interpretation**

**139. (1)** In this Division, unless the contrary intention appears—

*Public Sector Management Act 1994*

“Appeal Committee” means a Redeployment and Retirement Appeal Committee constituted under Subdivision D of Division 2 of Part II of the Merit Protection Act;

“excess officer” includes a person who is an excess officer within the meaning of subsection (2);

“officer” means an officer, other than—

- (a) a Chief Executive or an unattached Chief Executive;
- (b) a Senior Executive Service officer; or
- (c) an officer whose appointment to the Service on probation has not been confirmed.

(2) An officer in an administrative unit is an excess officer for the purposes of a provision of this Division if—

- (a) the officer is included in a class of officers employed in the administrative unit, which class comprises a greater number of officers than is necessary for the efficient and economical working of the administrative unit;
- (b) the services of the officer cannot be effectively used because of technological or other changes in the work methods of the administrative unit or changes in the nature, extent or organisation of the functions of the administrative unit; or
- (c) where the duties usually performed by the officer are to be performed at a different locality and the Commissioner has determined that the provision applies in relation to the relocation of the performance of those duties—the officer is not willing to perform duties at that locality.

(3) For the purposes of this Division, an officer is inefficient only if the officer fails, in the performance of the duties that he or she is required to perform, to attain or sustain a standard of efficiency that a person may reasonably be expected to attain or sustain in the performance of those duties.

(4) Without limiting the generality of the matters to which regard may be had for the purpose of determining whether an officer has failed, in the performance of the duties that he or she is required to perform, to attain or sustain the standard of efficiency referred to in subsection (3)—

- (a) regard shall be had to—

*Public Sector Management Act 1994*

- (i) any written selection criteria or job specifications applicable to those duties;
  - (ii) any duty statement describing those duties; and
  - (iii) any written work standards or instructions relating to the manner of performance of those duties; and
- (b) regard may be had to—
- (i) any written selection criteria or job specifications applicable to similar duties;
  - (ii) any duty statements describing similar duties; and
  - (iii) any written work standards or instructions relating to the manner of performance of similar duties.

**(5)** A reference in subsection (4) to similar duties, in relation to an officer holding an office or included in an administrative unit, shall be read as a reference to similar duties that other officers of that administrative unit are required to perform.

**(6)** For the purposes of this Division, an officer is not qualified to perform his or her duties only if, in relation to those duties—

- (a) the officer ceases to hold, or becomes unable or ineligible to hold or to use and enjoy, an essential qualification; or
- (b) a court, person, authority or body that is competent to do so suspends, cancels, revokes, rescinds or otherwise withdraws an essential qualification held by the officer.

**(7)** A reference in subsection (6) to an essential qualification, in relation to an officer, shall be read as a reference to any statutory, professional, academic, commercial, technical, trade, health or other qualification the holding of which is a prerequisite to the practice of a profession, trade or occupation, the exercise of a right or the performance of a function or duty, being a profession, trade, occupation, right, function or duty that it is necessary for that officer to practise, exercise or perform in the course of his or her employment.

**Power to reduce officer's classification**

**140. (1)** The power conferred by this Division on a Chief Executive to reduce an officer's classification is a power to assign an officer, being a person



who holds an office, or is included, in the administrative unit of the Chief Executive, to an office of a lower classification in the administrative unit.

(2) The power conferred by this Division on the Commissioner to reduce an officer's classification is a power—

- (a) to assign an officer in an administrative unit to an office of a lower classification in that or another administrative unit; or
- (b) to declare an officer in an administrative unit to be an unattached officer of a lower classification or, being an unattached officer, to have a lower classification and, in either case, to direct that the officer is included in that or another administrative unit.

**Retirement—minimum retiring age**

**141. (1)** An officer who has attained the age of 55 years is entitled to retire from the Service at any time at which the officer desires to do so.

(2) In subsection (1)—

“officer” includes—

- (a) an officer whose appointment to the Service on probation has not been confirmed; and
- (b) a person engaged as an employee for a fixed term.

**Retirement—maximum retiring age**

**142. (1)** Subject to subsection (2), an officer shall, by force of this subsection, be retired from the Service upon attaining the age of 65 years.

(2) Where the relevant Chief Executive is of the opinion that it is desirable, in the interests of the Territory, that an officer who has not attained the maximum retiring age should continue, after attaining that age, in employment, and the officer is able and willing so to continue, the relevant Chief Executive may determine, in writing, that subsection (1) does not apply to the officer.

(3) The relevant Chief Executive may, at the time of making, or at any time after making, a determination under subsection (2) in respect of an officer, determine that the officer shall retire from the Service upon attaining a specified age or upon the expiration of a specified period and, where such a determination is made, the relevant Chief Executive may, at any time before the officer attains that age or before the expiration of the period so determined, vary the determination.

(4) In this section—

“officer” includes—

- (a) an officer whose appointment to the Service on probation has not been confirmed; and
- (b) a person engaged as an employee for a fixed term.

(5) Subsections (1) to (4) (inclusive) cease to have effect on the expiration of 4 March 1996.

**Action by Chief Executive to reduce an officer’s classification or retire an officer from the Service**

**143. (1)** Where the relevant Chief Executive is satisfied that an officer—

- (a) is unable to perform his or her duties, or other duties appropriate to the officer’s classification, because of physical or mental incapacity (which ground is referred to in this section as the “ground of invalidity”);
- (b) is inefficient;
- (c) is not qualified to perform his or her duties; or
- (d) is an excess officer;

the relevant Chief Executive may, having considered whether it would be in the interests of the efficient administration of the administrative unit of the Chief Executive to transfer the officer under section 83, subject to subsection (2), by notice in writing given to the officer, reduce the officer’s classification or retire the officer from the Service.

(2) Where—

- (a) a Chief Executive—
  - (i) has been unable to find alternative suitable employment for an excess officer in the administrative unit of the Chief Executive; and
  - (ii) proposes to exercise a power under subsection (1) in relation to the officer; and
- (b) the officer has not consented to the exercise of that power;

the Commissioner shall take such action as is reasonable to find alternative suitable employment for the officer in the Service, and the Chief Executive shall not exercise a power under subsection (1) in relation to the officer unless the Commissioner is satisfied that it would not be in the interests of the efficient administration of the Service to transfer the officer under section 96 to another administrative unit.

**(3)** For the purposes of subsection (1)—

- (a) where an officer has consented to his or her proposed reduction in classification or retirement on the ground of invalidity—the notice under that subsection takes effect on a day agreed between the officer and the Chief Executive and specified in the notice, whether before or after the day on which the notice is given to the officer; and
- (b) where an officer has consented to his or her proposed reduction in classification or retirement on any other ground—the notice under that subsection takes effect on a day agreed between the officer and the Chief Executive and specified in the notice, being a day no earlier than the day on which the notice is given to the officer.

**(4)** For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification or retirement on the ground of invalidity, the notice under that subsection takes effect—

- (a) in accordance with subsection (7); or
- (b) where under an industrial award that is applicable to the officer the notice would not take effect until the day immediately following the day on which the officer exhausts any full-pay sick leave credits to which the officer may be entitled before retirement in accordance with that award and the day that so follows occurs after the time so determined—on that day.

**(5)** For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification or retirement on the ground that the officer is an excess officer, the notice under that subsection takes effect—

- (a) in accordance with subsection (7); or
- (b) where under an industrial award that is applicable to the officer the notice would not take effect until the end of a retention period that ends in relation to that officer after the time so determined—at the end of that period.

(6) For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification or retirement on a ground other than invalidity or that the officer is an excess officer, the notice under that subsection takes effect in accordance with subsection (7).

(7) For the purposes of subsections (4), (5) and (6), a notice under subsection (1), takes effect—

- (a) on the day (if any) specified in the notice as the day on which the notice takes effect;
- (b) 1 month after the day on which the notice is given to the officer;
- (c) where the officer appeals under section 147 against the giving of the notice and withdraws that appeal after the expiration of the period fixed by subsection 147 (1) but before the Appeal Committee determines the appeal—on the day on which that appeal is withdrawn; or
- (d) where the officer appeals under section 147 against the giving of the notice and the Appeal Committee confirms the notice—on the day on which that notice is confirmed;

whichever occurs last.

(8) The powers conferred on a Chief Executive or the Commissioner by this section are subject to any applicable industrial award.

#### **Action by Commissioner to reduce an officer's classification**

**144. (1)** Where the Commissioner is—

- (a) satisfied that an officer—
  - (i) is unable to perform his or her duties, or other duties appropriate to the officer's classification, because of physical or mental incapacity (which ground is referred to in this section as the "ground of invalidity");
  - (ii) is inefficient;
  - (iii) is not qualified to perform his or her duties; or
  - (iv) is an excess officer; and
- (b) satisfied that it would be in the interests of the efficient administration of the Service to reduce the officer's classification;

the Commissioner may, having considered whether it would be in the interests of the efficient administration of the Service to transfer the officer under section 96, by notice in writing given to the officer, reduce the officer's classification accordingly.

(2) For the purposes of subsection (1)—

- (a) where an officer has consented to his or her proposed reduction in classification on the ground of invalidity—the notice under that subsection takes effect on a day agreed between the officer and the Commissioner and specified in the notice, whether before or after the day on which the notice is given to the officer; and
- (b) where an officer has consented to his or her proposed reduction in classification on any other ground—the notice under that subsection takes effect on a day agreed between the officer and the Commissioner and specified in the notice, being a day no earlier than the day on which the notice is given to the officer.

(3) For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification on the ground of invalidity, the notice under that subsection takes effect—

- (a) in accordance with subsection (6); or
- (b) where under an industrial award that is applicable to the officer the notice would not take effect until the day immediately following the day on which the officer exhausts any full-pay sick leave credits to which the officer may be entitled before retirement in accordance with that award and the day that so follows occurs after the time so determined—on that day.

(4) For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification on the ground that the officer is an excess officer, the notice under that subsection takes effect—

- (a) in accordance with subsection (6); or
- (b) where under an industrial award that is applicable to the officer the notice would not take effect until the end of a retention period that ends in relation to that officer after the time so determined—at the end of that period.

(5) For the purposes of subsection (1), where an officer has not consented to his or her proposed reduction in classification on a ground other than

invalidity or that the officer is an excess officer, the notice under that subsection takes effect in accordance with subsection (6).

(6) For the purposes of subsections (3), (4) and (5), a notice under subsection (1) takes effect—

- (a) on the day (if any) specified in the notice as the day on which the notice takes effect;
- (b) 1 month after the day on which the notice is given to the officer;
- (c) where the officer appeals under section 147 against the giving of the notice and withdraws that appeal after the expiration of the period fixed by subsection 147 (1) but before the Appeal Committee determines the appeal—on the day on which that appeal is withdrawn; or
- (d) where the officer appeals under section 147 against the giving of the notice and the Appeal Committee confirms the notice—on the day on which that notice is confirmed;

whichever occurs last.

(7) The powers conferred on the Commissioner by this section are subject to any applicable industrial award.

(8) This section does not apply in relation to an autonomous instrumentality.

#### **Limitation on retirement on ground of invalidity**

**145. (1)** Notwithstanding anything contained in section 143 or 144, an officer who—

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

(2) Notwithstanding anything contained in section 143 or 144, an officer who—

*Public Sector Management Act 1994*

- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and
- (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

### **Unattachment of officers**

**146. (1)** Where an authorised medical practitioner has recommended that an officer should, because of physical or mental incapacity, be redeployed to perform other duties or retired from the Service, the relevant Chief Executive may, by writing, declare that the officer shall, on a specified day, become an unattached officer and, if the relevant Chief Executive does so, the office held by the officer becomes vacant on that day.

**(2)** As soon as practicable after a declaration is made under subsection (1) in respect of an officer, a copy of the instrument of declaration shall be given to the officer.

### **Appeals**

**147. (1)** An officer to whom a notice under section 143 or 144 has been given (not being an officer who, before receiving the notice, consented in writing to the giving of the notice) may, within the period of 14 days commencing on the day on which the notice is given to the officer, appeal to an Appeal Committee against the giving of the notice, on the ground that the reduction in the officer's classification, or the retirement of the officer, as the case requires, would be unreasonable.

**(2)** Where an officer appeals to an Appeal Committee against the giving of a notice, an Appeal Committee shall hear and determine the appeal and may—

- (a) confirm the notice; or
- (b) revoke the notice.

## **PART VII—LONG SERVICE LEAVE**

### **Interpretation**

**148. (1)** In this Part, unless the contrary intention appears—  
“approving authority” means—

*Public Sector Management Act 1994*

- (a) in relation to a person who is, or was at the time of his or her ceasing to be an officer (whether by reason of death or otherwise), the holder of an office or appointment, being an office or appointment to which this paragraph applies or applied by virtue of subsection (6)—the Commissioner or any other person who is authorised to grant leave to the holder of the office or appointment by the law establishing the office or providing for the making of the appointment; or
- (b) in relation to any other person—the Commissioner or the relevant Chief Executive;

“category A officer” means—

- (a) an officer the whole of whose employment that counts as eligible employment for the purposes of this Part has been employment in a full-time capacity; or
- (b) an officer the whole of whose employment that counts as eligible employment for the purposes of this Part has been employment in a part-time capacity;

“category B officer” means an officer other than a category A officer;

“Commonwealth Long Service Leave Act” means the *Long Service Leave (Commonwealth Employees) Act 1976* of the Commonwealth;

“leave” means leave of absence;

“long service leave” includes long leave, furlough, extended leave and any other leave in the nature of long service leave (however described);

“officer” includes—

- (a) an employee;
- (b) a statutory office holder; and
- (c) a person employed by a Territory instrumentality or by a statutory office holder;

“redundancy”, in relation to an officer, means the compulsory termination of the employment of the officer for the reason that—

- (a) his or her employment or position is not necessary;
- (b) the work for which he or she was engaged is finished; or



*Public Sector Management Act 1994*

- (c) a reduction in the number of officers is necessary because the quantity of work has diminished.

(2) A reference in this Part to eligible employment is a reference to employment by the Territory or employment referred to in subsection 154 (2).

(3) For the purposes of references in this Part to a number of months (other than a reference to a number of completed months), the number of months shall be taken to be, where appropriate, a whole number and a fraction.

(4) For the purposes of references in this Part to a number of years (other than a reference to a number of completed years), the number of years shall be taken to be, where appropriate, a whole number and a fraction.

(5) A reference in this Part to a person who is on loan to the Territory shall be read as including a reference to a person who is on loan to a Territory instrumentality or a statutory office holder.

(6) Where—

- (a) a Minister may grant leave of absence to a statutory office holder or the holder of an appointment established by, or made under, an Act; and
- (b) the holder of the office or appointment is, for the purposes of this Part, to be taken to be employed by the Territory by reason of holding the office or appointment;

the office is an office, or the appointment is an appointment, as the case may be, to which paragraph (a) of the definition of “approving authority” in subsection (1) applies.

(7) For the purposes of this Part, the minimum retiring age of an officer is—

- (a) in the case of an officer to whom Part VI applies—the age that is, in accordance with Part VI, his or her minimum retiring age;
- (b) in the case of an officer whose minimum retiring age is fixed by the terms and conditions of his or her employment otherwise than under Part VI—the age so fixed; or
- (c) in any other case—the age of 60 years.

**Meaning of public authority**

**149.** Subject to the management standards, a reference in this Part to a public authority shall be read as a reference to—

- (a) an authority, whether incorporated or not, that was or is constituted by or under the law of the Territory, the Commonwealth, a State or another Territory for a public purpose; or
- (b) a local governing body that was or is established by or under a law of the Commonwealth, a State or another Territory.

**Management standards with respect to previous employment with prescribed authorities etc.**

**150. (1)** The management standards may provide that a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the management standards shall, for the purposes of this Part, be taken to be, or to have been, a public authority.

**(2)** The management standards may provide that previous employment of an officer by a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the management standards shall be taken into account for the purposes of section 154 as if it had been employment by the Territory.

**(3)** Management standards made in accordance with this section may modify sections 154, 155, 156 and 157 in relation to officers who have been employed in the Independent State of Papua New Guinea.

**(4)** Management standards made in accordance with this section—

- (a) may refer to a specified person, authority, institution or body or to persons, authorities, institutions or bodies included in a specified class of persons, authorities, institutions or bodies;
- (b) may be expressed to have effect in respect only of employment in specified cases or circumstances; and
- (c) may be expressed to have effect in respect only of employment on or after a particular date, before a particular date or during a particular period.

### **Meaning of salary**

**151. (1)** The management standards may provide that allowances of specified kinds are to be included in salary for the purposes of this Part or of a provision of this Part.

**(2)** The management standards may prescribe the conditions subject to which, or specify the extent to which, payments in accordance with this Part, or in accordance with a provision of this Part, are to include amounts by way of, or in respect of, an allowance of a kind specified in the management standards referred to in subsection (1), including conditions having effect after the time at which leave commences.

**(3)** In the case of an officer who receives, or of officers included in a class of officers who receive, salary otherwise than by way of uniform amounts in respect of uniform periods, the management standards may provide that an amount ascertained in the manner provided by the management standards is to be the annual salary for the purposes of this Part of the officer or of the officers included in the class of officers.

### **Certain payments not included in salary**

**152.** The management standards may—

- (a) provide that payments of a specified kind are not included in salary;
- (b) specify the extent to which payments of a specified kind are not included in salary; or
- (c) prescribe the circumstances in which payments of a specified kind are not included in salary;

for the purposes of this Part or of a provision of this Part.

### **Persons taken to be employed by the Territory**

**153. (1)** A statutory office holder shall, for the purposes of this Part, be taken to be employed by the Territory, and his or her employment shall, for those purposes, be taken to be constituted by the performance of the duties of his or her office.

**(2)** A person—

- (a) who is temporarily transferred to employment with the Territory from, or whose services are temporarily loaned to the Territory by—
  - (i) the Commonwealth, a State or another Territory; or

(ii) a public authority of the Commonwealth, a State or another Territory; or

(b) who is appointed or engaged for employment overseas only;

shall not be taken, by reason only of his being such a person, to be employed by the Territory for the purposes of this Part.

(3) This section applies in relation to employment before the commencement of this Part in the same way as it applies in relation to employment after the commencement of this Part.

### **Period of employment**

**154. (1)** Subject to this Part, the period of employment of an officer for the purposes of this Part is the period during which he or she has been employed continuously by the Territory.

(2) Where, prior to his or her current period of employment by the Territory, an officer—

(a) was employed continuously in a type of employment recognised by the management standards for the purposes of this section; and

(b) the period for which he or she was so employed was continuous with his or her current period of employment;

his or her period of employment for the purposes of this Part includes, subject to this Part, the period for which he or she was so employed.

(3) The period of employment of an officer does not include any period during which his or her eligible employment—

(a) was employment in an honorary capacity and was not or is not also eligible employment in some other capacity, not being employment in respect of which he or she was or is remunerated by fees, allowances or commission only; or

(b) was or is remunerated, by fees, allowances or commission only and was not or is not remunerated in respect of other eligible employment in some other manner.

### **Continuity of employment**

**155. (1)** For the purposes of this Part, a person shall be taken not to break, or to have broken, the continuity of his or her eligible employment by reason of his or her being or having been—

*Public Sector Management Act 1994*

- (a) on leave of absence; or
- (b) absent for a continuous period not exceeding 12 months without the approval of his or her employer.

(2) Where a continuous period of eligible employment of a person has commenced after, but not more than 12 months after, the expiration of a continuous period of previous eligible employment of the person, those periods of employment shall, for the purposes of this Part, be taken to be continuous with one another.

(3) For the purposes of subsection (2), where a person, having ceased to be employed in eligible employment, has undertaken a prescribed course of full-time training before resuming eligible employment, the resumption of his or her eligible employment shall be taken to have occurred not more than 12 months after he or she ceased to be so employed if the period between his or her ceasing to be so employed and the resumption of that employment, less the period of his or her course of full-time training under that scheme, does not exceed 12 months.

(4) Where a continuous period of employment of a person by the Territory or in—

- (a) the Australian Public Service;
- (b) the Public Service of another Territory, or the Teaching Service or Police Force of the Northern Territory;
- (c) any authority established or constituted by or under a law of an external Territory; or
- (d) the Public Service of the former Territory of Nauru;

has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person by the Territory or in employment of the type mentioned in paragraph (a), (b), (c) or (d) those periods of employment shall, for the purposes of this Part, be taken to be continuous with one another if the approving authority is satisfied that—

- (e) the termination of the person's employment at the expiration of that period of previous employment was due to ill-health; and
- (f) the commencement of that first-mentioned period of employment occurred not more than 12 months after his or her health became so restored as to enable him or her to perform duties of a kind that were

suitable to be performed by him or her having regard to the duties performed by him or her immediately before the expiration of that period of previous employment.

**(5)** Where—

- (a) a continuous period of employment of a person by a State or an authority of a State has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person by the Territory or in employment of the kind referred to in paragraph (4) (a), (b), (c) or (d); or
- (b) a continuous period of eligible employment of a person has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person by a State or an authority of a State;

the periods of employment referred to in paragraph (a) or (b), whichever is applicable, shall, for the purposes of this Part, be taken to be continuous with one another if the approving authority is satisfied that—

- (c) the termination of his or her employment at the expiration of that period of previous employment was due to ill-health;
- (d) the person was, due to ill-health, unemployed for a period immediately following the expiration of that period of previous employment; and
- (e) the commencement of the period of employment first-mentioned in paragraph (a) or (b), whichever is applicable, occurred not more than 12 months after the expiration of the period of unemployment referred to in paragraph (d).

**(6)** A person shall not be taken, for the purposes of this Part, to have been in eligible employment during a period that would, but for subsection (2), (3), (4) or (5), have broken the continuity of his or her employment.

### **Status of periods of absence**

**156. (1)** In this section—

“defence employment” means—

- (a) continuous full-time employment in a part of the Reserve Forces or of the Citizen Forces;

*Public Sector Management Act 1994*

- (b) employment in a part of those Forces for such a period as was fixed by or in accordance with regulations in force under the *Defence Act 1903* of the Commonwealth, the *Naval Defence Act 1910* of the Commonwealth, or the *Air Force Act 1923* of the Commonwealth, as in force at the relevant time; or
- (c) national service;

“executive office holder” means an officer—

- (a) who is an officer or employee, within the meaning of the *Industrial Relations Act 1988* of the Commonwealth, of an organisation within the meaning of that Act;
- (b) who occupies an office that is a prescribed office for the purposes of this paragraph; and
- (c) who is required to devote the whole of his or her time to the duties of the office.

(2) A person absent from eligible employment without the approval of his or her employer shall be taken, for the purposes of this Part, not to be, or to have been, in that employment during the period of the absence.

(3) Subject to subsections (4) and (5) and the management standards, a person absent from eligible employment on leave of absence shall be taken, for the purposes of this Part, to have been in that employment during the period of the absence.

(4) Subject to subsection (5), where—

- (a) an officer is or has been absent from his or her employment on leave of absence without pay (not being leave of absence on account of illness or in respect of a period of defence employment); and
- (b) the leave of absence is the subject of a determination by the approving authority at the time of the grant of that leave or at a subsequent time that the period during which the officer is or was so absent be included in his or her period of employment for the purposes of this Part;

the officer shall be taken, for the purposes of this Part, to have been in that employment during the period of the absence.

(5) Where a person is or has been absent from his or her employment in Territory employment on leave granted for the purpose of enabling him or her to be an executive office holder—

- (a) the period of the absence shall be reckoned as part of his or her period of employment for the purpose of determining whether a provision of this Part that applies only in relation to officers whose periods of employment are at least 1 year or 10 years, as the case may be, applies in relation to him or her; and
- (b) the person shall be taken not to have been employed in that employment during the period of absence for any other purpose.

### **Concurrent employment**

**157. (1)** Where the period of service of an officer includes a period of eligible employment that is wholly or partly concurrent with a period of other eligible employment, subsections (3), (4) and (5) apply for the purpose of determining the extent (if any) to which each of those periods is to count in ascertaining the period of leave that may at any time be granted to the officer under this Part or the payment that may at any time be made under this Part to or in respect of the officer.

- (2) In applying subsections (3), (4) and (5) in relation to an officer—
  - (a) subsection (3) shall, if applicable, be applied before subsection (4) or (5); and
  - (b) subsection (4) shall, if applicable, be applied before subsection (5).
- (3) Where, on the day on which—
  - (a) leave is granted to an officer under this Part; or
  - (b) an officer ceases to be an officer;

the officer is also in eligible employment other than employment by the Territory, so much of his or her current period of eligible employment as is or was concurrent with any of his or her employment by the Territory does not count as eligible employment.

(4) Where a person is or was in eligible employment in a full-time capacity, any eligible employment in a part-time capacity that is or was concurrent with the full-time employment does not count as eligible employment.



(5) Where a person who is or was in eligible employment in a part-time capacity renders or rendered on a day service—

- (a) for a period in accordance with the terms of his or her employment; and
- (b) for a further period on that day in accordance with the terms of other eligible employment in a part-time capacity;

his or her period of employment on that day shall be taken to be a period equal to the sum of those periods.

### **Long service leave and payments in lieu of long service leave**

**158. (1)** Subject to section 159, an officer is not eligible to be granted long service leave unless his or her period of service is at least 10 years.

(2) Where the period of service of a category A officer is at least 10 years, the approving authority may, at any time, grant to the officer long service leave on full salary for a period not exceeding his or her long service leave credit at that time.

(3) Where the period of service of a category B officer is at least 10 years, the approving authority may, at any time, grant to the officer long service leave on full salary in relation to the officer's full-time employment for a period not exceeding the officer's long service leave credit related to the officer's full-time employment at that time and, in relation to the officer's part-time employment, for a period not exceeding the officer's long service leave credit related to the officer's part-time employment at that time or both.

(4) Where a period of long service leave (in this section called "the relevant period") may be granted to an officer under subsection (2) or (3), the approving authority may, at the request of the officer, grant to him or her long service leave on half salary for a period not exceeding twice the relevant period.

(5) Subject to subsections (7) and (8), where a category A officer whose period of employment is at least 10 years ceases to be an officer otherwise than by death, the approving authority shall authorise payment to the officer of an amount equal to the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit immediately before the officer ceases to be an officer if salary were payable to him or her in respect of that period at the rate applicable to the officer under section 163 in relation to his or her long service leave immediately before he or she ceases to be an officer.

**(6)** Subject to subsections (7) and (8), where a category B officer whose period of employment is at least 10 years ceases to be an officer otherwise than by death, the approving authority shall authorise payment to the officer of an amount equal to the sum of—

- (a) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit related to the officer's full-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's full-time employment immediately before he or she ceases to be an officer; and
- (b) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit related to the officer's part-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's part-time employment immediately before he or she ceases to be an officer.

**(7)** Subsection (5) or (6) does not apply to an officer who requests the approving authority in writing, before the officer ceases to be an officer, not to authorise a payment to him or her under that subsection.

**(8)** Where an officer requests the approving authority in writing before the officer ceases to be an officer to authorise a payment to the officer, upon his or her ceasing to be an officer, of a specified amount, being an amount less than the amount that would otherwise be payable to the officer under subsection (5) or (6), that subsection does not empower the approving authority to authorise a payment to the officer of an amount greater than the amount so specified.

**(9)** Subject to subsection (10), where, but for this subsection—

- (a) an amount would become due to a person under this section; and
- (b) the amount would become due solely because of the resignation of the person from the Service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115;

the amount does not become due on the person's resignation from the Service.

**(10)** Where, but for subsection (9)—

- (a) an amount would become due under this section to a person to whom section 166 applies; and
- (b) the amount would become due solely because of the resignation of the person from the Service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115 (being the first occasion on which he or she had resigned for that purpose);

the amount that the person shall receive shall be the difference between—

- (c) the amount that the person would have received by virtue of the operation of section 166 but for subsection (9); and
- (d) the amount that the person would have received but for that subsection if section 166 did not apply to him or her.

**(11)** Where an officer whose period of employment is at least 10 years dies, the approving authority shall authorise payment to a dependant of the officer of an amount equal to, or payments to any 2 or more dependants of the officer of amounts aggregating, the amount that would have been payable to the officer under subsection (5) or (6) if the officer had ceased to be an officer otherwise than by death on the day on which the officer died.

**Extended leave or pay in lieu of leave for officers not entitled to long service leave**

**159. (1)** Where an officer whose period of employment is less than 10 years but not less than 1 year is to cease to be an officer—

- (a) on or after his or her attaining the minimum retiring age; or
- (b) upon his or her redundancy;

the approving authority shall, on application in writing by the officer, grant to the officer long service leave under this subsection in accordance with the requirements of subsection (2) or (3), as the case may be.

**(2)** For the purposes of subsection (1), long service leave shall be granted to a category A officer on full salary, to be taken so as to expire immediately before the officer is to cease to be an officer, for a period not exceeding the officer's long service leave credit immediately before the officer commences that leave.

*Public Sector Management Act 1994*

**(3)** For the purposes of subsection (1), long service leave shall be granted to a category B officer on full salary, to be taken so as to expire immediately before the officer is to cease to be an officer, in relation to the officer's full-time employment for a period not exceeding the officer's long service leave credit related to the officer's full-time employment, and long service leave in relation to the officer's part-time employment for a period not exceeding the officer's long service leave credit related to the officer's part-time employment, immediately before the officer commences whichever of those periods of leave he or she commences first.

**(4)** Subject to subsections (5) and (6), where an officer whose period of employment is less than 10 years but not less than 1 year—

- (a) ceases to be an officer, otherwise than by reason of the officer's death, on, or after, his or her attaining the minimum retiring age;
- (b) ceases to be an officer by reason of his or her redundancy; or
- (c) ceases to be an officer and satisfies the approving authority that his or her so ceasing is due to ill health of such a nature as to justify his or her so ceasing;

the approving authority shall authorise payment to the officer under this subsection in accordance with the requirements of subsection (5) or (6), as the case requires.

**(5)** For the purposes of subsection (4), the amount payable in the case of a category A officer is an amount equal to the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave immediately before he or she ceases to be an officer.

**(6)** For the purposes of subsection (4), the amount payable in the case of a category B officer is an amount equal to the sum of—

- (a) the amount of salary that would be payable to the officer in respect of a period of employment equal to the period of the officer's long service leave credit related to the officer's full-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service

leave related to the officer's full-time employment immediately before he or she ceases to be an officer; and

- (b) the amount of salary that would be payable to the officer for a period of employment equal to the period of the officer's long service leave credit related to the officer's part-time employment immediately before the officer ceases to be an officer if salary were payable to the officer in respect of that period at the rate applicable to the officer under section 163 in relation to the officer's long service leave related to the officer's part-time employment immediately before he or she ceases to be an officer.

(7) Subsection (4) does not apply to an officer who requests the approving authority in writing, before the officer ceases to be an officer, not to authorise a payment to him or her under that subsection.

(8) Where an officer requests the approving authority in writing before the officer ceases to be an officer to authorise a payment to the officer, upon his or her ceasing to be an officer, of a specified amount, being an amount less than the amount that would otherwise be payable to the officer under subsection (4), that subsection does not empower the approving authority to authorise a payment to the officer of an amount greater than the amount so specified.

(9) Subject to subsection (10), where, but for this subsection—

- (a) an amount would become due to a person under this section; and
- (b) the amount would become due solely because of the resignation of the person from the Service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115;

the amount does not become due on the person's resignation from the Service.

(10) Where, but for subsection (9)—

- (a) an amount would become due under this section to a person to whom section 166 applies; and
- (b) the amount would become due solely because of the resignation of the person from the Service for the purpose of his or her being appointed to the Australian Public Service under a provision corresponding to section 115 (being the first occasion on which he or she had resigned for that purpose);

the amount that the person shall receive shall be the difference between—

- (c) the amount that the person would have received by virtue of the operation of section 166 but for subsection (9); and
- (d) the amount that the person would have received but for that subsection if section 166 did not apply to him or her.

**(11)** Where an officer whose period of employment is less than 10 years but not less than 1 year dies, the approving authority may authorise payment to a dependant of the officer of an amount equal to, or to 2 or more dependants of the officer of amounts aggregating, the amount that would have been payable to the officer under subsection (4) if the officer had, on the day on which the officer died, ceased to be an officer otherwise than by reason of death on, or after, his or her attaining the minimum retiring age.

### **Calculation of long service leave credit**

**160. (1)** In this section—

“prescribed day” means—

- (a) in relation to a long service leave credit of an officer on the day on which the officer ceases to be an officer—the day immediately following the last day of the last completed month in the officer’s period of employment ending on the day on which he or she ceases to be an officer; or
- (b) in relation to a long service leave credit of an officer on any other day—the day immediately following the last day of the last completed year of employment included in the officer’s period of employment ending on that other day.

**(2)** For the purposes of sections 158 and 159—

- (a) the long service leave credit of a category A officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3a}{10} - b$$

where—

- a** is the number of years comprised in the part of the officer’s period of employment that accrued before the prescribed day; and

- b** is the number of months comprised in the period or the sum of the periods of long service leave (if any) previously granted to the officer;
- (b) the long service leave credit related to the full-time employment of a category B officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3c}{10} - d$$

where—

- c** is the number of years comprised in a period equal to the period, or the sum of the periods, of the officer's employment in a full-time capacity included in the part of the officer's period of employment that accrued before the prescribed day; and
- d** is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to the officer in relation to his or her full-time employment; and
- (c) the long service leave credit related to the part-time employment of a category B officer on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3e}{10} - f$$

where—

- e** is the number of years comprised in a period equal to the period, or the sum of the periods, of the officer's employment in a part-time capacity included in the part of the officer's period of employment that accrued before the prescribed day; and
- f** is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to the officer in relation to his or her part-time employment.

### **Application of section 160**

**161. (1)** Subject to subsection (2), in the application of section 160 in relation to an officer—

*Public Sector Management Act 1994*

- (a) a reference to a period of long service leave granted to the officer shall be read as a reference to a period of long service leave granted to the officer, whether before or after the commencement of this Part, under this Part or otherwise in respect of a period of the officer's employment that is included in his or her period of employment;
  - (b) a reference to a period of long service leave granted to the officer in relation to the officer's full-time employment shall be read as a reference to a period of long service leave granted to the officer, whether before or after the commencement of this Part, under this Part or otherwise in respect of a period of employment in a full-time capacity that is included in his or her period of employment; and
  - (c) a reference to a period of long service leave granted to the officer in relation to the officer's part-time employment shall be read as a reference to a period of long service leave granted to the officer, whether before or after the commencement of this Part, under this Part or otherwise in respect of a period of employment in a part-time capacity that is included in his or her period of employment.
- (2) In the application of section 160 in relation to an officer—
- (a) if the officer has been granted long service leave on half salary under this Part or otherwise in respect of a period of the officer's employment included in the officer's period of employment for the purposes of this Part, the period of that leave shall be taken to have been a period equal to half that period;
  - (b) if the approving authority is satisfied that long service leave that was granted to the officer otherwise than under this Part, under any of the Acts repealed by the Commonwealth Long Service Leave Act or under the *Public Service Act 1922* of the Commonwealth in respect of a period of employment included in the officer's period of employment for the purposes of this Part was not granted to the officer on full salary or half salary having regard to the terms and conditions of the employment, the period of that long service leave shall be taken to have been such a period as is determined by the approving authority to be the period of long service leave that the officer would have been granted in respect of that employment if he or she had been granted long service leave on full salary;
  - (c) if the officer has been paid an amount under this Part, under the Commonwealth Long Service Leave Act, under any of the Acts



repealed by the Commonwealth Long Service Leave Act or under a repealed section of the *Public Service Act 1922* of the Commonwealth in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in the officer's period of employment for the purposes of this Part, the officer shall be taken to have been granted, on the day on which that payment was made to the officer, a period of long service leave in relation to the officer's full-time employment or to the officer's part-time employment, as the case may be, equal to the period of long service leave on full salary in relation to which that payment was made to him or her; and

- (d) if the officer has, in circumstances that are similar to the circumstances in which an amount is payable to an officer under section 158 or 159, been paid an amount otherwise than under this Part or a section of the *Public Service Act 1922* of the Commonwealth referred to in paragraph (c) in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in the officer's period of employment for the purposes of this Part, the officer shall be taken to have been granted, on the day on which that payment was made to the officer, such a period of long service leave in relation to the officer's full-time employment or in relation to the officer's part-time employment, as the case may be, as is determined by the approving authority to be equal to the period of his or her employment in respect of which that payment represented full salary.

### **Rate of salary while absent on long service leave**

**162. (1)** In this section—

“current rate of salary”, in relation to a part of a period of long service leave that is granted to an officer, means the rate at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to be employed in the capacity in which he or she was employed on the relevant day;

“prescribed average number of hours” means—

- (a) in relation to a category A officer who is granted a period of long service leave—

*Public Sector Management Act 1994*

- (i) the officer's average number of hours of employment per week during the relevant period; or
  - (ii) if the officer satisfies the approving authority that the officer's average number of hours of employment per week during the relevant period is less than the officer's average number of hours of employment per week during his or her period of employment—that last-mentioned average number of hours; and
- (b) in relation to a category B officer who is granted a period of long service leave—
- (i) the officer's average number of hours of employment per week during the relevant period; or
  - (ii) if the officer satisfies the approving authority that the officer's average number of hours of employment per week during the relevant period is less than the officer's average number of hours of employment per week throughout the officer's period or periods of employment in a part-time capacity included in his or her period of employment—that last-mentioned average number of hours;

“relevant day”, in relation to an officer who has been granted long service leave, means the day immediately preceding the day on which that leave commences;

“relevant period” means—

- (a) in relation to a category A officer who has been granted a period of long service leave, the 12 months of his or her period of employment ending on the day before the day on which the leave commences; and
- (b) in relation to a category B officer who has been granted a period of long service leave—
  - (i) the period of, or the periods aggregating, 12 months during which the officer was last employed in a part-time capacity before the day on which the leave commences; or

- (ii) if the officer has not been employed in a part-time capacity for 12 months—the period or periods during which the officer has been employed in a part-time capacity;

“relevant rate per hour”, in relation to a part of a period of long service leave that has been granted to an officer who was employed in a part-time capacity on the relevant day, means the rate per hour at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to be engaged in part-time employment in the capacity in which he or she was employed on the relevant day.

(2) Where a period of long service leave is granted under section 158 or 159 to a category A officer on full salary, salary is payable to the officer in respect of any part of the leave—

- (a) if the officer has been employed in a full-time capacity throughout the officer’s period of employment—at the rate that is his or her current rate of salary in respect of that part of the leave;
- (b) if the officer has been employed in a part-time capacity throughout the officer’s period of employment and there has been no change during that period in the number of hours per week for which the officer has, by the terms of the officer’s employment, been required to render service—at the rate per week at which salary would be payable to the officer in respect of that part of the leave if the officer were not absent on long service leave but were continuing to render service for that number of hours per week in the capacity in which he or she was employed on the relevant day; or
- (c) if the officer has been employed in a part-time capacity throughout the officer’s period of employment but there has been a change during that period in the number of hours per week for which the officer was required by the terms of the officer’s employment to render service—at the rate per week ascertained by multiplying the relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her employment.

(3) Where a period of long service leave on full salary is granted under section 158 or 159 to a category B officer who is employed in a full-time capacity on the relevant day—

*Public Sector Management Act 1994*

- (a) salary is payable to the officer in respect of any part of that leave that is granted to the officer in relation to the officer's full-time employment—at the rate that is his or her current rate of salary in respect of that part of the leave; and
- (b) salary is payable to the officer in respect of any part of that leave that is granted to the officer in relation to his or her part-time employment—at a weekly rate, being the lesser of—
  - (i) the rate that is the officer's current rate of salary per week in respect of that part of the leave; and
  - (ii) the rate per week ascertained in accordance with the formula—

$$\frac{ab}{c}$$

where—

- a** is the rate that is the officer's current rate of salary per week in respect of that part of the leave;
- b** is the prescribed average number of hours of the officer's employment; and
- c** is the number of hours of employment that the officer was, on the relevant day, required by the terms of his or her employment to render during a week.

**(4)** Where a period of long service leave on full salary is granted under section 158 or 159 to a category B officer who is employed in a part-time capacity on the relevant day—

- (a) salary is payable to the officer in respect of any part of the leave that is granted to the officer in relation to the officer's full-time employment—at the rate at which salary would be payable to the officer in respect of that part of the leave if the officer were not on long service leave but were rendering full-time service in the capacity in which he or she was employed on the relevant day; and
- (b) salary is payable to the officer in respect of any part of the leave that is granted in relation to the officer's part-time employment—at the rate per week ascertained by multiplying the officer's relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her employment.

**Rate of salary in relation to pay in lieu of leave**

**163. (1)** For the purposes of sections 158 and 159, where an officer ceases to be an officer—

- (a) the rate applicable to the officer in relation to his or her long service leave;
- (b) the rate applicable to the officer in relation to the officer's long service leave related to his or her full-time employment; or
- (c) the rate applicable to the officer in relation to the officer's long service leave related to his or her part-time employment;

immediately before the officer ceases to be an officer is the rate at which full salary would be payable to the officer in respect of the officer's employment on the day on which he or she ceases to be an officer (in this section called "the terminating day") if—

- (d) the officer were absent from duty on the terminating day in accordance with a period of long service leave, long service leave related to the officer's full-time employment or long service leave related to the officer's part-time employment, as the case requires, that had been granted to him or her on full salary to commence on the terminating day; and
- (e) on the day immediately before the terminating day the officer had completed the period of employment that he or she completes on the terminating day.

**(2)** Where an officer is not employed in the same capacity on the terminating day and on the day immediately before the terminating day, subsection (1) applies in relation to the officer as if the officer had been employed on the day immediately before the terminating day in the capacity in which the officer is employed on the terminating day.

**Long service leave benefits not to be granted under other laws**

**164. (1)** Where a person who holds an office or appointment under a relevant law, or is employed under a relevant law, is, for the purposes of this Part, employed in Territory employment by virtue of holding that office or appointment or of being so employed, then, unless otherwise expressly provided by a relevant law, nothing in a relevant law shall be taken to authorise the provision of long service leave benefits for or in relation to the person under

a relevant law or under terms and conditions of employment determined under a relevant law.

(2) In subsection (1)—

“long service leave benefits” means any benefits of the kind provided under sections 158 and 159;

“relevant law” means a law of the Territory that is in force on the day on which this Part comes into operation or that comes into force on or after that day.

### **Additional provisions relating to death of an officer**

**165. (1)** Where the approving authority, after consideration of all the circumstances, directs that, for the purposes of this Part, the death of an officer whose period of employment is at least 1 year is to be presumed to have occurred on a specified date, this Part applies in relation to the officer as if he or she had died on that date.

(2) Where there are 2 or more dependants of a deceased officer, the approving authority shall, in exercising the powers conferred on it by subsection 158 (11) or 159 (11), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the officer.

(3) Where an officer dies—

(a) the approving authority may, if it has not authorised a payment or payments under subsection 158 (11) or 159 (11), whichever is applicable, authorise payment of an amount equal to the amount referred to in whichever of those subsections is applicable to the legal personal representative of the officer; and

(b) the approving authority shall, if it has not authorised a payment to a dependant, or payments to dependants, of the officer or a payment to the legal personal representative of the officer, of an amount equal to the amount referred to in subsection 158 (11) or 159 (11), whichever is applicable, within 12 months after the death of the officer or, if the approving authority gave a direction in relation to the officer under subsection (1), the date on which it gave that direction, authorise payment of that amount to the legal personal representative of the officer.

(4) Where an amount is payable under this Part to a person, being an officer or a dependant of an officer, who is under a legal disability, the

approving authority may, instead of authorising payment of the amount to the person, authorise payment of the amount to such trustee or trustees as the approving authority appoints to be held by that trustee or those trustees upon such trusts for the benefit of the person as the approving authority directs and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for the purposes of this Part, other than this section, be taken to have been paid to the person.

(5) Where, upon the death of an officer, the amount payable under this Part in relation to the officer's death would be *bona vacantia*, his Part does not authorise that amount to be paid in relation to the officer and, if the amount is payable by a Territory instrumentality or a statutory office holder, the amount is payable to the Territory.

### **Provisions relating to members of the Australian Capital Territory Teaching Service**

**166. (1)** In this section, unless the contrary intention appears—

“long service leave” includes long leave, furlough, extended leave and any other leave in the nature of long service leave (however described);

“long service leave entitlement” means—

- (a) a period of long service leave; or
- (b) an amount of pay in lieu of long service leave;

“member of the Service” has the same meaning as in the *Teaching Service Act 1972* as in force on 1 November 1988;

“prescribed teacher” means—

- (a) a member of the Service who became such a member after 13 September 1973 and before 1 January 1974 and was, immediately before becoming such a member—
  - (i) employed in the teaching service of New South Wales and engaged in teaching duties in a Territory school in the Australian Capital Territory; or
  - (ii) employed in the teaching service of South Australia and engaged in teaching duties in a Territory school in the Northern Territory; or

*Public Sector Management Act 1994*

- (b) a member of the Service who became such a member after 31 December 1976 and before 1 April 1977 and was, immediately before becoming such a member, employed in the teaching service of New South Wales and engaged in full-time teaching duties in the Australian Capital Territory in connection with the provision of technical and further education, that is to say, education provided by way of a course of instruction or training—
  - (i) that is, or that is preparatory to, a course of a kind relevant to a trade, technical or other skilled occupation; or
  - (ii) that otherwise meets the educational needs of persons who are not enrolled in a full-time course of education at a primary school, a secondary school or a secondary college;

“relevant date” means—

- (a) in relation to a prescribed teacher referred to in paragraph (a) of the definition of “prescribed teacher”—1 January 1974; and
- (b) in relation to a prescribed teacher referred to in paragraph (b) of that definition—1 April 1977;

“relevant State” means, in relation to a prescribed teacher, the State in the teaching service of which he or she was employed immediately before becoming a member of the Service;

“Service” means the Australian Capital Territory Teaching Service established by the *Teaching Service Act 1972*.

(2) Where, at any time, in the application of this Part in relation to a prescribed teacher, the long service leave entitlement to which the teacher would, but for this section, be entitled is less than the long service leave entitlement to which the teacher would be entitled if the scale of accrual of long service leave (in this section called “the former scale of accrual”) that would have been applicable in relation to the teacher under the law of the relevant State as in force on the relevant date if the teacher had continued to be employed in the teaching service of the relevant State were substituted for the scale of accrual of long service leave applicable to the teacher at that time under this Part, the long service leave entitlement to which he or she is entitled shall be determined in accordance with the former scale of accrual.



## **PART VIII—MATERNITY LEAVE**

### **Interpretation**

**167. (1)** In this Part, unless the contrary intention appears—

“confinement”, in relation to an officer who has become pregnant, means the birth of a child, or other termination of the pregnancy that occurs not earlier than 20 weeks before the expected date of birth of the child;

“leave officer”, in relation to an officer, means a person who may, whether in his or her own right or as a delegate of another person, grant leave to that officer on account of illness;

“maternity leave” means a period of absence from duty by an officer, permitted or required in accordance with this Part, in connection with the confinement, or expected confinement, of that officer;

“officer” includes—

- (a) an employee;
- (b) a statutory office holder; and
- (c) a person employed by a Territory instrumentality or a statutory office holder;

“unauthorised absence”, in relation to an officer or in relation to officers included in a class of officers, means an absence from duty by an officer, being an absence in respect of which leave has not been granted under this Act, the management standards or an industrial award.

### **Persons in relation to whom this Part applies**

**168. (1)** Subject to this section, this Part applies to—

- (a) a woman who is an officer; and
- (b) a woman employed by a company that is incorporated under the Corporations Law and is declared by the management standards to be a body corporate in relation to which this Part applies.

**(2)** This Part does not apply to a woman who is not entitled, as a condition of her employment, to leave of absence, with pay, on account of illness.

**Absence on maternity leave**

**169. (1)** An officer who has become pregnant (whether before or after becoming a person to whom this Part applies)—

- (a) shall, on application made to a leave officer before she is confined, be granted maternity leave for a period not exceeding 52 weeks commencing on the date of commencement of the period of maternity leave required to be taken by her under paragraph (b);
- (b) shall, subject to section 173, whether or not she has been granted maternity leave under paragraph (a), take maternity leave for a period that—
  - (i) if she is still pregnant 6 weeks before the expected date of birth of her child—commences 6 weeks before the expected date of birth of her child and continues until the expiration of a period of 6 weeks commencing on the date of her confinement; or
  - (ii) if she is confined earlier than 6 weeks before the expected date of birth of her child—commences on the date of her confinement and continues for 6 weeks; and
- (c) shall, on application made to a leave officer—
  - (i) during or after a period of maternity leave granted to her under paragraph (a) or under this paragraph; or
  - (ii) if no such maternity leave has been granted—during or after a period of maternity leave required to be taken by her under paragraph (b);

be granted a further period of maternity leave ending not later than the expiration of a period of 52 weeks commencing on the date of commencement of the period of maternity leave required to be taken by her under paragraph (b).

**(2)** Where the pregnancy of an officer terminates other than by way of confinement—

- (a) she shall not, after that termination, be granted maternity leave in accordance with this section in respect of that pregnancy; and
- (b) if, before that termination, she has been granted maternity leave in accordance with this section, that grant shall be cancelled.

**Entitlement to paid maternity leave**

**170. (1)** Subject to subsection (2) and subsections 171 (1) and 172 (2), an officer who has been confined and who has been absent from duty is entitled to pay—

- (a) in a case where the period of absence, or the sum of the periods of absence, exceeds 12 weeks—for the first 12 weeks of that absence; and
- (b) in any other case—for the whole of that absence.

**(2)** An officer is not entitled, under subsection (1), to pay in respect of any absence that occurs before the day on which the continuous period, or the last continuous period, during which she is by virtue of subsection (3), to be taken to be a person to whom this subsection applies first exceeds 12 months.

**(3)** A person shall be taken to be a person to whom subsection (2) applies by virtue of this subsection—

- (a) while she is a person to whom this Part applies;
- (b) while she is employed by a body corporate (not being an incorporated company, society or association), or an unincorporated body, established for a public purpose by an Act but is not a person in relation to whom this Part applies; or
- (c) where paragraphs (a) and (b) do not apply to the person, while she is employed by a prescribed body or a prescribed organisation.

**(4)** Where under subsection (1), an officer is entitled to pay in respect of a period, the pay that the officer is to receive shall be the pay, salary, wage or other payment that the officer would have received if, for that period, she had been granted leave of absence on full pay on account of illness.

**(5)** Where—

- (a) an officer has, under paragraph 169 (1) (a) or (c) been granted maternity leave for a period; and
- (b) the officer applies for leave of absence of any kind with pay in respect of the whole or any part of that period, excluding a period in respect of which pay is payable under subsection (1);

that application shall, if the officer is eligible for the leave to which the application relates, be granted.

(6) The grant of leave of absence of any kind with pay in respect of a period in respect of which pay is payable under subsection (1) is of no effect.

### **Unauthorised absences**

**171. (1)** Where, an unauthorised absence of an officer occurs immediately before the commencement of the period during which, but for the operation of paragraph (a), the officer would be required to take maternity leave under paragraph 169 (1) (b), unless the relevant Chief Executive determines that the unauthorised absence occurs in extenuating circumstances—

- (a) the other provisions of this Part do not apply to her in connection with her confinement, or her expected confinement, as the case may be;
- (b) she shall absent herself from duty during that first-mentioned period, but, subject to subsection (2), is not entitled to pay in respect of the period while she is so absent; and
- (c) if, upon the expiration of that first-mentioned period, the unauthorised absence of the officer continues, her unauthorised absence before the commencement of that period shall be deemed to be continuous with her unauthorised absence after the expiration of that period.

(2) Subsection (1) does not affect an officer's entitlement to pay for any period of long service leave or leave of absence for recreation or on account of illness that is granted to her.

### **Absence on leave without pay**

**172. (1)** Where an officer who is granted leave of absence without pay is pregnant before or during that leave, her absence from duty on maternity leave during part of the period of 52 weeks commencing 6 weeks before the expected birth of her child or if she is confined earlier than 6 weeks before the expected birth of her child, commencing on the date of her confinement, shall be taken, for the purposes of paragraph 169 (1) (c) and subsection 170 (1), to be absence from duty on maternity leave under paragraph 169 (1) (a).

(2) Notwithstanding subsection (1), where an officer who is granted leave of absence without pay for a period (in this subsection referred to as "the relevant period") being a period exceeding 6 weeks, has become pregnant before, or becomes pregnant after, the commencement of that leave, then unless the relevant Chief Executive otherwise determines—

- (a) subsection 169 (1) does not authorise a leave officer to grant her maternity leave under this Part at any time while she is absent during the relevant period; and
- (b) she is not entitled to pay under subsection 170 (1) in respect of any part of the relevant period.

(3) Subsection (2) applies in relation to an officer who has been granted leave of absence without pay for a period whether or not she ceases to be absent from duty on leave without pay before the expiration of that period, but does not apply to such an officer unless she is absent on leave without pay in accordance with the grant for a continuous period exceeding 6 weeks.

**Officers may continue to perform, or resume, duty in certain circumstances**

**173. (1)** Where an officer who is pregnant furnishes to the leave officer—

- (a) not less than 6 weeks before the expected date of birth of her child; or
- (b) on or before the date given to her under this subsection, being the date to which she is permitted to continue to perform duties;

a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will continue to be fit for duty until a specified date, the leave officer may give her permission, in writing, to continue to perform duty until and including that date.

(2) Where permission is given under subsection (1) for an officer to continue to perform duty until and including a date specified in the permission—

- (a) if she is confined more than 6 weeks before the expected date of birth of her child—the grant of permission so to perform duty is of no effect;
- (b) if she is confined before the date so specified but not more than 6 weeks before the expected date of birth of her child—subparagraph 169 (1) (b) (i) has effect as if the period referred to in that subparagraph commenced on the date of her confinement; or
- (c) in any other case—subparagraph 169 (1) (b) (i) has effect as if the period referred to in that subparagraph commenced on the day next following the date so specified.

(3) Where, before the expiration of the period during which an officer who has been confined would, but for this subsection, be required to take maternity leave under paragraph 169 (1) (b), the officer furnishes to the leave officer a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will be fit to resume duty on a specified date occurring before the expiration of that period of maternity leave, the leave officer may give her permission, in writing, to resume duty on that date and the period during which she shall, upon permission being so given, be required to take maternity leave terminates immediately before that date.

### **Other applications to resume duty**

**174. (1)** An officer who takes maternity leave under paragraph 169 (1) (a) or (c) may, at any time after the expiration of the period of maternity leave required to be taken by her under paragraph 169 (1) (b), apply, in writing, to the leave officer for permission to resume duty on a day specified in the application.

(2) Within 7 days after receipt of an application made under subsection (1), the leave officer shall—

- (a) subject to subsections (3) and (6), grant or refuse to grant the application; and
- (b) inform the applicant, in writing, whether he or she has granted or refused to grant the application.

(3) A leave officer shall not grant an application made under subsection (1) to resume duty on a day that is less than 7 days after the application is received by the leave officer unless he or she is satisfied that there are special circumstances justifying the granting of the application.

(4) Where a leave officer refuses to grant an application for permission to resume duty and the application was received by the leave officer not less than 21 days before the date on which the applicant wished to resume duty—

- (a) the leave officer shall furnish to the applicant, when informing the applicant that he or she has refused to grant the application, particulars of the grounds in which it would not, in his or her opinion, be in the interests of the Service for her to resume duty on that date; and
- (b) the applicant may, within 7 days after she has received the particulars referred to in paragraph (a) request the Commissioner, in writing, to review the decision of the leave officer and furnish, with her request,

particulars of any matters she wishes the Commissioner to consider in making the review.

(5) Where the Commissioner receives a request under subsection (4), the Commissioner shall, within 7 days after receiving the request—

- (a) subject to subsection (6)—
  - (i) affirm the decision of the leave officer; or
  - (ii) set aside the decision of the leave officer and grant the applicant the permission sought in her application; and
- (b) inform the applicant, in writing, of the decision.

(6) An application under subsection (1) shall be granted by the leave officer to whom the application is made, or by the Commissioner in reviewing a refusal by the leave officer to grant the application, unless the leave officer or the Commissioner, as the case may be, is satisfied that it would not be in the interests of the Service to grant the application.

(7) Where an applicant is granted, under this section, permission to resume duty before the expiration of a period in respect of which she had been granted permission to absent herself from duty, that period shall be treated as having expired immediately before the date upon which she resumes duty.

#### **Grant of maternity leave not to affect continuity of service**

**175. (1)** Where an officer is absent on maternity leave for a period—

- (a) if she has been paid, whether under subsection 170 (1) or otherwise, in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has been so paid forms part of her period of service or employment for all purposes of this Act or any other law of the Territory; and
- (b) subject to subsection (2) if she has not been so paid in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has not been so paid does not form part of her period of service or employment for the purposes of this Act or of any other law of the Territory, but shall not be taken to have broken her continuity of service or employment.

(2) Where an officer, who is absent on maternity leave for a period, had not, immediately before the commencement of that period, been an officer for a continuous period of 12 months, the period of the absence or the period

comprising the first 12 weeks of the period of absence, whichever is the less, forms part of her period of service or employment for all purposes of this Act or of any other law of the Territory.

### **Officers on maternity leave**

**176. (1)** Notwithstanding anything in this Act, where—

- (a) an officer is absent on maternity leave; and
- (b) that absence is after her confinement and is without pay;

the relevant Chief Executive may, with the officer's written consent, declare that the office held by the officer is vacant and, in that event, the officer becomes an unattached officer for the purposes of this Act.

**(2)** Where an officer who has become an unattached officer under subsection (1) returns to duty on completion of her maternity leave, she shall be appointed—

- (a) if the office occupied by her immediately before she so became an unattached officer is vacant—to that office; or
- (b) in any other case—to another office that, in status and salary, is as near as possible to the office referred to in paragraph (a).

**(3)** Notwithstanding subsection (2), where an officer who has become an unattached officer under subsection (1) returns to duty before the expiration of the period of 52 weeks commencing on the date of commencement of the period during which she is required to take maternity leave under paragraph 169 (1) (b), the Chief Executive is not required to comply with the provisions of subsection (2) until the first-mentioned period has expired.

### **Temporary employees on maternity leave**

**177. (1)** Notwithstanding the provisions of this or another Act, where a woman, who is engaged in temporary employment in accordance with this Act, is absent on maternity leave, her employment shall not terminate, or be terminated, while she is so absent.

**(2)** Where—

- (a) a woman referred to in subsection (1) returns to duty with a government agency, her employment terminates, or is terminated, or notice of termination of her employment is given to her; and
- (b) the woman then applies to that agency for temporary employment;



that agency shall give to the woman preference over all other persons (other than other women to whom this subsection applies) for employment on work for which she is qualified.

## **PART IX—DISCIPLINE**

### *Division 1—Preliminary*

#### **Interpretation**

**178. (1)** In this Part, unless the contrary intention appears—

“Disciplinary Appeal Committee” means a Disciplinary Appeal Committee established in accordance with Subdivision C of Division 2 of Part II of the Merit Protection Act;

“eligible public employment” means—

- (a) employment as the holder of a public office; or
- (b) employment by a Territory instrumentality;

“employment” means—

- (a) employment in a full-time capacity; or
- (b) employment in a part-time capacity where—
  - (i) the person employed does not also perform duties in the Service;
  - (ii) the number of ordinary hours of duty per week applicable to the person in respect of the employment is greater than the prescribed number of hours; and
  - (iii) the employment is not employment of a kind that the Commissioner has declared, in writing, to be non-qualifying part-time employment for the purposes of this subparagraph;

“misconduct”, in relation to an officer, means a failure of the officer to fulfil his or her duty as an officer;

“original office” means—

- (a) in the case of a person who has been dismissed from the Service under section 187 or 188—

*Public Sector Management Act 1994*

- (i) if the person held an office immediately before his or her dismissal—that office; or
  - (ii) if the person was an unattached officer performing duty in an administrative unit immediately before his or her dismissal—an office in that administrative unit the duties of which correspond to the duties the person was performing, and the classification of which is the same as the classification applicable to the person, immediately before his or her dismissal;
- (b) in the case of a person who has been dismissed from the Service under section 197—
- (i) if he or she or she was the holder of an office when he or she last performed duty in the Service before his or her dismissal—that office; or
  - (ii) if he or she was an unattached officer performing duty in an administrative unit when he or she last performed duty in the Service before his or her dismissal—an office in that administrative unit the duties of which correspond to the duties he or she was performing, and the classification of which is the same as the classification applicable to him or her, when he or she last performed duty in the Service before his or her dismissal;
- (c) in the case of a person who is deemed, under section 221, to have retired from the Service—
- (i) if the person held an office immediately before he or she was deemed so to have retired—that office; or
  - (ii) if the person was an unattached officer performing duty in an administrative unit immediately before he or she was deemed so to have retired—an office in that administrative unit the duties of which correspond to the duties he or she was performing, and the classification of which is the same as the classification applicable to him or her, immediately before he or she was deemed to have retired; and

- (d) in the case of an officer who has been transferred to another office under section 187, 188 or 191—the office held by the officer immediately before his or her transfer;

“public office” means—

- (a) an office established by an Act;
- (b) an office or appointment the holder of which is appointed—
  - (i) by the Governor-General or a Commonwealth Minister;
  - (ii) by the Governor or a Minister of a State; or
  - (iii) by the Administrator or a Minister of the Northern Territory;

being an office or appointment prescribed, or included in a class of offices or appointments prescribed, by the management standards for the purposes of this paragraph; or

- (c) any other office or appointment prescribed, or included in a class of other offices or appointments prescribed, by the management standards for the purposes of this paragraph;

but does not include an office or appointment in the public service of the Commonwealth, a State or the Northern Territory;

“salary” includes such allowances as are prescribed.

(2) A power conferred by a provision of this Part to reappoint a person to an office includes a power to reappoint the person to the Service as an unattached officer to whom there is applicable a salary, or range of salary, equivalent to the salary or range of salary applicable to that office.

(3) A reference in this Division or Division 3 or 7 to an officer shall be read as not including a reference to a person who is a detached officer for the purposes of Division 4.

### **Meaning of failure to fulfil duty as officer**

**179.** For the purposes of this Division and Divisions 2, 3 and 7, an officer shall be taken to have failed to fulfil his or her duty as an officer only if he or she fails to comply with section 9.

***Division 2—Chief Executives and certain unattached officers***

**Interpretation**

**180.** In this Division, unless the contrary intention appears—

“Minister”, in relation to an officer, means the Minister for the time being having responsibility for the administrative unit in which—

- (a) in the case of an officer who is a Chief Executive—the officer holds office; or
- (b) in any other case—the officer is included by virtue of a direction under subsection 119 (2);

“officer” means a Chief Executive or an unattached Chief Executive.

**Disciplinary action in respect of Chief Executives**

**181. (1)** Where the Minister has at any time, whether by reason of an allegation made to the Minister or otherwise, reason to believe that an officer may have failed to fulfil his or her duty as an officer, he or she may, by notice in writing delivered to the officer, suspend the officer from duty and charge him or her with the failure.

**(2)** Where the Minister suspends an officer from duty under subsection (1) and charges him or her with having failed to fulfil his or her duty as an officer, the Minister—

- (a) shall specify in the notice delivered to the officer under that subsection particulars of the matters alleged to constitute the failure; and
- (b) shall forthwith report the suspension and charge to the Commissioner.

**(3)** Where an officer has been charged with misconduct under subsection (1), the officer may, within 7 days, or such longer period as the Commissioner allows, after delivery to him or her of the notice charging him or her with the misconduct—

- (a) submit to the Commissioner, in writing, that the charge should be dismissed on either or both of the following grounds:
  - (i) that some or all of the matters alleged to constitute the misconduct are untrue;

(ii) that the matters alleged to constitute the misconduct are, even if true, incapable in law of constituting misconduct for the purposes of this Part; or

(b) furnish to the Commissioner a notification in writing admitting the truth of the matters alleged to constitute the misconduct and containing particulars of any matters which the officer wishes the Commissioner to consider under subsection (7).

(4) An officer who has been charged with misconduct under subsection (1) shall not, by reason only of having failed to deny the truth of a matter included among matters alleged to constitute the misconduct, be taken to have admitted the truth of that matter.

(5) Where an officer does not furnish a notification referred to in paragraph (3) (b) in relation to the misconduct with which he or she has been charged, a Board of Inquiry shall inquire into the charge and report to the Commissioner whether it finds the charge to be proved and its reasons for its finding.

(6) For the purposes of subsection (5), a Board of Inquiry shall consist of a Chairperson and 2 other members, all of whom shall be appointed by the Chief Minister.

(7) Where an officer furnishes to the Commissioner a notification of the kind referred to in paragraph (3) (b) or a Board of Inquiry finds a charge of misconduct in respect of the officer to be proved, the Commissioner shall, after consideration of the notification furnished by the officer or of the report of the Board of Inquiry, as the case may be, recommend to the Chief Minister—

(a) that he or she take, in respect of the misconduct of the officer, action by way of—

(i) admonishing the officer;

(ii) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and, if there is a salary range applicable to the office so specified, determining that he or she be paid a specified salary within that range; or

(iii) dismissing the officer from the Service; or

(b) that he or she take no action in respect of the misconduct of the officer.

**(8)** The Commissioner shall furnish to the Chief Minister with a recommendation under subsection (7) in relation to a charge—

- (a) particulars of his or her reasons for making the recommendation;
- (b) a copy of any notification furnished to the Commissioner pursuant to paragraph (3) (b), or of any report furnished to the Commissioner pursuant to subsection (5), in relation to the charge; and
- (c) any submission that is furnished to the Commissioner pursuant to subsection (9) in relation to the recommendation.

**(9)** Before furnishing a recommendation to the Chief Minister under subsection (7) with respect to an officer, the Commissioner shall inform the officer of the recommendation he or she proposes to furnish and afford the officer an opportunity to furnish to him or her any submission that the officer wishes the Chief Minister to consider in relation to the recommendation.

**(10)** Where a recommendation under subsection (7) has been furnished to the Chief Minister, the Chief Minister may, after consideration of the recommendation and of any documents furnished with it pursuant to subsection (8)—

- (a) take, in respect of the misconduct of the officer, action of a kind specified in paragraph (7) (a), whether or not the Commissioner recommended that he or she take action of that kind; or
- (b) decide not to take any action in respect of the misconduct of the officer, whether or not the Commissioner so recommended.

**(11)** Where the Chief Minister decides not to give effect to a recommendation furnished to him or her under subsection (7) in relation to the misconduct of an officer, a copy of a statement setting out his or her reasons for not giving effect to the recommendation shall be laid before the Legislative Assembly within 14 sitting days after he or she so decides.

### **Conviction by courts of Chief Executives**

**182. (1)** Where—

- (a) a court has convicted an officer of a criminal offence or found, without recording a conviction, that such an officer has committed such an offence; and
- (b) the Commissioner, after giving the officer an opportunity to furnish to him or her, in writing, any statement that the officer desires to furnish

in relation to the offence, is of the opinion that, having regard to the nature and seriousness of the offence, the circumstances in which it was committed and the nature of the duties of the officer, the Commissioner is justified in doing so in the interests of the Service;

the Commissioner may recommend to the Chief Minister that he or she take, in respect of the officer, action by way of—

- (c) transferring the officer to a specified office (whether at the same or a different locality), being an office for which the officer is qualified, and, if there is a salary range applicable to the office so specified, determining that he or she be paid a specified salary within that range; or
- (d) dismissing the officer from the Service.

**(2)** The Commissioner shall furnish to the Chief Minister with a recommendation under subsection (1) in relation to a criminal offence—

- (a) particulars of his or her reasons for making the recommendation;
- (b) a copy of any statement furnished to the Commissioner pursuant to paragraph (1) (b) in relation to the offence; and
- (c) any submission furnished to the Commissioner pursuant to subsection (3) in relation to the recommendation.

**(3)** Before furnishing a recommendation to the Chief Minister under subsection (1) with respect to an officer, the Commissioner shall inform the officer of the recommendation he or she proposes to furnish and afford the officer an opportunity to furnish to him or her any submission that the officer wishes the Chief Minister to consider in relation to the recommendation.

**(4)** Where a recommendation has been furnished to the Chief Minister under subsection (1), the Chief Minister may, after consideration of the recommendation and of any documents furnished with it pursuant to subsection (2)—

- (a) take action of a kind specified in paragraph (1) (c) or (d) in respect of the officer, whether or not the Commissioner recommended that he or she take action of that kind; or
- (b) decide not to take any action in respect of the officer.

**(5)** Where the Chief Minister does not give effect to a recommendation furnished to him or her under subsection (1), a copy of a statement setting out

his or her reasons for not giving effect to the recommendation shall be laid before the Legislative Assembly within 14 sitting days after he or she so decides.

(6) The fact that action is, or is not, taken against an officer under this section in respect of a criminal offence shall not be taken to preclude the Commissioner, a Chief Executive or another person from having regard to the conviction or finding, to the nature and seriousness of the offence and to the circumstances in which the offence was committed in the course of exercising a power or performing a function conferred on him or her by this Act or by the management standards if those matters are relevant to the manner in which the power should be exercised or the function should be performed.

(7) Nothing in subsection (6) shall be taken to authorise the charging of an officer under section 181, and the taking of action in respect of the officer under this section, in relation to the same matter.

### **Suspension of Chief Executives**

**183. (1)** Where an officer has been charged with having committed a criminal offence and the Minister is of the opinion that it would be prejudicial to the effective operation of the Service, to the interests of the public or to the interests of the officer or his or her fellow officers (whether officers within the meaning of this Division or not) if the officer were to continue to perform the duties of his or her existing office pending the hearing and determination of the charge, the Minister may, by notice in writing delivered to the officer—

- (a) direct the officer to perform temporarily other duties that he or she is qualified to perform (whether at the same or at a different locality); or
- (b) suspend the officer from duty.

(2) Except as provided by subsection (3), an officer who has been suspended from duty under section 181 or under this section is not entitled to be paid salary in respect of the period during which he or she is so suspended.

(3) Where an officer is suspended from duty under section 181 or under this section—

- (a) the Commissioner may, at any time, whether upon application by the officer or otherwise, if the Commissioner is satisfied that the officer is suffering or has suffered hardship, direct that the officer be paid salary in respect of the whole, or a specified part, of the period of the officer's suspension; and



- (b) the Commissioner shall, if the suspension continues for more than 30 days, forthwith after the suspension has continued for more than 30 days, consider whether a direction should be given under paragraph (a).

**Removal and variation of suspension relating to Chief Executives**

**184. (1)** Where an officer has been suspended from duty under section 181 or 183, the suspension may be removed in accordance with this section, but, subject to paragraph 218 (1) (e), shall not otherwise be removed, revoked or rescinded.

- (2) Where an officer is suspended from duty under section 183—
  - (a) the Minister may, at any time, whether upon application by the officer or otherwise, remove the suspension; and
  - (b) the Minister shall, if the suspension continues for more than 30 days, forthwith after the suspension has continued for more than 30 days, consider whether the suspension should be removed.
- (3) Where—
  - (a) an officer has been suspended under section 181; and
  - (b) the charge, or each charge, in connection with which he or she has been so suspended—
    - (i) is found by the Board of Inquiry established to inquire into it not to have been proved; or
    - (ii) is withdrawn;

the Minister shall remove the suspension.

- (4) Where—
  - (a) an officer has, by reason of his or her having been charged with a criminal offence, or with 2 or more criminal offences, been directed to perform temporarily other duties or has been suspended from duty, under section 183; and
  - (b) a condition specified in subsection (5) is fulfilled in respect of the charge, or of each of the charges, as the case may be;

the Minister shall, if the direction has not previously been revoked or the suspension has not previously been removed, revoke the direction or remove the suspension, as the case requires.

**(5)** For the purposes of paragraph (4) (b), the conditions are—

- (a) the condition that, upon the hearing of the charge, the officer neither pleads guilty to the charge nor is found guilty of the criminal offence with which he or she is charged or of any other criminal offence established by the evidence given upon the hearing of the charge; and
- (b) the condition that the charge is not proceeded with.

**(6)** Where the suspension of an officer who had, after having been suspended under section 183, sought and been granted leave of absence for a part of the period of suspension, is required to be removed under subsection (4) or would have been required to be so removed if it had not previously been removed, the officer is entitled to a credit of a period of leave of absence equal to that part of the period of suspension.

**(7)** Where an officer who has been suspended from duty under section 181 or 183 is dismissed from the Service, the period during which the officer is suspended from duty does not count as service for any purpose.

**(8)** Where an officer retires from the Service or dies while he or she is suspended from duty under section 181 or 183, the Commissioner shall determine whether the whole, or any part, of the officer's period of suspension is to form part of the officer's period of service for any purpose under this Act or any other Act, and, if so, the purpose for which it is to form part of his or her period of service.

**(9)** Where an officer is under suspension from duty in respect of misconduct or a criminal offence immediately before the Chief Minister takes action, or decides not to take action, with respect to the misconduct or offence, the suspension ceases upon the Chief Minister taking that action or deciding not to take any action.

**(10)** The revocation of a direction under subsection 183 (1) that an officer perform other duties, or the removal of the suspension under that subsection of an officer from duty, in circumstances (other than circumstances where the direction is required to be revoked or the suspension is required to be removed) does not prevent the officer from being directed to perform other duties, or being suspended from duty, in accordance with that subsection, as if the previous direction or suspension had not taken place.

***Division 3—Officers other than Chief Executives***

**Interpretation**

**185.** In this Division, unless the contrary intention appears—

“officer” means an officer other than a Chief Executive or an unattached Chief Executive.

**Disciplinary action**

**186. (1)** Where an officer authorised by the relevant Chief Executive for the purposes of this subsection is of the opinion that an officer may have failed to fulfil his or her duty as an officer, the authorised officer shall, as soon as practicable, decide whether he or she should be charged and—

- (a) if the authorised officer decides that the officer should not be charged—may counsel the officer or cause a supervisor of the officer to counsel the officer; or
- (b) if the authorised officer decides that the officer should be charged—shall, by writing under his or her hand delivered to the officer, charge the officer with the failure.

**(2)** An officer charged under subsection (1) may request the relevant Chief Executive to furnish copies of the charge to either or both of the following:

- (a) an organisation specified by the officer, being an organisation within the meaning of the *Industrial Relations Act 1988* of the Commonwealth;
- (b) a person specified by the officer, being a person whom the officer wishes to assist him or her in relation to the charge;

and, if the officer makes such a request, the relevant Chief Executive shall comply with it.

**Inquiries into misconduct**

**187. (1)** Subject to subsection (2), where an officer is charged with misconduct under section 186, an inquiry shall, without undue delay, be held into the charge by the relevant Chief Executive or an officer appointed for the purpose by the relevant Chief Executive.

**(2)** An inquiry into a charge shall not be held—

*Public Sector Management Act 1994*

- (a) by an officer who has furnished a report in respect of any of the matters alleged to constitute the misconduct to which the charge relates; or
- (b) by the officer who laid the charge.

(3) In an inquiry for the purposes of subsection (1), a formal hearing is not required, but the officer shall be notified that an inquiry is to be held into the alleged misconduct and given an opportunity to state, in writing, within 7 days or such longer period as the officer holding the inquiry may allow after the notice is furnished to him or her, whether he or she admits or denies the truth of the matters alleged to constitute the misconduct and to furnish a statement in relation to those matters, including a statement submitting that the matters alleged to constitute the misconduct are, even if true, incapable in law of constituting misconduct for the purposes of this Act.

(4) Where an officer has furnished a statement in relation to the matters alleged to constitute misconduct, the officer shall, if he or she so requests, be given the opportunity of making a further oral statement to the officer holding the inquiry and, if he or she does so, a written record of his or her further statement shall be made by that officer.

(5) An officer who has been charged with misconduct under section 186 shall not, by reason only of having failed to deny the truth of a matter included among matters alleged to constitute the misconduct, be taken to have admitted the truth of that matter.

(6) Where the officer holding an inquiry into a charge is satisfied that the officer charged has failed to fulfil his or her duty as an officer, he or she may counsel the officer, or cause the officer to be counselled by another officer, or, if he or she is of the opinion that other action is necessary—

- (a) may direct that there be taken, in respect of the officer, action by way of—
  - (i) admonishing the officer;
  - (ii) causing a sum not exceeding \$500 to be deducted from the salary of the officer;
  - (iii) if the officer occupies an office to which a range of salary is applicable and the salary payable to him or her is not the minimum salary in that range—reducing the salary of the officer to a specified salary in that range and then, upon the

expiration of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his or her salary had not been so reduced, or to a lesser salary specified in the direction;

- (iv) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and which has the same classification as the classification of the office held by him or her;
- (v) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and which has the same classification as the classification held by him or her and causing a sum, not exceeding \$500, to be deducted from his or her salary;
- (vi) if the officer occupies an office to which a range of salary is applicable and the salary payable to him or her is not the minimum salary of that range—transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and which has the same classification as the classification of the office held by him or her, reducing the salary of the officer to a specified salary and then, upon the expiration of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his or her salary had not been so reduced, or to a lesser salary specified in the direction; or
- (vii) transferring the officer to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and which has a lower classification than the classification of the office held by him or her, and, if there is a salary range applicable to the officer so specified, determining that he or she be paid a specified salary within that range; or

(b) may direct that the officer be dismissed from the Service.

(7) Where the officer holding an inquiry into a charge gives a direction of a kind referred to in paragraph (6) (a) or (b) in respect of the officer charged, he or she shall furnish to the officer particulars of his or her reasons for giving that direction.

- (8) A direction under this section in respect of an officer takes effect—
- (a) if the officer has no right of appeal against the direction—on the day on which the officer is furnished with particulars of the reasons for the giving of the direction;
  - (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a Disciplinary Appeal Committee confirming the direction, whichever happens first; or
  - (c) in any other case—at the end of the period within which the officer may appeal against the direction to a Disciplinary Appeal Committee.

### **Convictions by courts**

**188. (1)** Where—

- (a) a court has convicted an officer of a criminal offence or found, without recording a conviction, that such an officer has committed such an offence; and
- (b) the relevant Chief Executive, after giving the officer an opportunity to furnish to him or her, in writing, any statement that the officer desires to furnish in relation to the offence, is of the opinion that, having regard to the nature and seriousness of the offence, the circumstances in which it was committed and the nature of the duties of the officer, he or she is justified in so doing in the interests of the Service;

the relevant Chief Executive may counsel the officer or may—

- (c) direct that there be taken, in respect of the officer, action by way of—
  - (i) transferring the officer to a specified office (whether or not at the same or a different locality), being an office for which he or she is qualified and which has the same classification as the classification of the office held by him or her; or
  - (ii) transferring the officer to a specified office (whether or not at the same or a different locality), being an office for which he or she is qualified and which has a lower classification than the classification of the office held by him or her and, if there is a salary range applicable to the office so specified, determining that he or she be paid a specified salary within that range; or
- (d) direct that the officer be dismissed from the Service.

(2) Where the relevant Chief Executive gives a direction of a kind referred to in paragraph (1) (c) or (d) in respect of an officer, he or she shall furnish to the officer particulars of his or her reasons for giving that direction.

(3) A direction under this section in respect of an officer takes effect—

- (a) if the officer has no right of appeal against the direction—on the day on which the officer is furnished with particulars of the reasons for the giving of the direction;
- (b) if the officer has a right of appeal against the direction and appeals—on the lapsing or withdrawal of the appeal or on a Disciplinary Appeal Committee confirming the direction, whichever happens first; or
- (c) in any other case—at the end of the period within which the officer may appeal against the direction to a Disciplinary Appeal Committee.

(4) The fact that an officer is, or is not, counselled, or that other action is, or is not, taken against an officer, under this section, in respect of a criminal offence shall not be taken to preclude the Commissioner, a Chief Executive or another person from having regard to the conviction or finding, to the nature and seriousness of the offence and to the circumstances in which the offence was committed in the course of exercising a power or performing a function conferred on him or her by this Act or by the management standards if those matters are relevant to the manner in which the power should be exercised or the function should be performed.

(5) Nothing in subsection (4) shall be taken to authorise the charging of an officer under section 186, and the taking of action in respect of the officer under this section, in relation to the same matter.

### **Suspension**

**189. (1)** Where—

- (a) an officer has been charged with having committed a criminal offence; or
- (b) an officer authorised for the purposes of subsection 186 (1) has informed the relevant Chief Executive that he or she is of the opinion that an officer may have failed to fulfil his or her duty as an officer;

and the relevant Chief Executive is of the opinion that it would be prejudicial to the effective operation of the Service, to the interests of the public or to the interests of the officer or his or her fellow officers if the officer were to

continue to perform the duties of his or her existing office pending the hearing and determination of the criminal charge, the taking of a decision not to charge the officer with misconduct or the hearing and determination of any charge of misconduct laid against the officer, as the case may be, the relevant Chief Executive may, by notice in writing delivered to the officer—

- (c) direct the officer to perform temporarily other duties that he or she is qualified to perform (whether at the same or a different locality); or
- (d) suspend the officer from duty.

(2) The relevant Chief Executive shall not suspend an officer under paragraph (1) (d) without first giving the officer an opportunity to be heard unless, in the opinion of the relevant Chief Executive, it would not be appropriate in the particular circumstances to give the officer such an opportunity.

(3) Except as provided by subsection (4), (5) or (6) or by section 190, an officer who is suspended from duty under this section is not entitled to be paid salary in respect of the period during which he or she is so suspended.

(4) Where an officer is, by reason of circumstances referred to in paragraph (1) (b), suspended from duty under this section before a decision is made whether or not he or she is to be charged with misconduct, he or she shall be suspended with salary—

- (a) in a case where an officer authorised for the purpose of subsection 186 (1) decides that he or she should not be so charged—until that decision is made; or
- (b) in any other case—until he or she is charged.

(5) Where an officer is suspended from duty under this section at a time when he or she is absent on leave of absence, the suspension does not prevent the officer receiving any salary to which he or she is entitled in respect of that period of leave of absence.

(6) The suspension of an officer from duty under this section does not prevent the granting to the officer of leave of absence with salary.

(7) An officer who is suspended from duty under this section is entitled to engage in employment outside the Service during any period of suspension from duty other than a period during which the officer is receiving salary.



**Removal and variation of suspension**

**190. (1)** Where an officer has been suspended from duty under section 189, the suspension may be removed in accordance with this section, but, subject to paragraph 218 (1) (e), shall not otherwise be removed, revoked or rescinded.

**(2)** Where an officer is suspended from duty under section 189—

(a) the relevant Chief Executive may—

- (i) at any time, upon application by the officer or otherwise, remove the suspension; or
- (ii) if the relevant Chief Executive is satisfied that the officer is suffering or has suffered hardship—subject to the management standards, direct that the officer be paid the whole or part of the officer's salary in respect of the whole or part of the period of the officer's suspension; and

(b) the relevant Chief Executive shall, if the suspension continues for more than 30 days, forthwith after the suspension has continued for more than 30 days, consider whether the suspension should be removed, or a direction should be given, under paragraph (a).

**(3)** Where, after an officer has been directed to perform temporarily other duties, or has been suspended from duty, in circumstances referred to in paragraph 189 (1) (b)—

- (a) the officer is charged with a failure, or with 2 or more failures, to fulfil his or her duties as an officer and the charge or each charge is found not to have been proved by the officer holding the inquiry or by a Disciplinary Appeal Committee or is withdrawn; or
- (b) an officer authorised for the purposes of subsection 186 (1) decides that the officer should not be charged with any such failure;

the relevant Chief Executive shall, if the direction has not previously been revoked or the suspension has not previously been removed, revoke the direction or remove the suspension, as the case requires.

**(4)** Where—

- (a) an officer has, by reason of his or her having been charged with a criminal offence or with 2 or more criminal offences, been directed to

*Public Sector Management Act 1994*

perform temporarily other duties, or been suspended from duty, under section 189; and

- (b) a condition specified in subsection (5) is fulfilled in respect of the charge, or of each of the charges, as the case may be;

the relevant Chief Executive shall, if the direction has not previously been revoked or the suspension has not previously been removed, revoke the direction or remove the suspension, as the case requires.

**(5)** For the purposes of paragraph (4) (b), the conditions in respect of a charge are—

- (a) the condition that, upon the hearing of the charge, the officer neither pleads guilty to the charge nor is found guilty of the criminal offence with which he or she is charged or of any other criminal offences established by the evidence given upon the hearing of the charge; and
- (b) the condition that the charge is not proceeded with.

**(6)** Where—

- (a) an officer has been suspended from duty under section 189;
- (b) an amount of salary that would otherwise have been paid to the officer in respect of the whole, or a part, of the period of the suspension was not payable to him or her; and
- (c) the suspension is required to be removed under subsection (3) or (4) or would have been required to be so removed had it not previously been removed;

the relevant Chief Executive shall, subject to subsection (7), authorise payment to the officer of an amount equal to the amount of salary referred to in paragraph (b).

**(7)** Where an officer to whom subsection (6) applies has engaged in employment outside the Service during the whole, or a part, of the period of his or her suspension, the amount payable to him or her under that subsection shall be reduced by an amount equal to the total of the amounts of the earnings that were received or are receivable by him or her in respect of that employment or work.

**(8)** A relevant Chief Executive may request an officer to whom subsection (6) applies to furnish to him or her, in writing—

*Public Sector Management Act 1994*

- (a) particulars of any employment outside the Service in which the officer has engaged during the whole, or a part, of the period of his or her suspension; and
- (b) particulars of the total amounts of the earnings that were received or are receivable by the officer in respect of that employment;

and may defer authorising payment to the officer under subsection (6) until these particulars have been furnished to him or her.

**(9)** Where the suspension of an officer who had, after being suspended under section 189, sought, and been granted, leave of absence for a part of the period of suspension, is required to be removed under subsection (3) or (4) or would have been required to be so removed had it not previously been removed, the officer is entitled to a credit of a period of leave of absence equal to that part of the period of suspension.

**(10)** Where an officer who has been suspended from duty under section 189 is dismissed from the Service, the period during which the officer is suspended from duty does not count as service for any purpose.

**(11)** Where an officer retires from the Service or dies while he or she is, under section 189, suspended from duty, the Commissioner shall determine whether the whole, or any part, of the officer's period of suspension is to form part of the officer's period of service for any purpose under this Act or any other Act, and, if so, the purposes for which it is to form part of his or her period of service.

**(12)** Where an officer retires from the Service or dies while he or she is, under section 189, suspended from duty without salary, the Commissioner may, in his or her discretion, authorise payment to the officer, or to the estate of the deceased officer, of an amount equal to the amount of salary that would otherwise have been paid to the officer in respect of the period of his or her suspension without salary less the total of the amounts (if any) of the earnings that the Commissioner is satisfied the officer received or was entitled to receive in respect of any employment or work engaged in by him or her while so suspended.

**(13)** Where an officer is performing temporarily other duties in accordance with a direction under section 189, or is under suspension from duty under that section, in connection with any misconduct or offence, immediately before—

- (a) a direction in respect of the officer in relation to that misconduct or offence takes effect under section 187 or 188; or

- (b) a Disciplinary Appeal Committee sets aside a direction given under subsection 187 (6) in relation to the misconduct or under subsection 188 (1) in relation to the offence;

the direction that the officer perform temporarily those other duties shall be taken to have been revoked or the suspension of the officer from duty shall be taken to have been removed, as the case requires, upon the direction referred to in paragraph (a) taking effect or the setting aside of the direction referred to in paragraph (b), as the case may be.

**(14)** The revocation of a direction under subsection 189 (1) that an officer perform other duties, or the removal of the suspension under that subsection of an officer from duty, in circumstances other than circumstances where the direction is required to be revoked or the suspension is required to be removed, does not prevent the officer from being directed to perform other duties, or suspended from duty, in accordance with that subsection, as if the previous direction or suspension had not taken place.

## **Appeals**

**191. (1)** A reference in this section to a decision in respect of an officer shall be read as a reference to a direction given in respect of the officer under subsection 187 (6) or 188 (1), not being—

- (a) a direction under subsection 187 (6) that there be taken, in respect of the officer, action by way of—
  - (i) admonishing the officer;
  - (ii) causing a sum not exceeding \$50 to be deducted from the officer's salary; or
  - (iii) transferring the officer to an office at the same locality, being an office for which the officer is qualified and which has the same classification as the officer; or
- (b) a direction under subsection 188 (1) that there be taken, in respect of the officer, action by way of transferring the officer to an office at the same locality, being an office for which the officer is qualified and which has the same classification as the officer.

**(2)** An officer may appeal to a Disciplinary Appeal Committee against a decision made in respect of him or her—

- (a) if the decision relates to a charge of misconduct—on either or both of the following grounds:
  - (i) that the charge should have been dismissed;
  - (ii) that the action directed to be taken in relation to the charge is unduly severe; or
- (b) in any other case—on the ground that the action directed to be taken in respect of him or her is unduly severe.

(3) A Disciplinary Appeal Committee shall hear each appeal submitted to it under subsection (2) and may confirm, vary or set aside the decision against which the appeal is made.

(4) Where a decision in respect of an officer is varied by a Disciplinary Appeal Committee in such a manner as to direct the taking of action of a kind referred to in paragraph 187 (6) (a) or 188 (1) (c), the direction takes effect in respect of the officer immediately it has been given.

(5) Where an officer appeals to a Disciplinary Appeal Committee under subsection (2) against a decision on the ground that the action directed to be taken in respect of him or her is unduly severe, the Committee shall take into consideration any evidence given on the hearing of the appeal—

- (a) of matters relating to the previous employment history and general character of the appellant;
- (b) if the officer was, under section 189, suspended without salary in respect of the misconduct or offence to which the decision relates—of any loss of earnings arising from that suspension; and
- (c) if the officer is to be transferred to another office—of the expenses that will be incurred by the officer in connection with that transfer.

(6) A Disciplinary Appeal Committee shall give reasons, in writing, for its decision on an appeal under this section.

### **Nullification of conviction**

**192. (1)** For the purposes of this section, a finding of a court in relation to an offence shall be regarded as having been nullified—

- (a) where a person has been convicted on the basis of that finding—if the conviction has subsequently been quashed or otherwise nullified or

*Public Sector Management Act 1994*

the person convicted has received a pardon or has been released from prison as a result of an inquiry into the conviction; or

(b) in any other case—if the finding has been set aside.

(2) Where, after a person has been dismissed from the Service under section 188 or 197 by reason of his or her having been found by a court to have committed a criminal offence, the finding of the court is nullified, the person may apply to the Commissioner, in writing, for reappointment to the Service.

(3) Where, after an officer has been transferred to another office under subsection 188 (1) or 191 (4) by reason of his or her having been found by a court to have committed a criminal offence, the finding of the court is nullified, the officer may apply to the Commissioner, in writing, for transfer to an appropriate office.

(4) A person who—

(a) has been dismissed from the Service or the Australian Public Service by reason of his or her having been found by a court to have committed a criminal offence;

(b) has subsequently been reappointed to the Service or the Australian Public Service; and

(c) presently holds an office in the Service;

may, if the finding of the court is nullified, apply to the Commissioner, in writing, for transfer or promotion to an appropriate office at any time after the finding is nullified and before he or she ceases to be an officer.

(5) The Commissioner shall refer an application made to him or her under subsection (2), (3) or (4) to the Chief Executive who is, in the opinion of the Commissioner, appropriate to consider it.

(6) Where an application is referred to a Chief Executive under subsection (5), the Chief Executive shall consider the application and—

(a) if he or she is satisfied that it is, in all the circumstances reasonable that the applicant be reappointed to the Service, or transferred or promoted to an appropriate office, as the case may be—shall recommend to the Commissioner that the applicant be so reappointed, transferred or promoted; or

(b) if he or she is not so satisfied—shall recommend to the Commissioner that the application be refused.

*Public Sector Management Act 1994*

(7) Where the Chief Executive recommends to the Commissioner that an application under subsection (2), (3) or (4) be refused—

- (a) he or she shall notify the applicant, in writing, accordingly and furnish to him or her and to the Commissioner the reasons for his or her recommendation; and
- (b) the applicant may appeal to a Disciplinary Appeal Committee against the recommendation.

(8) A Disciplinary Appeal Committee shall hear each appeal made to it under subsection (7) and may—

- (a) confirm the recommendation appealed against; or
- (b) recommend to the Commissioner that the appellant be reappointed to the Service, or be transferred or promoted to an appropriate office, as the case may be;

and shall furnish to the appellant and to the Commissioner the reasons for its decision on the appeal.

(9) Upon receipt of a recommendation of the Chief Executive pursuant to subsection (6), or of a decision on appeal of a Disciplinary Appeal Committee under subsection (8), the Commissioner may, subject to subsection (10)—

- (a) where the recommendation or decision relates to an application under subsection (2)—
  - (i) if the applicant was dismissed under section 188—appoint the applicant to the Service to fill an appropriate office or, with the consent in writing of the applicant, another office;
  - (ii) if the applicant was dismissed under section 197 but is engaged in eligible public employment—appoint the applicant to the Service as an unattached officer on leave without pay, having such rights with respect to appointment, promotion or transfer to an office in the Service as he or she had at the time of his or her dismissal; or
  - (iii) if the applicant was dismissed under section 197 but is not engaged in eligible public employment—appoint the applicant to the Service to fill an appropriate office or, with the consent in writing of the applicant, another office;

- (b) where the recommendation or decision relates to an application under subsection (3)—transfer the applicant to an appropriate office; or
- (c) where the recommendation or decision relates to an application under subsection (4)—transfer or promote the applicant to an appropriate office.

(10) Where a Chief Executive pursuant to subsection (6), or a Disciplinary Appeal Committee under subsection (8), recommends that a person be reappointed to the Service or that an officer be transferred to an appropriate office, the Commissioner shall reappoint the person to the Service or transfer the officer, as provided in subsection (9).

(11) Where a person who had, under this Part, been dismissed from the Service, is reappointed to the Service under this section, the person shall be deemed, during the period commencing on the day immediately following the day on which he or she was so dismissed and ending on the day immediately preceding the day on which he or she was so reappointed, to have continued in the Service and to have been absent from duty on leave of absence without pay, and the Commissioner shall determine whether that period, or any part of that period, is to form part of the officer's period of service for any purposes under this Act or any other Act and, if so, the purposes for which it is to form part of the period of his or her service.

(12) In this section—

“appropriate office”, in relation to a person or to an officer, means the original office occupied by that person or officer, an equivalent office, or, if such an office is not available, an office determined by the Commissioner to be as nearly as possible equivalent to the original office occupied by that person or officer.

### **Review of findings**

**193. (1)** Where, upon the holding of an inquiry into a charge laid against a person under subsection 186 (1), section 195 or 196, or upon the hearing by a Disciplinary Appeal Committee of an appeal in connection with such a charge, the charge is found to have been established and—

- (a) in a case where the charge was laid under subsection 186 (1)—
  - (i) a sum was deducted from the salary of the person;
  - (ii) the salary of the person was reduced;



*Public Sector Management Act 1994*

- (iii) the person was transferred to another office; or
  - (iv) the person was dismissed from the Service; or
- (b) in a case where the charge was laid under section 195 or 196—the person was dismissed from the Service;

the person may, at any time, request the Merit Protection Agency, in writing, to review the finding, or the action taken in respect of the charge, on the ground that evidence that was not given, and could not reasonably be expected to be given, on behalf of the person in the course of the investigation of the charge is now available and that the evidence might, if it had been given, have resulted in the charge being found not to have been established, or in less severe action being taken in respect of the charge, as the case may be.

(2) A request under subsection (1) shall set out particulars of the evidence that has become available.

(3) Where the Merit Protection Agency is satisfied that the ground of the request is established, it shall refer the request to a Disciplinary Appeal Committee.

(4) Where the request of a person for the review of a finding is referred to a Disciplinary Appeal Committee, the Disciplinary Appeal Committee—

- (a) shall review the finding;
- (b) shall—
  - (i) if it is satisfied, in the light of the evidence given when the charge was being investigated and of the evidence given before it in connection with the review, that the person failed to fulfil his or her duty as an officer, or failed to fulfil his or her duty as a detached officer within the meaning of Division 4, as the case requires—affirm the finding; or
  - (ii) in any other case—quash the finding and recommend to the Commissioner that he or she take such action, by way of recompensing the person, as is, in the opinion of the Commissioner, reasonable and practicable in all the circumstances; and
- (c) shall furnish to the person and to the Commissioner its reasons for making its decision.

(5) Where the request of a person for the review of action taken in respect of a charge is referred to a Disciplinary Appeal Committee, the Disciplinary Appeal Committee—

- (a) shall review the action so taken;
- (b) shall—
  - (i) if it is satisfied, in the light of the evidence given when the charge was being investigated and of the evidence given before it in connection with the review, that the action so taken was not too severe—affirm the action; or
  - (ii) in any other case—recommend to the Commissioner that he or she take such action to mitigate the severity of the action as is, in the opinion of the Commissioner, reasonable and practicable in all the circumstances; and
- (c) shall furnish to the person and to the Commissioner its reasons for making its decision or recommendation.

(6) The Commissioner shall consider the recommendation given to him or her by a Disciplinary Appeal Committee upon a review under this section and the reasons for the recommendation and may, in his or her discretion—

- (a) where the recommendation relates to a review of a finding under subsection (4)—take such action by way of recompensing the person to whom the finding relates as is, in the opinion of the Commissioner, reasonable and practicable in all the circumstances; or
- (b) where the recommendation relates to a review of action taken in respect of a charge under subsection (5)—take such action to mitigate the severity of the action as is, in the opinion of the Commissioner, reasonable and practicable in all the circumstances.

(7) Without limiting the power of the Commissioner to take action under subsection (6), the Commissioner may, if he or she considers it appropriate to do so—

- (a) in relation to a person who had been dismissed from the Service—reappoint the person to the Service to fill his or her original office or an equivalent office, or, if such an office is not available, an available office as nearly as possible equivalent to his or her original office; or

- (b) in relation to a person who had been transferred—direct that he or she be transferred to his or her original office or an equivalent office, or, if such an office is not available, an available office as nearly as possible equivalent to his or her original office.

(8) Where a person who had, under this Part, been dismissed from the Service, is reappointed to the Service under this section, the person shall be taken, during the period commencing on the day immediately following the day on which he or she was so dismissed and ending on the day immediately preceding the day on which he or she was so reappointed, to have continued in the Service and to have been absent from duty on leave of absence without pay, and the Commissioner shall determine whether that period, or any part of that period, is to form part of the officer's period of service for any purposes under this Act or any other Act and, if so, the purposes for which it is to form part of the period of his or her service.

(9) In this section—

- (a) a reference to the investigation of a charge shall be read as a reference—
  - (i) if the person charged appealed to a Disciplinary Appeal Committee—to the investigation of the charge by the Disciplinary Appeal Committee; or
  - (ii) in any other case—to the investigation of the charge by the officer holding the inquiry;
- (b) a reference to the giving of evidence includes a reference to the submission or production of statements or other material; and
- (c) a reference to the taking of less severe action in respect of a charge shall be read as including a reference to counselling in respect of the charge.

***Division 4—Officers employed otherwise than in the Service***

**Interpretation**

**194. (1)** In this Division, unless the contrary intention appears—

“detached officer” means—

- (a) an officer who, whether or not he or she holds an office in an administrative unit or a Territory instrumentality, is—

*Public Sector Management Act 1994*

- (i) notwithstanding that he or she is employed under this Act, also employed by the Territory otherwise than under this Act, whether as the holder of an office of appointment or otherwise;
- (ii) employed by another person or body (including the Commonwealth, a State or another Territory), whether as the holder of an office or appointment or otherwise; or
- (iii) engaged in employment on his or her own account or in partnership with another person or other persons;

but does not include an officer who is performing duty in an administrative unit or an autonomous instrumentality; or

- (b) an officer who is on leave of absence from the Service, not being leave of absence for recreation or on account of illness, and does not hold an office in an administrative unit or an autonomous instrumentality;

“misconduct”, in relation to a detached officer, means a failure by the officer to fulfil his or her duty as a detached officer.

(2) For the purposes of this Division, a detached officer shall be taken to have failed to fulfil his or her duty as a detached officer only if, while he or she is a detached officer, he or she engages in improper conduct, being conduct which brings the Service into disrepute.

(3) Subsection (2) applies to conduct engaged in by a detached officer whether he or she engages in the conduct in, or in connection with, the employment (if any) in which he or she is engaged or otherwise.

**Misconduct committed before becoming detached officer**

**195.** (1) A detached officer may, as provided in the management standards, be charged with misconduct committed by him or her before he or she became a detached officer.

(2) The management standards may make provision for and in relation to the holding of an inquiry into a charge against a detached officer under subsection (1).

(3) Where the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct before he or she

became a detached officer, he or she may counsel the officer or, if he or she is of the opinion that the misconduct is of such seriousness that, if the officer were performing duty in an administrative unit, he or she would direct that the officer be dismissed from the Service, he or she may direct that the officer be dismissed from the Service.

(4) Where the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct, he or she shall furnish to the officer particulars of his or her reasons for being so satisfied, and, if he or she gives a direction under subsection (3) in respect of the misconduct, he or she shall also furnish to the officer particulars of his or her reasons for giving the direction.

(5) Where a finding is made under this section that a detached officer committed misconduct before he or she became a detached officer, the fact that the officer is, or is not, counselled, or is not dismissed, in respect of the misconduct shall not be taken to preclude the Commissioner, a Chief Executive or another person from having regard to the finding in the course of exercising a power or performing a function conferred on him or her by this Act or by the management standards if the finding is relevant to the manner in which the power should be exercised or function should be performed.

(6) A reference in subsection (5) to a finding does not include a reference to a finding that has been set aside by a Disciplinary Appeal Committee.

(7) In this section, a reference to misconduct shall be read as a reference to misconduct as defined by section 178.

### **Misconduct while detached officer**

**196.** (1) A detached officer may, as provided in the management standards, be charged with misconduct committed by him or her while he or she is a detached officer.

(2) The management standards may make provision for and in relation to the holding of an inquiry into a charge against a detached officer under subsection (1).

(3) Where the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct while a detached officer, he or she may counsel the officer or, if he or she is of the opinion that, having regard to the nature and seriousness of the misconduct and to the circumstances in which it was committed he or she is justified in doing so in the

interests of the Service, he or she may direct that the officer be dismissed from the Service.

(4) Where the person holding an inquiry into a charge under subsection (1) is satisfied that the detached officer committed misconduct, he or she shall furnish to the officer particulars of his or her reasons for being so satisfied, and, if he or she gives a direction under subsection (3) in respect of the misconduct, he or she shall also furnish to the officer particulars of his or her reasons for giving the direction.

(5) Where a finding is made under this section that a detached officer has committed misconduct as a detached officer, the fact that the officer is, or is not, counselled, or is not dismissed, in respect of the misconduct shall not be taken to preclude the Commissioner, a Chief Executive or another person from having regard to the finding in the course of exercising a power or performing a function conferred on him or her by this Act or by the management standards if the finding is relevant to the manner in which the power should be exercised or function should be performed.

(6) A reference in subsection (5) to a finding does not include a reference to a finding that has been set aside by a Disciplinary Appeal Committee.

(7) A detached officer may be charged under this section in relation to a matter whether or not action has been or is being taken in respect of the matter otherwise than under this Act.

### **Criminal offences**

**197. (1)** Where—

- (a) a court has convicted a detached officer of a criminal offence, or found, without recording a conviction, that a detached officer has committed such an offence; and
- (b) a person selected by the Commissioner from among the persons specified in a prescribed class of persons is of the opinion that, having regard to the nature and seriousness of the offence and to the circumstances in which it was committed he or she is justified in doing so in the interests of the Service;

the person referred to in paragraph (b) may direct that the officer be dismissed from the Service.

(2) Where a person gives a direction under subsection (1) in relation to an officer, he or she shall furnish to the officer particulars of his or her reasons for giving the direction.

(3) The fact that a detached officer is, or is not, counselled, or is not dismissed under this section, in respect of a criminal offence shall not be taken to preclude the Commissioner, a Chief Executive or another person from having regard to the conviction or finding, to the nature and seriousness of the offence and to the circumstances in which the offence was committed in the course of exercising a power or performing a function conferred on him or her by this Act or by the management standards if those matters are relevant to the manner in which the power should be exercised or function should be performed.

(4) Nothing in subsection (3) shall be taken to authorise the charging of a detached officer under section 196, and the taking of action in respect of the detached officer under this section, in relation to the same matter.

#### **When directions for dismissal take effect**

**198.** A direction under subsection 195 (3), 196 (3) or 197 (1) that an officer be dismissed from the Service takes effect—

- (a) if the officer appeals against the direction—upon the lapsing of the appeal or upon a Disciplinary Appeal Committee confirming the direction; or
- (b) in any other case—upon the expiration of the period within which the officer may appeal to a Disciplinary Appeal Committee against the direction.

#### **Appeals**

**199.** (1) A detached officer may appeal to a Disciplinary Appeal Committee—

- (a) against a finding under section 195 or 196 in respect of a charge that he or she has committed misconduct—on the grounds that the charge should have been dismissed; or
- (b) against a direction under subsection 195 (3), 196 (3) or 197 (1) that the officer be dismissed from the Service—on the ground that the giving of the direction is, in relation to the finding or conviction in relation to which the direction was given, unduly severe.

(2) Where a detached officer has appealed against a finding of a kind referred to in paragraph (1) (a) and a direction of a kind referred to in paragraph (1) (b) was given in relation to the finding, the officer shall be taken to have appealed also against that direction on the ground specified in paragraph (1) (b).

(3) Subject to subsection (4), a Disciplinary Appeal Committee may confirm or set aside a finding or a direction appealed against.

(4) Where a Disciplinary Appeal Committee sets aside the finding in respect of a charge under section 195 or 196, being a finding in relation to which a direction of a kind referred to in paragraph (1) (b) was given, the direction shall be deemed to have been set aside.

**Reasons to be given for making finding or giving direction etc.**

200. Where a person makes a finding under section 195 or 196, or gives a direction under subsection 195 (3), 196 (3) or 197 (1), or a Disciplinary Appeal Committee confirms a finding so made or a direction so given, the person or the Committee shall give reasons, in writing, for making the finding or giving the direction or for confirming the finding or direction, as the case requires.

***Division 5—Employees***

**Interpretation**

201. In this Division, unless the contrary intention appears—

“authorised officer” means an officer authorised by a Chief Executive for the purposes of subsection 186 (1);

“employee” means an employee engaged under Division 7 of Part V for a fixed term of not less than 12 months.

**Application of Part to employees**

202. (1) Subject to subsection (2), the provisions of this Part apply to an employee—

- (a) subject to the modifications and adaptations specified in Schedule 1; and
- (b) unless the contrary intention appears, as if—
  - (i) a reference in those provisions to employment included a reference to engagement under this Act;



- (ii) a reference in those provisions to the Service included a reference to the administrative unit in which the employee is employed;
  - (iii) a reference in those provisions to an officer included a reference to an employee; and
  - (iv) a reference in those provisions to an office included a reference to employment or engagement under this Act.
- (2) The provisions of this Part do not apply to—
- (a) employees engaged outside Australia to perform duty outside Australia; or
  - (b) prescribed employees.

***Division 6—Boards of Inquiry and Disciplinary Appeal Committees***

**Interpretation**

**203.** In this Division, unless the contrary intention appears—

“Board of Inquiry” means a Board of Inquiry appointed under subsection 181 (6);

“Chief Executive”, in relation to a person who—

- (a) has been dismissed from the Service under section 187 or 188;
- (b) is to be taken, under section 221, to have retired from the Service; or
- (c) is a detached officer within the meaning of Division 4;

means—

- (d) the Chief Executive of the administrative unit in which the person last held office or, where that person did not hold office, the administrative unit in which the person last performed duties; or
- (e) where that administrative unit has been abolished—a Chief Executive selected by the Commissioner having regard to the duties last performed in the Service by that person;

as the case requires;

“proceeding” means—

- (a) in relation to a Board of Inquiry, an inquiry into a charge under subsection 181 (5); or
- (b) in relation to a Disciplinary Appeal Committee, the hearing of an appeal under section 191, 192, 199 or 222 or the conduct of a review under section 193;

or any part of such an inquiry, hearing or review;

“review” means a review under section 193 of—

- (a) a finding in respect of a charge or an appeal; or
- (b) action taken in respect of a charge.

### **Manner of appeal to Disciplinary Appeal Committee**

**204. (1)** An appeal to a Disciplinary Appeal Committee under section 191, 192 or 199 shall be made in writing and addressed to and lodged with the Director.

**(2)** An appeal to a Disciplinary Appeal Committee under subsection 191 (2) or 199 (1) shall specify the ground referred to in that subsection on which the appeal is made.

### **Time for appealing to Disciplinary Appeal Committee**

**205. (1)** Subject to subsection (2), an appeal referred to in subsection 204 (1) shall be lodged with the Director by delivering it to, or posting it as a letter so as to be received by, the Director within the period of 14 days after the day on which the appellant was furnished with the particulars of reasons, or reasons, referred to in subsection 187 (7) or 188 (2), paragraph 192 (7) (a) or subsection 195 (4), 196 (4) or 197 (2), as the case may be, or within such further period as the person who is required to furnish the particulars of reasons, or reasons, to the appellant allows.

**(2)** The Director may extend the time for lodging an appeal referred to in subsection 204 (1) before or after the expiration of the period provided by subsection (1).

**(3)** For the purposes of this section, the Director may, by notice published in the Gazette, nominate a place or places to which appeals and applications for extensions of time may be delivered or posted.

**Furnishing of documents to appellants and persons requesting a review**

**206. (1)** Subject to subsections (3) and (4), where a Board of Inquiry is to inquire into a charge, the relevant Chief Executive shall—

- (a) furnish the charged officer with a copy of all documents intended to be used in the inquiry; and
- (b) where practicable, do so at least 7 days before the inquiry is to commence.

**(2)** Subject to subsections (3) and (4), where a Disciplinary Appeal Committee is to hear and determine an appeal, review a finding or review action taken in respect of a charge, the Chief Executive of the person appealing or requesting the review shall—

- (a) furnish the person with a copy of all documents intended to be used in the hearing of the appeal or in the review, as the case may be; and
- (b) where practicable, do so at least 7 days before the hearing or review is to commence.

**(3)** Where—

- (a) a document referred to in subsection (1) or (2) contains medical or psychiatric information concerning the person to whom a copy of the document would otherwise be required to be furnished under that subsection; and
- (b) it appears to the relevant Chief Executive that the disclosure of that information to the person might be prejudicial to the physical or mental health or well-being of the person;

the Chief Executive may refuse to furnish the person with a copy of the document.

**(4)** Where—

- (a) a document referred to in subsection (1) or (2) contains information concerning a person other than the charged officer, appellant or person seeking a review; and
- (b) the furnishing of a copy of that document in accordance with that subsection could be prejudicial to that other person;

the Chief Executive may refuse to furnish a copy of the document to the charged officer, appellant or person requesting a review.

(5) Where a Chief Executive refuses under subsection (3) or (4) to furnish a person with a copy of a document, the Chief Executive shall forthwith notify that person and the Board of Inquiry or Disciplinary Appeal Committee of that refusal and the provision under which the copy of the document was withheld.

(6) Where, in relation to a proceeding before a Board of Inquiry or a Disciplinary Appeal Committee, a charged officer, appellant or person requesting a review has not been furnished with a copy of a document that is intended to be used in the proceeding, or has been furnished with a copy of such a document less than 7 days before the inquiry, hearing or review commenced, a person shall not use that document in that proceeding unless he or she has—

- (a) notified the Board or Committee accordingly; and
- (b) furnished the Board or Committee with a copy of the document and with a written statement of his or her reasons for not furnishing, or for furnishing less than 7 days before the proceeding commenced, the charged officer, appellant or person requesting a review, as the case requires, with a copy of the document.

(7) Where a Board of Inquiry or Disciplinary Appeal Committee hearing a proceeding is notified under subsection (6) that a charged officer, appellant or person requesting a review has not been furnished with a copy of a document, or has been furnished with a copy of a document less than 7 days before the proceeding commenced, the Board or Committee may, after consideration of the contents of the document and the reasons furnished to it under paragraph (6) (b), subject to subregulation 16 (3) of the Merit Protection (Australian Government Employees) Regulations of the Commonwealth—

- (a) order that a copy of the document be furnished to, or that the document be shown to, the charged officer, appellant or person requesting a review before it is used in the proceeding;
- (b) where the document is a document to which subsection (3) applies— order that a copy of the document be furnished to a medical practitioner nominated for the purpose by the charged officer, appellant or person requesting a review, as the case may be;
- (c) order the document not be used in the proceeding; or
- (d) permit the document to be used in the proceeding;

and in so doing may make such orders in relation to the furnishing of a copy of the document to the charged officer, appellant or person requesting a review

(including, without limiting the generality of the foregoing, orders adjourning the proceeding) as that Board or Committee thinks fit.

(8) In this section—

“document” includes any part of a document.

### **Hearing to be in public except in special circumstances**

**207. (1)** Subject to this section, a proceeding before a Board of Inquiry shall be heard in public.

(2) Where a Board of Inquiry is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Board may—

- (a) direct that the hearing of a proceeding take place in private and give directions as to the persons who may be present at the hearing;
- (b) give directions prohibiting or restricting the publication of evidence given before the Board, whether in public or in private, or of matters contained in documents lodged with the Board or received in evidence by it; or
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Board, or of the contents of a document lodged with the Board, in relation to the proceeding.

(3) In considering—

- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to some or all of the parties, of evidence given before the Board of Inquiry or of a matter contained in a document lodged with the Board or received in evidence by it, should be prohibited or restricted;

a Board shall take as the basis of its consideration the principle that it is desirable that hearings of proceedings before it should be held in public and that evidence given before it and the contents of documents lodged with it or received in evidence by it should be made available to the public and to all the parties, but shall pay due regard to any reasons given to it why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

(4) Notwithstanding subsections (1), (2) and (3), where a Board of Inquiry reports in accordance with subsection 181 (5) that it finds a charge proved, the Board shall furnish the Commissioner with a transcript of all oral evidence given before it, and a copy of all documents received in evidence by it, in relation to the charge.

### **Witnesses**

**208.** For the purposes of a proceeding before a Board of Inquiry, the Chairperson of the Board may, by writing under his or her hand, summon a person to attend before the Board to give evidence or to produce such documents (if any) as are referred to in the summons.

### **Witnesses expenses**

**209. (1)** A person, other than a person referred to in subsection (4), who is summoned to attend, and attends, for the purpose of giving evidence or producing a document at a hearing by a Board of Inquiry, and who applies to the Chairperson of the Board for the payment of costs reasonably incurred by him or her in relation to that attendance, is entitled to be paid by the Territory costs in respect of that attendance assessed by the Chairperson in accordance with the prescribed scale.

(2) An assessment of costs under subsection (1) shall be in writing and a copy of the assessment shall be furnished to the applicant.

(3) An amount payable to a person in accordance with subsection (1) is payable to him or her, upon tender of a copy of the assessment referred to in subsection (1)—

- (a) if the person charged holds an office of Chief Executive of an administrative unit—by that administrative unit; or
- (b) if the person charged is an unattached Chief Executive—by the administrative unit of which the person was Chief Executive immediately before becoming an unattached Chief Executive.

(4) This section does not apply to officers or employees summoned to give evidence.

### **Representation of parties**

**210. (1)** A person who is a party to a proceeding before a Board of Inquiry may examine witnesses and address the Board at the hearing of the proceeding.

(2) A party to a proceeding before a Board of Inquiry may be represented by a legal practitioner or some other person and at the hearing of the proceeding the legal practitioner or other person may examine witnesses and address the Board on behalf of that party.

**Protection of members of Boards of Inquiry, witnesses etc.**

**211. (1)** No action or proceeding, civil or criminal, lies against a person who is a Chairperson or member of a Board of Inquiry for or in respect of any act or thing done in good faith by him or her in his or her capacity as Chairperson or member.

(2) A legal practitioner representing a party to a proceeding before a Board of Inquiry has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Division—

- (a) a person summoned to attend or appearing before a Board of Inquiry to give evidence at a hearing of a proceeding; or
- (b) a person, other than a legal practitioner, representing a party at the hearing of a proceeding before a Board of Inquiry;

has the same protection, and is, in addition to the penalties provided by this Division, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the Supreme Court.

**Notification of findings of Board of Inquiry**

**212.** Where a Board of Inquiry makes a finding under subsection 181 (5), it shall, as soon as practicable after it has completed its inquiry, notify the officer charged, the Chief Minister and the Commissioner in writing of its finding and of its reasons for its finding.

**Payment of costs**

**213. (1)** Where a Board of Inquiry finds that a charge against an officer is not proved, it shall consider whether the Commissioner should pay the whole or part of the costs incurred by the officer in relation to the inquiry.

(2) If the Board considers that the Commissioner should pay the whole or part of the costs incurred by the officer in relation to the inquiry, it shall determine in writing the amount of the costs it considers properly so payable and give a copy of its determination to—

- (a) the officer; and
- (b) the Commissioner.

(3) On receiving a copy of a determination under subsection (2), the Commissioner shall pay to the officer an amount equal to the amount of the costs determined by the Board to be properly payable.

### **Costs of lapsed inquiry**

**214. (1)** Where an inquiry being conducted under subsection 181 (5) by a Board of Inquiry lapses because of the death, mental or physical incapacity or compulsory retirement of the charged officer, an application for payment of the costs reasonably incurred by the charged officer in relation to the inquiry may be made to the Commissioner by—

- (a) the charged officer;
- (b) a person administering the affairs or estate of the charged officer under a law of the Territory, a State or another Territory; or
- (c) by a member of the family of the charged officer.

(2) Where an application is made to the Commissioner under subsection (1) for reimbursement of the costs incurred by an officer in relation to an inquiry and the Commissioner is satisfied that the claimant should be granted reimbursement in respect of those costs, the Commissioner shall pay the claimant an amount equal to the costs which the Commissioner is satisfied were reasonably incurred by the officer in connection with the inquiry.

(3) In this section a reference to a member of the family of an officer shall be read as including a reference to a parent, spouse, de facto spouse or child of the officer, or the de facto spouse of a child of the officer.

### **Recording of action taken**

**215. (1)** Subject to this section, where action other than counselling is taken under, or by virtue of the application of, section 181, 182, 187, 188, 191, 195, 196, 197 or 219 in relation to an officer, the relevant Chief Executive shall cause a record of the action so taken to be entered in an official conduct record kept in respect of the officer.

(2) Notwithstanding subsection (1), the relevant Chief Executive shall not enter under that subsection a record of action taken in relation to an officer while that action is, or may become, the subject of an appeal to a Disciplinary Appeal Committee under section 191 or 199.



*Public Sector Management Act 1994*

**(3)** Subject to subsection (5), a record of action entered under subsection (1) in the official conduct record of an officer shall be kept—

- (a) in the case of admonition—for a period of 2 years; or
- (b) in any other case—for a period of 5 years;

after the day on which the action was taken and at the expiration of that period the relevant Chief Executive shall cause the record of that action to be destroyed.

**(4)** Where an officer is promoted or transferred from one administrative unit to another, the appropriate officer of the administrative unit from which the officer is promoted or transferred shall transmit the official conduct record of the officer to the appropriate officer of the administrative unit to which the officer is promoted or transferred and that record shall be maintained in accordance with this section.

**(5)** Notwithstanding subsection (3), where—

- (a) a record of action is entered under subsection (1) in the official conduct record of an officer;
- (b) a record of action that had previously been taken in relation to that officer is contained in that record; and
- (c) the period of time for which the record of the action referred to in paragraph (b) is to be kept under subsection (3) has not expired;

the record of action referred to in paragraph (b) shall be kept until the record of action referred to in paragraph (a) is to be destroyed in accordance with subsection (3).

**(6)** Where, under this Part, an officer is dismissed from the Service or reduced to an office of lower classification, the provisions of this section do not operate so as to require the expunging of a reference to the dismissal or reduction from any record kept in relation to the officer other than his or her official conduct record or so as to require the destruction of any record other than his or her official conduct record.

**(7)** Nothing in this section affects the taking, keeping or maintaining of any record, other than an official conduct record, in relation to an officer under the provisions of this Act or the management standards.

**(8)** Where, before the commencement of this section, a record of a punishment has been made in the official conduct record of an officer pursuant

to the Public Service Regulations of the Commonwealth, and that record has not been destroyed, the record shall be deemed to have been made under this section and the provisions of this section apply to that record as if this section had been in operation at the time the record was made.

### **Amendment of official conduct record**

**216.** Where an official conduct record is kept in relation to an officer under section 215 and—

- (a) a conviction of the officer is, by virtue of section 192, to be regarded as having been nullified;
- (b) a Disciplinary Appeal Committee, on a review, quashes a finding in respect of the officer; or
- (c) the Commissioner takes action to recompense an officer in relation to a finding against the officer or to mitigate the severity of action taken in respect of a charge against the officer;

the relevant Chief Executive shall cause the entry in the official conduct record in relation to that conviction or finding to be deleted or amended accordingly.

### **Delegation**

**217.** The Director may delegate to a person any of the Director's powers under this Division.

## ***Division 7—Miscellaneous***

### **Imprisonment**

**218. (1)** Where an officer is imprisoned by reason of his or her having been convicted of an offence or is in custody awaiting trial for an offence—

- (a) he or she shall be deemed, for the duration of his or her imprisonment or custody, unless and until he or she is dismissed, to be on leave of absence without pay;
- (b) except where he or she is dismissed in relation to the offence—any service before that period of imprisonment or custody shall, for all purposes, be regarded as being continuous with any service after that period;
- (c) the period of his or her imprisonment or custody shall not, unless the Commissioner otherwise determines, be regarded as service for any purposes under this Act or any other Act;

- (d) he or she shall not, during that period of imprisonment or custody, be suspended from duty under this Act; and
- (e) any suspension from duty under this Act that was in force in relation to him or her immediately before that period of imprisonment or custody commenced shall be taken, upon that period's so commencing, to have been removed.

(2) Where an officer is imprisoned by reason of having been convicted of an offence or is in custody awaiting trial for an offence, the relevant Chief Executive or, in the case of an officer referred to in Division 2, the Commissioner may, subject to the management standards, if the relevant Chief Executive or the Commissioner, as the case may be, is satisfied that the officer is suffering or has suffered hardship, direct, notwithstanding subsection (1), that the officer be paid the whole or part of his or her salary for the whole or part of that period of imprisonment or custody.

**Application to unattached officers performing duty in administrative unit**

**219. (1)** In this section, a reference to an unattached officer shall not be taken to include a reference to a person who is a detached officer for the purposes of Division 4.

(2) Without prejudice to their effect in relation to unattached officers apart from this section, Divisions 1, 2 and 3 and this Division also have effect in relation to an unattached officer as provided by this section.

(3) Divisions 1, 2 and 3 and this Division have, by force of this subsection, the effect that they would have if—

- (a) an unattached officer who is performing duties in an administrative unit were occupying an office in that administrative unit;
- (b) the duties of that office were duties corresponding to the duties that he or she is performing in the administrative unit as an unattached officer; and
- (c) the office had a classification corresponding to his or her classification as an unattached officer.

(4) In addition to the effect that Divisions 1, 2 and 3 and this Division have in relation to unattached officers as provided by subsection (2), the Divisions have, by force of this subsection, the effect they would have if—

*Public Sector Management Act 1994*

- (a) there were included among the kinds of action specified in paragraph 181 (7) (a) and among the kinds of action specified in subsection 182 (1) the following kind of action, namely, action by way of causing the officer to perform specified duties in the same or another administrative unit (whether at the same or a different locality), being duties that he or she is qualified to perform, and determining the salary, or range of salary, that is to be applicable to him or her as an unattached officer while he or she is performing those duties and, if a range of salary is to be so applicable, that he or she be paid a specified salary within that range;
- (b) there were included among the kinds of action specified in paragraph 187 (6) (a) the following kinds of action:
  - (i) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer;
  - (ii) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer and causing a sum, not exceeding \$500, to be deducted from his or her salary;
  - (iii) if a range of salary is applicable to the officer and the salary payable to him or her is not the minimum salary of that range—action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or the range of salary applicable to him or her as an unattached officer, reducing the salary of the officer to a specified salary and then, upon the expiration of a specified period, being a period of 12 months or less, increasing the salary of the officer to the salary that would have been payable to him or her if his

or her salary had not been so reduced, or to a lesser salary specified in the direction;

- (iv) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is lower than the salary or range of salary applicable to him or her as an unattached officer and, if there is a range of salary applicable to the performance of those duties, determining that he or she be paid a specified salary within that range; and
- (c) there were included among the kinds of action specified in paragraph 188 (1) (c) the following kinds of action:
  - (i) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is the same as the salary or range of salary applicable to him or her as an unattached officer;
  - (ii) action by way of causing the officer to perform specified duties (whether at the same or a different locality), being duties that he or she is qualified to perform and in relation to the performance of which there is applicable a salary or range of salary that is lower than the salary or range of salary applicable to him or her as an unattached officer and, if there is a range of salary applicable to the performance of those duties, determining that he or she be paid a specified salary within that range.

### **Deduction of pecuniary penalty from salary**

**220. (1)** Where the officer who pays the salary of an officer or employee is notified that, under the authority of this Act, a pecuniary penalty has been imposed upon the officer or employee, an order for the payment of money has been made against the officer or employee or a direction has been given for the deduction of an amount from the salary of the officer or employee, he or she shall deduct from the salary payable to the officer or employee the amount of the penalty, the sum ordered to be paid or the amount directed to be deducted,

as the case may be, unless he or she is satisfied that payment of that amount has been made by the officer or employee.

(2) The deduction may be made by instalments equal as nearly as practicable to one-fourth of the salary due from time to time to the officer or employee.

(3) All fines and penalties imposed under this Act shall be paid into the Consolidated Revenue Fund.

## **PART X—FORFEITURE OF OFFICE**

### **Forfeiture of office**

**221. (1)** Where an officer is absent from duty without permission, and has been so absent for a continuous period of not less than 4 weeks, the relevant Chief Executive may send to the officer by post addressed to him or her at his or her address last known to the Chief Executive a notice informing him or her that unless, within a period of 2 weeks from and including the day on which the notice was sent—

- (a) he or she returns to duty; or
- (b) he or she explains his or her absence and seeks the permission of the Chief Executive for any further period of absence that may be necessary having regard to that explanation;

the officer will be taken to have retired from the Service upon the expiration of that period of 2 weeks.

(2) Where an officer to whom a notice under subsection (1) has been sent does not, within the period of 2 weeks from and including the day on which the notice was so sent—

- (a) return to duty; or
- (b) explain his or her absence and seek the permission of the Chief Executive for any further period of absence;

and the notice has not been revoked under subsection (5), the officer shall be taken to have retired from the Service on the day following the expiration of that period of 2 weeks.

(3) Where a notice has been sent to an officer under subsection (1) and, within the period of 2 weeks after that notice was so sent, the officer explains his or her absence and seeks the permission of the Chief Executive for any

further period of absence, the Chief Executive shall, as soon as practicable, consider the matter and may, by notice in writing sent to the officer by post addressed to him or her at his or her address last known to the Chief Executive, inform the officer—

- (a) that he or she has been granted leave of absence for such period and on such conditions as are specified in the notice; or
- (b) that he or she is required to return to duty and that, unless he or she returns to duty within a specified period (being a period of at least 2 weeks from and including the day on which the notice is sent) he or she will be taken to have retired from the Service upon the expiration of the period so specified.

(4) Where an officer who is required by a notice sent to him or her under subsection (3) to return to duty does not return to duty within the period specified to in the notice and the notice is not revoked under subsection (5), he or she shall be taken to have retired from the Service on the day following the expiration of that period.

(5) The Commissioner may, at any time before an officer is to be deemed to have retired from the Service under this section, by notice in writing sent to the officer by post addressed to him or her at his or her address last known to the Commissioner, revoke a notice previously sent to the officer under this section, and the notice is then void and of no effect.

### **Reappointment of officers taken to have retired under section 221**

222. (1) A person who is to be taken to have retired from the Service in accordance with subsection 221 (2) or (4) may apply to the relevant Chief Executive, in writing, for reappointment to the Service.

(2) A Chief Executive to whom an application is made under subsection (1) shall—

- (a) if the Chief Executive is satisfied that the applicant had, in all the circumstances, reasonable grounds for being absent, reappoint the applicant to the Service to fill—
  - (i) the office occupied by the applicant immediately before the applicant was to be taken to have retired from the Service, or an equivalent office;
  - (ii) if such an office is not available—an available office as nearly as possible equivalent to the office occupied by the applicant

*Public Sector Management Act 1994*

immediately before he or she was to be taken to have retired from the Service; or

(iii) with the consent in writing of the person—another office; or

(b) if the Chief Executive is not so satisfied—refuse the application.

**(3)** Where a Chief Executive refuses an application—

(a) he or she shall notify the applicant in writing accordingly and furnish to the applicant and the Commissioner his or her reasons for the refusal; and

(b) an application may be made to the Merit Protection Agency for review of the decision of the Chief Executive to refuse the application.

**(4)** A decision under subsection (2) to refuse an application may be reviewed under section 43 of the Merit Protection Act.

**(5)** Where a person who is to be taken to have retired from the Service in accordance with subsection 221 (2) or (4) is reappointed to the Service under this section, the person shall be taken, during the period commencing on the day immediately following the day on which the person is so to be taken to have retired from the Service and ending on the day immediately preceding the day on which the person was so reappointed, to have continued in the Service and to have been absent from duty on leave of absence without pay, and the relevant Chief Executive shall determine whether that period, or any part of that period, is to form part of the officer's period of service for any purposes under this Act or any other Act and, if so, the purposes for which it is to form part of the period of the officer's service.

**(6)** In this section—

“relevant Chief Executive”, in relation to a person who is to be taken to have retired from the Service in accordance with subsection 221 (2) or (4), means the Chief Executive of the administrative unit in which the person held an office, or was included, immediately before being taken to have so retired or, if that administrative unit has ceased to exist, the Chief Executive of such administrative unit as the Commissioner directs.



**PART XI—REVIEW OF CERTAIN DECISIONS AND  
INVESTIGATION OF GRIEVANCES**

*Division 1—Preliminary*

**Interpretation**

**223.** In this Part, unless the contrary intention appears—

“action” has the same meaning as in subsection 46 (1) of the Merit Protection Act;

“authorised person”, in relation to a decision made under this Act or the management standards, means an officer who is authorised under this Act or those standards to make that decision;

“decision” has the same meaning as in the Merit Protection Act;

“employee” means an officer or employee in—

- (a) an administrative unit; or
- (b) a Territory instrumentality specified in Schedule 2;

“internal appeal officer” means—

- (a) in the case of a decision of, or action taken by, the relevant Chief Executive—that Commissioner or another Chief Executive nominated by the Commissioner;
- (b) in the case of a decision of, or action taken by, a delegate of the relevant Chief Executive—
  - (i) a delegate of the relevant Chief Executive, being a delegate who holds an office having a higher classification than the office of the delegate who made the relevant decision or who took the relevant action; or
  - (ii) the relevant Chief Executive; or
- (c) in any other case—the relevant Chief Executive;

“Study bank” means a scheme to enable employees to undertake tertiary study in accordance with the management standards.

***Division 2—Review of certain decisions***

**Application**

**224.** This Division applies to—

- (a) a decision of an authorised person refusing approval for an employee to undertake a scheme of study under Study bank;
- (b) a decision of the relevant Chief Executive—
  - (i) not to grant reimbursement, in full or in part, of study costs incurred by an approved student in respect of a scheme of study, or a study program, undertaken under Study bank, or a subject included in such a scheme of study; or
  - (ii) not to grant payment, in full or in part, prior to the completion of such a scheme of study, or a subject included in such a scheme of study, of study costs incurred or likely to be incurred by an approved student in respect of the scheme of study or subject;
- (c) a decision of the relevant Chief Executive—
  - (i) not to grant reimbursement, in full or in part, of study costs incurred by an award holder in respect of a scheme of study, or a study program, undertaken under Study bank; or
  - (ii) not to grant payment, in full or in part, prior to completion of such a scheme of study or a study program, of study costs likely to be incurred by an award holder in respect of the scheme of study or study program;
- (d) a decision of an authorised person specifying, in relation to an employee who is directed to perform only part of the duties of an office, the classification that shall be deemed to be the classification of that office;
- (e) a decision of the relevant Chief Executive, in relation to an application for the grant of leave of absence to undertake a scheme of study, or a study program, under Study bank—
  - (i) not to grant the leave;
  - (ii) to grant the leave for a period other than for the period requested; or

- (iii) to grant the leave subject to conditions;
- (f) a decision under subsection 225 (3) of the internal appeal officer upon his or her review of a decision referred to in paragraph (a), (b), (c) or (d); and
- (g) a decision under subsection 225 (3) of the internal appeal officer upon his or her review of a decision referred to in paragraph (e).

**Review by the internal appeal officer**

**225. (1)** An employee aggrieved by a decision referred to in paragraph 224 (a), (b), (c), (d) or (e) made in relation to the employee may request the internal appeal officer to review the decision.

**(2)** A request under subsection (1) by an employee for the review of a decision shall—

- (a) be in writing;
- (b) set out the decision;
- (c) set out the reasons why the employee is aggrieved by the decision; and
- (d) be furnished to the internal appeal officer.

**(3)** As soon as practicable after receiving a request for the review of a decision made in relation to an employee, the internal appeal officer shall review the decision and shall, by decision in writing—

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision for the decision so set aside.

**(4)** For the purpose of reviewing a decision made in relation to an employee, the internal appeal officer may request any person, including the employee, to provide information or documents relevant to the decision.

**Review by the Merit Protection Agency**

**226. (1)** For the purposes of section 39 of the Merit Protection Act in its application under section 235, application may be made to the Merit Protection Agency for review of—

*Public Sector Management Act 1994*

- (a) a decision referred to in paragraph 224 (a), (b), (c), (d) or (e) made in relation to an employee that has been reviewed under section 225 by the internal appeal officer; or
  - (b) a decision referred to in paragraph 224 (f) or (g) made in relation to an employee by the internal appeal officer.
- (2) An application under subsection (1) for review of a decision shall—
- (a) be in writing;
  - (b) be addressed to the Director;
  - (c) set out the decision;
  - (d) set out the reasons why the application is made; and
  - (e) be furnished to the internal appeal officer with a request that the internal appeal officer furnish the application to the Director.

**Documents to be furnished by the internal appeal officer**

**227.** Within 14 days after receiving an application under section 226 for review by the Merit Protection Agency of a decision made in relation to an employee, the internal appeal officer shall—

- (a) furnish to the Director—
  - (i) the application;
  - (ii) the request by the employee under section 226 for review by that internal appeal officer of that decision;
  - (iii) a copy of that decision;
  - (iv) any other document relevant to that decision or that review; and
  - (v) if necessary, a report on anything done by that internal appeal officer in connection with that decision or that review; and
- (b) furnish to the employee—
  - (i) a copy of any document referred to in subparagraph (a) (iv); and
  - (ii) a copy of any report referred to in subparagraph (a) (v).

**Review to be under section 42 or 43 of the Merit Protection Act**

**228.** On receipt by the Director of an application under section 226 for review by the Merit Protection Agency of a decision, that decision may be reviewed—

- (a) in the case of a decision referred to in paragraph 224 (e) or (g)—under section 43 of the Merit Protection Act; or
- (b) in any other case—under section 42 of that Act.

**Official directions to be carried out**

**229.** Where—

- (a) under section 225 an employee requests the internal appeal officer to review an official direction to the employee; or
- (b) under section 226 application is made to the Merit Protection Agency for review of an official direction to an employee;

the employee shall, as far as practicable, carry out the direction unless, on review, the direction—

- (c) is varied or set aside; or
- (d) if made subject to reconsideration—is subsequently withdrawn.

***Division 3—Investigation of grievances by the Merit Protection Agency***

**Application**

**230.** This Division applies to—

- (a) action taken in relation to an employee other than—
  - (i) classifying an office;
  - (ii) fixing the rate of salary applicable to an office;
  - (iii) fixing the conditions of service or employment of employees, in so far as those conditions are set out in, or under, this Act, the management standards or another Act, otherwise than applying those conditions to the employee;
  - (iv) action arising under—
    - (A) the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

*Public Sector Management Act 1994*

- (B) the *Safety Rehabilitation and Compensation Act 1988* of the Commonwealth; or
- (C) an Act of the Commonwealth made with respect to superannuation;
- (v) action in respect of which the employee has under Part VI of this Act a right of appeal whether or not that right has been exercised;
- (vi) the termination of the appointment of an employee on probation;
- (vii) refusal to permit an employee to decline a transfer within an administrative unit or within a Territory instrumentality;
- (viii) the appointment, promotion or transfer of a person to an office to which the person had applied to be promoted or transferred; and
- (ix) termination of the employment of a person engaged as an employee in a temporary capacity under this Act; and
- (b) action taken in relation to an employee that is part of the procedure adopted for the purpose of action referred to in subparagraph (a) (v), (vi), (vii), (viii) or (ix) taken in relation to the employee;

but does not apply to a decision to which Division 2 applies.

**Investigation by the internal appeal officer**

**231. (1)** An employee aggrieved by action to which this Division applies taken in relation to the employee may request the internal appeal officer to investigate the action.

**(2)** A request under subsection (1) by an employee for investigation of action taken shall—

- (a) be in writing;
- (b) describe the action;
- (c) set out the reasons why the employee is aggrieved by the action; and
- (d) be furnished—

*Public Sector Management Act 1994*

- (i) in the case of action that concerns the conduct of the supervisor of the employee—to the internal appeal officer; or
- (ii) in any other case—to the supervisor of the employee who shall, as soon as practicable, refer the request to the internal appeal officer.

(3) As soon as practicable after receiving a request under subsection (1) to investigate action taken in relation to an employee, the internal appeal officer shall—

- (a) investigate the action in any manner that he or she thinks fit; and
- (b) cause the employee to be advised, in writing, of the results of the investigation, of any decision of the internal appeal officer consequent upon the investigation and of the reasons for that decision.

(4) For the purposes of an investigation under this section by the internal appeal officer into action taken in relation to an employee, the internal appeal officer may request any person, including the employee, to provide information or documents relevant to the action.

**Investigation by the Merit Protection Agency**

**232. (1)** For the purposes of section 47 of the Merit Protection Act in its application under section 235, application may be made to the Merit Protection Agency for the investigation, in accordance with Division 4 of Part II of that Act, of an action to which this Division applies taken in relation to an employee that has been investigated by the internal appeal officer under section 231 if the employee remains aggrieved by the action.

(2) An application under subsection (1) for investigation of an action shall—

- (a) be in writing;
- (b) be addressed to the Director;
- (c) describe the action;
- (d) set out the reasons why the application is made; and
- (e) be furnished to the internal appeal officer with a request that that officer furnish the application to the Director.

**Documents to be furnished by the internal appeal officer**

**233.** Within 14 days after receiving an application under section 232 for investigation by the Merit Protection Agency of action taken in relation to an employee, the internal appeal officer shall—

- (a) furnish to the Director—
  - (i) the application;
  - (ii) the request by the employee under section 231 for investigation by the internal appeal officer of the action;
  - (iii) a copy of the advice given under subsection 231 (3) by the internal appeal officer to the employee as a result of that investigation;
  - (iv) any other document relevant to the action or that investigation; and
  - (v) if necessary, a report on anything done by the internal appeal officer in connection with that action or that investigation; and
- (b) furnish to the employee—
  - (i) a copy of any document referred to in subparagraph (a) (iv); and
  - (ii) a copy of any report referred to in subparagraph (a) (v).

**Official directions to be carried out**

**234.** Where—

- (a) under section 231 an employee requests the internal appeal officer to investigate an official direction to the employee; or
- (b) under section 232 application is made to the Merit Protection Agency for the investigation of an official direction to an employee;

the employee shall, as far as practicable, carry out the direction unless, following investigation, it is withdrawn.



***Division 4—Merit protection***

**Application of provisions of Merit Protection Act**

**235. (1)** The provisions of the Merit Protection Act apply by force of this subsection to the Australian Capital Territory and to officers and employees as if—

- (a) the Australian Capital Territory were a Commonwealth authority within the meaning of that Act; and
- (b) each officer or employee were a Commonwealth employee within the meaning of that Act.

**(2)** The provisions of the Merit Protection Act specified in subsection (1) apply subject to the modifications of that Act specified in Schedule 2.

**PART XIII—MISCELLANEOUS**

**Returns and information generally**

**241.** The Chief Executive of an administrative unit shall, at the request of the Commissioner, supply such returns or other information as may be required for the purposes of carrying out the provisions of this Act or the management standards.

**Improper influence**

**242. (1)** An officer or employee shall not—

- (a) seek the influence of another person; or
- (b) supply another officer or employee with certificates or testimonials;

in order to improperly obtain promotion, transfer or other advantage in relation to his or her employment in the Service.

**(2)** An officer or employee shall not knowingly provide false information to another officer or employee, or to another person acting on behalf of the Territory, in connection with his or her appointment to the Service.

**(3)** An officer or employee shall not take, or seek to take, advantage of his or her functions in order to influence any person or body to enter into a financial or other arrangement with that officer or employee, or any other person or body.

(4) An officer or employee shall not confer a benefit, or enter, or seek to enter, into a financial or other arrangement, in order to influence another officer or employee in the exercise of that other officer's or employee's functions.

**Protection of persons in respect of work reports on officers or employees**

**243. (1)** An action or proceeding does not lie against a person for or in respect of any oral or written report made in good faith by that person on or in connection with—

- (a) work performed, or proposed to be performed, by an officer or employee; or
- (b) conduct of an officer or employee.

(2) A report shall be deemed to have been made in good faith if the person by whom the report was made was not actuated by ill will to the officer or employee affected or by any other improper motive.

(3) Subsection (1) does not apply in relation to a report unless—

- (a) the person who made the report believed on reasonable grounds that it was the function or duty of the person to whom the report was made to receive the report; and
- (b) in the case of a report containing matter that was false or misleading in a material respect, the person who made the report did not know, and could not with reasonable diligence have ascertained, that the report contained matter that was so false or misleading.

**Second jobs**

**244. (1)** An officer shall not, except in accordance with the written approval of the relevant Chief Executive or as otherwise provided by the management standards—

- (a) accept or continue in employment—
  - (i) with the Commonwealth, a State, another Territory or the government of a foreign country; or
  - (ii) in or under any public or municipal corporation;
- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with, any business whether carried on by any corporation, company, firm or individual;

- (c) engage in or undertake business of the kind referred to in paragraph (b), whether as principal or agent;
- (d) engage or continue in the private practice of any profession occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged;
- (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of the office held by the officer or otherwise on behalf of the Territory; or
- (f) accept or engage in any other remunerative employment.

(2) Nothing in subsection (1) shall be deemed to prevent an officer from becoming a member or shareholder only of any incorporated company or of any company or society of persons registered under any law in any State or elsewhere.

#### **Remuneration additional to salary**

**245. (1)** An officer or employee shall not demand, or except with the approval of the relevant Chief Executive given in accordance with the management standards, receive for his or her own use any remuneration, other than salary and allowances payable under this Act, for services rendered in connection with the performance of his or her duties in the Service.

(2) An approval given for the purposes of subsection (1) may specify a period during which an amount of remuneration, or a specified percentage of such amount, received by an officer or employee pursuant to that approval may be retained for his or her own use.

(3) Where an officer or employee receives an amount of remuneration of the kind referred to in subsection (1), otherwise than in accordance with an approval given for the purposes of that subsection, the officer shall be taken to receive such remuneration on behalf of the Territory and shall pay the amount of that remuneration to the Territory.

#### **Payments to officers**

**246.** Payments to an officer or employee in connection with his or her employment, other than by way of salary, allowances or expenses payable pursuant to this Act or the management standards, may only be made under the authority of the Commissioner from money appropriated by the Assembly.

**Personation etc. at examinations**

**247. (1)** A person shall not—

- (a) personate another person at an examination held under this Act;
- (b) permit another person to personate him or her at an examination held under this Act; or
- (c) before the time at which an examination is to be held under this Act—
  - (i) improperly obtain possession of; or
  - (ii) except with proper authority, furnish to a person;  
an examination paper that has been set for that examination or particulars relating to such an examination paper.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** In subsection (1)—

“examination” includes a test.

**Contracts**

**248.** An officer or employee shall not, without proper authority, incur any liability or enter into any contract on behalf of the Territory or alter the terms or conditions of any contract to which the Territory is a party.

**Occupational health and safety**

**249.** The provisions of the *Occupational Health and Safety Act 1989* apply in relation to public employees—

- (a) subject to the modifications and adaptations specified in Schedule 3; and
- (b) unless the contrary intention appears, as if—
  - (i) each such employee were an employee within the meaning of that Act; and
  - (ii) the Territory and each Territory instrumentality were an employer within the meaning of that Act.

**Attachment of salary of officers and employees**

**250. (1)** The rule of the common law that debts owing by the Crown for the salaries of its officers and employees are not capable of being attached, is, in relation to the Crown in right of the Territory, abolished.

**(2)** Where an order is made by law attaching a debt owing by the Crown in right of the Territory, or by a Territory instrumentality, in respect of the salary of an officer or employee, the order shall be complied with out of money lawfully available.

**Management standards**

**251. (1)** The Commissioner may, with the approval in writing of the Chief Minister, make management standards, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** Without limiting the generality of subsection (1), the management standards may make provision with respect to—

- (a) the structure and organisation of the Service;
- (b) appointment to and employment in the Service, including entry to and advancement in the Service;
- (c) terms and conditions of employment of officers and employees;
- (d) the implementation of the access and equity principles referred to in paragraph 7 (f) in the provision of services;
- (e) the improvement of management practices and accountability;
- (f) reviews or inquiries into the administration of the Service;
- (g) public sector industrial relations;
- (h) terms and conditions on which statutory offices are held;
- (j) ethics and conduct of officers and employees;
- (k) discipline of officers and employees;
- (m) procedures for hearing grievances and appeals;

*Public Sector Management Act 1994*

- (n) the redeployment, retirement, resignation and redundancy of officers and employees;
- (p) arrangements for superannuation in relation to officers and employees;
- (q) equal employment opportunity in the Service;
- (r) mobility of employment—
  - (i) within the public sector in the Territory, including mobility between employment streams within the meaning of section 59;
  - (ii) between the public sectors of the Territory and the Commonwealth, a State or another Territory; and
  - (iii) between the public sectors of the Territory and a foreign country or a part of a foreign country;
- (s) occupational health and safety in the Service;
- (t) training of officers and employees;
- (u) performance appraisal of officers and employees;
- (v) industrial democracy in the Service;
- (w) the evaluation of the implementation of government policy;
- (x) internal audit;
- (y) fraud minimisation;
- (z) infrastructure for the effective management and operation of the Service.
- (3)** Without limiting the generality of paragraph (2) (b), where—
  - (a) a matter relating to the appointment or employment of a person as a public employee, or of a class of persons as public employees, is not provided for by this Act or the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*; and
  - (b) it is necessary or convenient to make provision in relation to that matter for the efficient administration of the public sector;

the Commissioner may, during the period of 1 year after the day on which this section commences, make management standards that make provision in relation to that matter.

(4) Management standards that provide for matters of the kind referred to in paragraph (2) (j) take effect subject to any direction in force under section 12 of the *Director of Public Prosecutions Act 1990*.

(5) The management standards may, in relation to a matter, include special conditions that are applicable to officers who are returned soldiers or who are, or have been, on specified defence service, including conditions under which preference may be given to returned soldiers in relation to any proposed appointments or promotions.

(6) In subsection (5)—

“returned soldier” means a discharged member of the Forces within the meaning of section 4 or section 139 of the *Re-establishment and Employment Act 1945* of the Commonwealth and any other person who, as a member of the Defence Force, rendered continuous full-time service outside Australia—

- (a) as a member of a unit of the Defence Force that was allotted for duty within the meaning of subsection 5B (2) of the *Veterans' Entitlements Act 1986* of the Commonwealth; or
- (b) as a person who was allotted for duty within the meaning of subsection 5B (2) of the *Veterans' Entitlements Act 1986* of the Commonwealth;

in an operational area described in item 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 or 14 in Schedule 2 to the *Veterans' Entitlements Act 1986* of the Commonwealth during the period specified in that item;

“specified defence service” has the same meaning as in subsection 70 (12).

### **Numbering and citation of standards**

**252. (1)** The management standards made in each calendar year shall, subject to subsection (2), be numbered in regular arithmetic series as nearly as may be in the order in which they are made.

(2) The Commissioner may cause management standards relating to different subject matters to be numbered in separate regular arithmetic series.

(3) A management standard may, without prejudice to any other mode of citation provided by law, be cited by its number and the calendar year in which made.

*Public Sector Management Act 1994*

(4) Section 4 of the *Subordinate Laws Act 1989* does not apply to a management standard.

**Notification and publication of standards**

**253. (1)** A management standard—

- (a) shall be notified in the Territory Gazette; and
- (b) takes effect on the day of notification, or if the standard otherwise provides, as so provided.

(2) Publication in the Territory Gazette of notice of a management standard having been made and of the place or places where copies can be purchased and inspected shall be taken to be sufficient compliance with paragraph (1) (a).

(3) On the day of publication of a notice under subsection (2) or as soon as practicable after that day, copies of the management standard to which the notice relates shall be made available for purchase and inspection at the place, or at each of the places, specified in the notice.

(4) Failure to comply with the requirement of subsection (3) shall not be taken to constitute a failure to comply with subsection (1).

(5) Section 6 of the *Subordinate Laws Act 1989* does apply to a management standard.

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**SCHEDULE 1**

Section 202

**MODIFICATIONS AND ADAPTATIONS OF THE PROVISIONS OF  
PART IX IN THEIR APPLICATION TO EMPLOYEES**

**Subsection 178 (1) (definition of “original office”)—**

Omit the definition, substitute the following definition:

“ ‘original office’ means, in the case of a person who has been—

(a) dismissed from employment under section 187, 188 or 197; or

(b) transferred to other duties under section 187, 188 or 191;

the duties performed by him or her immediately before his or her dismissal or transfer;”.

**Subsection 178 (2)—**

Omit the subsection.

**Subsection 178 (3)—**

Omit the subsection.

**Division 2 of Part IX—**

Omit the Division.

**Heading to Division 3 of Part IX—**

Omit “other than Chief Executives”.

**Subparagraph 187 (6) (a) (iii)—**

Omit “occupies an office”, substitute “performs duties”.

**Subparagraph 187 (6) (a) (iv)—**

Omit all the words after “to”, substitute “other duties for which he or she is qualified (whether at the same or a different locality);”.

**Subparagraph 187 (6) (a) (v)—**

Omit all the words after “officer”, substitute “to other duties for which he or she is qualified (whether at the same or a different locality) and causing a sum, not exceeding \$500, to be deducted from his or her salary;”.

**SCHEDULE 1**—continued

**Subparagraph 187 (6) (a) (vi)**—

- (a) Omit “occupies an office”, substitute “performs duties”.
- (b) Omit “to a specified office (whether at the same or a different locality), being an office for which he or she is qualified and which has the same classification as the classification of the office held by him or her”, substitute “to other duties for which he or she is qualified (whether at the same or a different locality)”.

**Subparagraph 187 (6) (a) (vii)**—

Omit all the words after “officer” (first occurring), substitute “to other duties for which he or she is qualified (whether at the same or a different locality) and the salary or salary range applicable to which is lower than his or her salary immediately before the inquiry;”.

**Paragraph 187 (6) (b)**—

Omit “the Service”, substitute “his or her employment”.

**Paragraph 188 (1) (c)**—

Omit the paragraph, substitute the following paragraph:

- “(c) direct that there be taken, in the case of an employee, action by way of transferring him or her to other duties for which he or she is qualified (whether at the same or a different locality) and the salary or salary range applicable to which is the same as or lower than that applicable to the duties of the employee immediately before the Chief Officer so directs; or”.

**Paragraph 188 (1) (d)**—

Omit “the Service”, substitute “his or her employment”.

**Subsection 192 (2)**—

- (a) Omit “the Service” (first occurring), substitute “his or her employment”.
- (b) Omit “reappointment to the Service”, substitute “re-employment or re-engagement”.

**Subsection 192 (3)**—

Omit “another office”, substitute “other duties”.

**SCHEDULE 1**—continued

**Paragraph 192 (4) (a)**—

Omit “the Service”, substitute “his or her employment”.

**Paragraph 192 (4) (b)**—

Omit “reappointed to the Service”, substitute “re-employed or re-engaged by the Territory or a Territory instrumentality”.

**Paragraph 192 (6) (a)**—

- (a) Omit “reappointed to the Service, or transferred or promoted”, substitute “re-employed or re-engaged, or transferred”.
- (b) Omit “reappointed, transferred or promoted”, substitute “re-employed, re-engaged or transferred”.

**Paragraph 192 (8) (b)**—

Omit “reappointed to the Service, or be transferred or promoted”, substitute “re-employed or re-engaged, or be transferred”.

**Subparagraph 192 (9) (a) (i)**—

Omit all the words from and including “appoint” to and including “another office”, substitute “employ or engage the applicant”.

**Subparagraph 192 (9) (a) (ii)**—

Omit all the words from and including “appoint” to and including “dismissal”, substitute “employ or engage the applicant as an employee on leave without pay”.

**Subparagraph 192 (9) (a) (iii)**—

Omit all the words from and including “appoint” to and including “another office”, substitute “employ or engage the applicant”.

**Subsection 192 (10)**—

- (a) Insert “or re-engaged or re-employed” after “Service” (first occurring).
- (b) Insert “, re-engage or re-employ the person” after “Service” (second occurring).

**Subsection 192 (11)**—

**SCHEDULE 1**—continued

- (a) Omit “the Service, is reappointed to the Service”, substitute “his or her employment, is re-employed or re-engaged”.
- (b) Omit “so reappointed”, substitute “so re-employed or re-engaged”.
- (c) Omit “in the Service”, substitute “in that employment”.

**Subsection 192 (12)**—

Omit all the words after “means”, substitute “employment the duties of which were performed by that person or officer, equivalent employment, or, if such employment is not available, employment determined by the Commissioner to be as nearly as possible equivalent to the duties in which that person or officer was previously employed or engaged”.

**Subparagraph 193 (1) (a) (iii)**—

Omit “another office”, substitute “other duties”.

**Subparagraph 193 (1) (a) (iv)**—

Omit “the Service”, substitute “his or her employment”.

**Paragraph 193 (1) (b)**—

Omit “the Service”, substitute “his or her employment”.

**Paragraph 193 (7) (a)**—

Omit all the words from and including “the Service” (first occurring), substitute “his or her employment—re-employ or re-engage the person in employment that is an appropriate office within the meaning of subsection 192 (12) in its application to employees; or”.

**Paragraph 193 (7) (b)**—

Omit the paragraph, substitute the following paragraph:

- “(b) in relation to a person who has been transferred—direct that he or she be transferred to employment that is an appropriate office within the meaning of subsection 192 (12) in its application to employees.”.

**Subsection 193 (8)**—

- (a) Omit “the Service, is reappointed to the Service”, substitute “his or her employment, is re-employed or re-engaged”.
- (b) Omit “so reappointed”, substitute “so re-employed or re-engaged”.

**SCHEDULE 1**—continued

(c) Omit “in the Service”, substitute “in that employment”.

**Subsection 194 (1) (definition of “detached officer”)—**

Omit the definition.

**Subsection 195 (3)—**

Omit “the Service” (twice occurring), substitute “his or her employment”.

**Subsection 196 (3)—**

Omit “the Service” (second occurring), substitute “his or her employment”.

**Subsection 197 (1)—**

Omit “the Service” (second occurring), substitute “his or her employment”.

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**SCHEDULE 2**

Subsection 235 (2)

**MODIFICATIONS OF THE MERIT PROTECTION ACT IN ITS APPLICATION UNDER SECTION 235**

**Subsection 3 (1)—**

- (a) Omit the definitions of “enactment” and “officer”, substitute the following definitions:

“ ‘enactment’ means—

- (a) an Act passed by the Legislative Assembly for the Australian Capital Territory; or
- (b) an instrument (including determinations, management standards, rules, regulations or by-laws) made under such an Act;

‘officer’ has the same meaning as in the Public Sector Management Act;”.

- (b) Omit “not include the Australian Federal Police” from the definition of “Commonwealth authority”, substitute the following:

“not include—

- (e) the Australian Federal Police; or
- (f) an authority that is an enactment authority as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth and incorporated or established for a public purpose”.

- (c) Omit the definition of “the Service”.

- (d) Insert the following definitions:

“ ‘administrative unit’ means an administrative unit of the Service;

‘Chief Executive’ means a person for the time being holding, or performing the duties of, an office of Chief Executive in the Service;

**PUBLIC SECTOR MANAGEMENT ACT 1994**

**SCHEDULE 2—continued**

‘Chief Minister’ means the Chief Minister for the Australian Capital Territory elected under section 40 of the *Australian Capital Territory (Self-Government) Act 1988*;

‘Commissioner’ means the Commissioner for Public Administration appointed under section 18 of the Public Sector Management Act;

‘employee’ has the same meaning as in the Public Sector Management Act;

‘Executive’ means the Australian Capital Territory Executive established by section 36 of the *Australian Capital Territory (Self-Government) Act 1988*;

‘Legislative Assembly’ means the Legislative Assembly for the Australian Capital Territory;

‘management standards’ means management standards made under section 251 of the Public Sector Management Act;

‘principal relevant staff organisation’, in relation to the promotion of an officer to a position, means—

- (a) if there is only 1 relevant staff organisation in relation to that position—that organisation; or
- (b) in any other case—the relevant staff organisation the membership of which includes the largest number of persons occupying positions similar to the first-mentioned position;

‘Public Sector Management Act’ means the *Public Sector Management Act 1994* of the Australian Capital Territory;

‘relevant Chief Executive’ has the same meaning as in the Public Sector Management Act;

‘relevant staff organisation’, in relation to a position, means an organisation—

- (a) that is registered under the *Industrial Relations Act 1988*;

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

(b) for membership of which a person occupying the position would be eligible; and

(c) that is a party to an industrial award that applies in relation to the salary payable in respect of the position;

‘Service’ has the same meaning as in the Public Sector Management Act;

‘Territory instrumentality’ has the same meaning as in the Public Sector Management Act;”.

**Section 4**—

Omit the section, substitute the following section:

**Object**

“4. (1) In relation to officers and employees of the Australian Capital Territory, the object of the Act is to ensure that actions taken and decisions made in relation to an officer or employee in connection with his or her employment are fair and equitable and are taken or made in accordance with sound personnel management practices and with due regard being had to—

(a) the efficiency of the relevant authority; and

(b) the need to ensure good relations between the relevant authority and its officers and employees.

“(2) In subsection (1)—

‘relevant authority’, in relation to an officer or employee, means—

(a) in the case of an officer or employee who is performing duty with a Territory instrumentality—the Territory instrumentality;  
or

(b) in any other case—the Australian Capital Territory.”.

**Paragraph 9 (a)**—

Omit “50B or 50H of the *Public Service Act 1922*”, substitute “84 or 86 of the Public Sector Management Act”.

**Paragraph 9 (b)**—



*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

Omit “regulations made for the purposes of section 51A”, substitute “section 102”.

**Paragraph 10 (1) (b)**—

Omit “Secretary of the Department”, substitute “Chief Executive of the administrative unit”.

**Paragraph 10 (1) (c)**—

Omit “regulations” (twice occurring), substitute “management standards”.

**Section 14**—

Omit “Australia”, substitute “the Australian Capital Territory”.

**Section 16**—

Omit “Divisions 6 and 6A of Part III of the *Public Service Act 1922*”, substitute “Parts IX and X of the Public Sector Management Act”.

**Subsection 17 (1)**—

(a) Omit “section 63D, 63F or 63P of the *Public Service Act 1922*”, substitute “section 181, 182 or 189 of the Public Sector Management Act”.

(b) Omit “section 63G”, substitute “section 193”.

**Paragraph 17 (1) (b)**—

Omit “Secretary”, substitute “Chief Executive”.

**Paragraph 17 (1) (c)**—

Omit “regulations” (twice occurring), substitute “management standards”.

**Subsection 17 (3)**—

(a) Omit “section 61 of the *Public Service Act 1922*”, substitute “section 186 of the Public Sector Management Act”.

(b) Omit “subsection 63 (1)”, substitute “subsection 188 (1)”.

**Subsection 17 (4)**—

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

- (a) Omit “section 63D, 63F or 63P of the *Public Service Act 1922*”, substitute “section 191, 192 or 199 of the *Public Sector Management Act*”.
- (b) Omit “section 65”, substitute “section 220”.

**Subsection 17 (5)**—

Omit the subsection, substitute the following subsection:

“(5) A reference in this section to the relevant Chief Executive, in relation to a person who has been dismissed from the Service under Part IX of the *Public Sector Management Act*, is a reference to the Chief Executive of the administrative unit in which the person held an office, or was included, immediately before being dismissed or, if that administrative unit has ceased to exist, the Chief Executive of such administrative unit as the Commissioner directs.”.

**Section 22**—

Omit “Divisions 8B and 8C of Part III of the *Public Service Act 1922*”, substitute “Divisions 2 and 3 of Part VI of the *Public Sector Management Act*”.

**Paragraph 23 (1) (b)**—

Omit the paragraph, substitute the following paragraph:

- “(b) a person nominated by—
- (i) where the Committee is constituted for the purpose of an appeal under Division 2 of Part VI of the *Public Sector Management Act* or an appeal under Division 3 of Part VI of that Act against the giving of a notice by the Commissioner—the Commissioner; or
  - (ii) where the Committee is constituted for the purpose of any other appeal by the officer under Division 3 of Part VI of the *Public Sector Management Act*—the relevant Chief Executive; and”.

**Paragraph 23 (1) (c)**—

Omit “regulations” (twice occurring), substitute “management standards”.

**Subsection 23 (2)**—

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

Omit “Division 8C of Part III of the *Public Service Act 1922*”, substitute “Division 3 of Part VI of the *Public Sector Management Act*”.

**Subsection 25 (2)**—

Omit “or (2), as the case requires,”.

**Section 27**—

Add at the end “in its application to officers under section 15 of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* of the Australian Capital Territory”.

**Paragraph 28 (1) (b)**—

Omit “Public Service Board”, substitute “Commissioner”.

**Paragraph 28 (1) (c)**—

Omit “regulations” (twice occurring), substitute “management standards”.

**Subsection 28 (2)**—

(a) Omit “Public Service Board”, substitute “Commissioner”.

(b) After “*Public Service Act 1922*” insert “in its application to officers under section 15 of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994* of the Australian Capital Territory”.

**Section 31 (definition of “application”)**—

Omit “subsection 17 (2) or 24 (2)”, substitute “subsection 13B (1)”.

**Section 31 (definition of “relevant Act”)**—

Omit “*Members of Parliament (Staff) Act 1984*”, substitute “*Legislative Assembly (Members’ Staff) Act 1989* of the Australian Capital Territory”.

**Section 32**—

Omit “Parts III and IV”, substitute “Part IIIA”.

**Paragraph 33 (b)**—

Omit “Public Service Board”, substitute “Commissioner”.

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

**Paragraph 33 (c)**—

Omit “regulations” (twice occurring), substitute “management standards”.

**Paragraph 37 (1) (b)**—

Omit “and to the regulations made under those Acts”, substitute “, the regulations made under those Acts and the management standards”.

**Paragraphs 37 (2) (a) and (c)**—

Omit the paragraphs, substitute the following paragraphs:

- “(a) in relation to a Promotion Appeal Committee, Disciplinary Appeal Committee or Redeployment and Retirement Appeal Committee—the Public Sector Management Act;
- (b) in relation to a Re-appointment Review Committee—the *Public Service Act 1922*; and
- (c) in relation to a Re-integration Assessment Committee—the *Legislative Assembly (Members’ Staff) Act 1989* of the Australian Capital Territory.”.

**Subsection 43 (5)**—

Omit “Prime Minister”, substitute “Chief Minister”.

**Subsection 43 (6)**—

Omit the subsection, substitute the following subsection:

“(6) Where the Agency has, in accordance with subsection (5), furnished information to the Chief Minister in relation to a recommendation, the Agency may also forward to the Speaker of the Legislative Assembly, for presentation to the Legislative Assembly, copies of a report prepared by it concerning the recommendation for presentation to the Legislative Assembly.”.

**Subsection 44 (1)**—

Omit “Public Service Board” (twice occurring), substitute “Commissioner”.

**Subsection 44 (2)**—

Omit “Public Service Board”, substitute “Commissioner”.

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

**Subsection 46 (1) (subparagraph (b) (i) of the definition of “principal officer”)**—

Omit “regulations”, substitute “management standards”.

**Paragraph 46 (2) (a)**—

Omit “the Governor-General, a Minister or the Secretary of a Department”, substitute “a Minister or a Chief Executive”.

**Paragraph 46 (2) (b)**—

Omit “being a Judge of a court of, or a magistrate of, a State or a Territory;”, substitute the following:

“being—

- (i) a Judge of a court of the Commonwealth, or a State or another Territory; or
- (ii) a magistrate of a State or another Territory;”.

**Subsection 46 (2)**—

Omit “Department” (last occurring), substitute “administrative unit”.

**Subsection 46 (3)**—

- (a) Omit “the Governor-General, a Minister or the Secretary of a Department”, substitute “a Minister or a Chief Executive”.
- (b) Omit “regulations”, substitute “management standards”.
- (c) Omit “Department” (second occurring), substitute “administrative unit”.

**Subsection 52 (1)**—

Omit “Prime Minister”, substitute “Chief Minister”.

**Subsection 52 (2)**—

Omit “Prime Minister” (twice occurring), substitute “Chief Minister”.

**Subsection 52 (3)**—

Omit “Prime Minister”, substitute “Chief Minister”.

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

**Section 53**—

- (a) Omit “Prime Minister”, substitute “Chief Minister”.
- (b) Omit “President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively”, substitute “Speaker of the Legislative Assembly, for presentation to the Legislative Assembly”.
- (c) Omit “both Houses of the Parliament”, substitute “the Legislative Assembly”.

**Subsection 54 (1)**—

Omit “such officer in the Department or authority as the Agency considers appropriate”, substitute “the Commissioner”.

**Subsection 56 (1)**—

- (a) Insert “Chief” before “Minister”.
- (b) Omit “Public Service Board”, substitute “Commissioner”.

**Subsection 56 (2)**—

- (a) Insert “Chief” before “Minister”.
- (b) Omit “Board”, substitute “Commissioner”.

**Subsection 58 (1)**—

Omit “regulations”, substitute “management standards”.

**Subsection 58 (2)**—

Omit “regulations”, substitute “management standards”.

**Subsection 59 (4)**—

- (a) Insert “of the Australian Capital Territory” after “Attorney-General”.
- (b) Omit paragraphs (a) to (d) (inclusive), substitute the following paragraphs:
  - “(a) by reason that it would involve the disclosure of communications between a Minister of the Australian Capital Territory and a Commonwealth Minister or a Minister of a State or of the Northern Territory, being a

*PUBLIC SECTOR MANAGEMENT ACT 1994*

**SCHEDULE 2**—continued

disclosure that would prejudice relations between the Australian Capital Territory and the Commonwealth Government or the Government of a State or the Northern Territory, as the case may be; or

- (b) by reason that it would involve the disclosure of deliberations or decisions of the Executive or a committee of the Executive;”.

**Subsections 61 (2) and (3)**—

Omit the subsections.

**Subsection 61 (4)**—

Insert “of the Australian Capital Territory” after “Attorney-General”.

**Section 80**—

Add at the end “or the Public Sector Management Act”.

**Subparagraph 84 (3) (b) (i)**—

Insert “of the Australian Capital Territory” after “Minister”.

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**SCHEDULE 3**

Paragraph 249 (a)

**MODIFICATIONS AND ADAPTATIONS OF THE OCCUPATIONAL  
HEALTH AND SAFETY ACT 1989 IN ITS APPLICATION TO PUBLIC  
EMPLOYEES**

**Subsection 5 (1) (definition of “approved code of practice”)—**

Insert in paragraph (a) “, or taken to be approved,” after “approved”.

**Subsection 5 (1) (definition of “designated work group”)—**

Omit the definition, substitute the following definition:

“ ‘designated work group’ means—

- (a) a group of employees established as a designated work group by an employer under subsection 37 (4A); and
- (b) such a group as varied by an employer under subsection 37 (4B);

and, in relation to an employer, means such a group that consists entirely of employees of the employer;”.

**Subsection 5 (1)—**

Insert the following definitions:

“ ‘annual report’ means the annual report (if any) of an administrative unit of the Australian Capital Territory Government Service or of a Territory instrumentality to the responsible Minister for the administrative unit or the instrumentality relating to the activities, operations, business or affairs of the administrative unit or the instrumentality;

‘public employee’ has the same meaning as in subsection 3 (1) of the *Public Sector Management Act 1994*;

‘Territory instrumentality’ has the same meaning as in subsection 3 (1) of the *Public Sector Management Act 1994*.”.

**Paragraph 27 (2) (e)—**

Insert “, in consultation with any involved unions in relation to the employees of the employer, and with such other persons as the employer considers appropriate,” after “maintain”.



**SCHEDULE 3**—continued

**Subsection 27 (3)**—

Omit the subsection, substitute the following subsection:

“(3) A policy relating to occupational health and safety of the kind referred to in paragraph (2) (e) that is developed in consultation with involved unions shall provide for the making of an agreement between the employer and the involved unions that—

- (a) provides appropriate mechanisms for continuing consultation, between the employer, the involved unions and the employees, on occupational health and safety matters; and
- (b) provides for such other matters (if any) as are agreed between the employer and the involved unions.”.

**Section 36**—

Omit the section.

**Subsections 37 (1), (2), (3) and (4)**—

Omit the subsections, substitute the following subsections:

“(1) A request to an employer to enter into consultations to establish designated work groups in respect of employees of the employer, or to vary designated work groups that have already been established, may be made by—

- (a) if there are involved unions in relation to employees of the employer—any such involved union; or
- (b) if there are no involved unions in relation to any employee of the employer—any such employee.

“(2) The employer may, at any time, and shall, within 14 days after receiving such a request, enter into such consultations with—

- (a) if there are any involved unions in relation to employees of the employer—each such involved union; or
- (b) if there is no involved union in relation to any employee of the employer—the employee who made the request.

“(3) Where an employer believes that designated work groups should be varied, the employer may, at any time, enter into consultations concerning the variation of the designated work groups with—

**SCHEDULE 3**—continued

- (a) if there are involved unions in relation to employees of the employer—each such involved union; or
- (b) if there is no involved union in relation to an employee of the employer—the health and safety representative of each designated work group proposed to be varied.

“(4) If in the course of consultations under subsection (2) or (3), there is a disagreement between any of the parties to the consultation concerning the matter of establishing or varying a designated work group, any party may, for the purposes of facilitating that consultation, refer the matter of disagreement to the Review Authority for resolution as it considers appropriate and, where this is done, the parties to the disagreement shall complete the consultation in accordance with the resolution of that matter by the Authority.

“(4A) Within 14 days after the completion of consultations concerning the establishment of the designated work groups, the employer shall, by notice in accordance with subsection (10), establish the designated work groups in accordance with the outcome of the consultations.

“(4B) Within 14 days after the completion of consultations concerning the variation of designated work groups that have already been established, the employer shall, if it has been determined that the variation of some or all of those designated work groups is justified, by notice in accordance with subsection (10), vary the designated work groups in accordance with the outcome of the consultations.”.

**Subsection 37 (7)**—

Omit the subsection.

**Subsection 37 (9)**—

Omit “subsections (5), (6) and (7)”, substitute “subsections (5) and (6)”.

**Subsection 37 (10)**—

- (a) Omit “subsection (1) or (2)”, substitute “subsection (4A)”.
- (b) Omit “subsection (4)”, substitute “subsection (4B)”.

**SCHEDULE 3**—continued

**Section 38**—

Omit the section.

**Subsections 40 (3), (4), (5), (6) and (7)**—

Omit the subsections, substitute the following subsections:

“(3) A person is to be taken to have been selected as the health and safety representative for a designated work group if—

- (a) all of the employees included in the group unanimously agree to the selection of the person as the health and safety representative of the group; or
- (b) the person is elected as the health and safety representative of the group.

“(4) An election for a health and safety representative for the designated work group may be conducted—

- (a) if there is only 1 involved union in relation to the group—by that involved union; or
- (b) if there is more than 1 involved union and all the involved unions are in agreement that a specified 1 of those unions should conduct the election—by that specified union; or
- (c) if there is no involved union in relation to the group—by a person authorised by the Registrar to conduct elections under this section.

“(5) An employee in the designated work group may be a candidate in the election only if—

- (a) the employee is not disqualified under section 48; and
- (b) where an involved union in relation to the group is conducting the election—the employee is nominated by an involved union in relation to the group.

“(6) All the employees in the designated work group are entitled to vote in the election.

“(7) Where there is only 1 candidate for the election, that person is to be taken to have been elected.

**SCHEDULE 3**—continued

“(8) Where a person is selected as the health and safety representative for a designated work group—

- (a) if the person is selected by agreement in accordance with paragraph (3) (a)—the person; and
- (b) if the person is selected by election in accordance with paragraph (3) (b)—the involved union or other person authorised under subsection (4) to conduct the election;

shall, as soon as practicable after the person has been so selected, inform the employer of all the employees included in the group of the name of the person so selected.

“(9) As soon as practicable after being so informed, the employer shall cause a notice that the person so selected is the health and safety representative for the group to be displayed in a prominent place at such work places, under the employer’s control, as will allow all of the employees in the group to be notified of the selection.”.

**Section 41**—

Omit the section.

**After paragraph 43 (a)**—

Insert the following paragraph:

“(aa) make a request to an inspector that an investigation be conducted at the workplace;”.

**Section 43**—

Add at the end the following subsections:

“(2) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.

“(3) A health and safety representative for a designated work group shall not—

- (a) be assisted by a consultant at a workplace at which work is performed for an employer of the employees in the group; or

**SCHEDULE 3**—continued

- (b) provide to a consultant information which has been provided to the health and safety representative by an employer under paragraphs (1) (g) and (h);

unless the employer or the Registrar has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

“(4) An employer does not, by reason of the agreement of the employer under subsection (3) to the provision of assistance by a consultant, become liable for any remuneration or other expenses incurred in connection with the consultant’s activities.

“(5) Where a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, concerning health and safety at work, between an employee in the group and—

- (a) an inspector; or
- (b) the employer or a person representing the employer;

only if the employee concerned consents to the presence of the consultant.”.

**After section 44—**

Insert the following section:

**Training of health and safety representatives**

“44A. A health and safety representative for a designated work group shall undertake a course of training relating to occupational health and safety that is approved under the regulations.”.

**Subsection 47 (2)—**

Omit the subsection, substitute the following subsections:

“(2) A person may resign as the health and safety representative for a designated work group—

- (a) where the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—by notice in writing delivered to the involved union that nominated the person as a candidate in the election; or

**SCHEDULE 3**—continued

- (b) in any other case—by notice in writing delivered to the employer of all the employees included in the group.

“(3) Where a person has resigned as a health and safety representative for a designated work group—

- (a) if paragraph (2) (a) applies—the involved union to which the notice of resignation was delivered; or
- (b) in any other case—the person;

shall notify the employees included in the group, and, in a case to which paragraph (2) (a) applies, the employer of all those employees, of the resignation.

“(4) Where a person has ceased to be the health and safety representative for a designated work group because of paragraph (1) (b), the person shall notify in writing—

- (a) the employees included in the group;
- (b) the employer of all those employees; and
- (c) where the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—the involved union, in relation to the group, that nominated the person as a candidate in the election;

that the person has ceased to be the health and safety representative for that designated work group.”.

**Before section 58—**

Insert the following section in Division 4 of Part IV:

**Health and safety committees**

“57A. (1) A health and safety committee shall be established in respect of the employer’s employees at a particular work place if—

- (a) the number of employees of the employer who work at the workplace is normally not less than 50 (whether or not the employers are all at work at the workplace at the same time);
- (b) the employees are included in 1 or more designated work groups in respect of the employer; and

**SCHEDULE 3**—continued

- (c) the employer is requested to establish the committee by—
  - (i) a health and safety representative for the designated work group or for 1 of the designated work groups; or
  - (ii) an involved union in relation to such a group.

“(2) A health and safety committee consists of—

- (a) the number of members specified in an agreement reached between the employer and—
  - (i) the involved unions in relation to the designated work group that includes, or the designated work groups that include, all of the employees; or
  - (ii) if there are no such involved unions—the employees; or
- (b) where there is no such agreement—an equal number of members, chosen by employees, to represent the interests of the employees and members, chosen by the employer, to represent the interests of management.

“(3) The agreement referred to in paragraph (2) (a) may—

- (a) specify the persons who are to be members to represent the interests of management; and
- (b) provide for the manner in which persons who are to be members to represent the interests of employees are to be chosen.

“(4) Where regulations made for the purposes of this section specify procedures for the selection of persons as members of health and safety committees, to represent the interests of the employees, an agreement referred to in paragraph (2) (a) shall not provide for such members to be chosen in a manner inconsistent with the regulations.

“(5) A health and safety committee shall hold meetings at least once every 3 months.

“(6) The procedure at meetings of a health and safety committee shall, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.

“(7) A health and safety committee must cause minutes of its meetings to be kept, and shall retain those minutes for a period of not less than 3 years.

**SCHEDULE 3—continued**

“(8) Nothing in this section is to be taken as preventing an employer from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the employer.”.

**After section 60—**

Insert the following Part:

**“PART IVA—INQUIRIES AND REPORTS IN RELATION TO  
MATTERS AFFECTING PUBLIC EMPLOYEES**

**Application**

“60A. This Part does not apply to a Territory owned corporation within the meaning of the *Territory Owned Corporations Act 1990*.

**Direction by the Minister**

“60B. The Minister may, by writing, give a direction to the Council concerning the performance of its functions and the exercise of its powers under this Part and the Council shall comply with any direction so given.

**Report of certain investigations**

“60C. (1) Where an inspector has conducted an investigation in relation to a matter affecting 1 or more public employees, the inspector shall, as soon as practicable, prepare a written report relating to the investigation and submit the report to the Council.

“(2) The report shall include—

- (a) the inspector’s conclusions from conducting the investigation and the reasons for those conclusions;
- (b) any recommendations that the inspector wishes to make arising from the investigation or those conclusions; and
- (c) such other matters, if any, as are prescribed.

“(3) As soon as practicable after receiving the report, the Council shall—

- (a) give a copy of the report, together with any written comments that it wishes to make to the employer; and



**SCHEDULE 3**—continued

- (b) if it considers it appropriate, give a copy of the report, together with those comments (if any), to the responsible Minister in relation to the employer.

“(4) The Council may, in writing, request the employer to provide the Council, within a reasonable period specified in the request, with particulars of—

- (a) any action that is proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- (b) where a notice has been issued by an inspector under section 76 or 77 in relation to work being performed for the employer—any action that has been taken, or that is proposed to be taken, in respect of that notice;

and the employer shall comply with the request.

“(5) As soon as practicable after the receipt of a report, the employer shall give a copy of the report together with any written comment made by the Council relating to the report—

- (a) if there is at least 1 health and safety committee established in respect of some or all of the employer’s employees to whose work the report relates—to each such committee; and
- (b) if there is no such committee established in respect of some or all of the employer’s employees to whose work the report relates, but some or all of those employees (in respect of which there is no such committee) are included in at least 1 designated work group for which there is a health and safety representative—to each such health and safety representative.

**Power to obtain information and documents**

“60D. (1) Where the Council has reason to believe that a person is capable of giving information or producing documents relevant to a matter dealt with in a report under subsection 60C (1), the Council may, at any time after receiving the report and before commencing an inquiry under section 60E, by notice in writing served on that person, require that person at such place, and within such period or on such date and at such time, as are specified in the notice, to give to the Council any such information or to produce to the Council any such documents.

**SCHEDULE 3**—continued

“(2) A person shall not refuse or fail, without reasonable excuse, to give information or produce a document, when so required under subsection (1).

Penalty: \$5,000 or imprisonment for 6 months, or both.

“(3) The fact that giving information or producing documents pursuant to a requirement under subsection (1) may tend to incriminate the person who is subject to such a requirement shall be taken to be a reasonable excuse on the part of that person for the purpose of subsection (2).

**Council may conduct public inquiry**

“60E. (1) The Council may, at any time after receiving a report under subsection 60C (1) and before preparing a report under section 60Q, conduct an inquiry into any matter arising out of the first-mentioned report.

“(2) The Council may hold the whole or any part of an inquiry in private if, in the opinion of the Council, it is necessary or desirable in the public interest to do so.

“(3) Where proceedings are held in private, the Council may inform itself on any matter in such manner as it thinks fit.

“(4) Where proceedings are held in public—

- (a) evidence in the proceedings must, subject to this subsection, be taken on oath or affirmation;
- (b) the Council may, if it thinks fit, permit a person appearing as a witness to give evidence by tendering, and verifying by oath or affirmation, a written statement;
- (c) where the Council considers that the attendance of a person as a witness would cause serious hardship to the person, the Council may permit the person to give evidence by sending to the Council a written statement, verified in such manner as the Council directs; and
- (d) where evidence is given by a written statement in accordance with paragraph (b) or (c), the Council shall make available to the public in such manner as the Council thinks fit the contents of the statement, other than any matter as to which the Council is satisfied that its publication would be contrary to the public interest by reason of its confidential nature or any other reason.

“(5) Subject to this section—

**SCHEDULE 3**—continued

- (a) the procedure to be followed at an inquiry is within the discretion of the Council; and
- (b) the Council is not bound by the rules of evidence.

**Power to summon witnesses**

“60F. The Council may, by instrument in writing, summon a person to appear before the Council at a time and place specified in the summons to give evidence and produce such documents (if any) as are referred to in the summons.

**Failure of witness to attend**

“60G. A person served with a summons under section 60F shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Council.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**Power to administer oath or affirmation**

“60H. The Council may cause an oath or affirmation to be administered to a person appearing as a witness.

**Refusal to be sworn or to answer questions**

“60J. (1) A person appearing as a witness shall not, without reasonable excuse—

- (a) refuse or fail to comply with a requirement by the Council to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he or she is required to answer by the Council; or
- (c) refuse or fail to produce a document that he or she was required to produce by a summons served on him or her.

Penalty: \$5,000 or imprisonment for 6 months, or both.

“(2) The fact that answering a question or producing a document pursuant to a requirement under paragraph (1) (b) or (c), as the case may be, may tend to

**SCHEDULE 3**—continued

incriminate the person who is subject to such a requirement shall be taken to be a reasonable excuse on the part of that person for the purpose of subsection (1).

**Protection of members and witnesses**

“60K. (1) A member of the Council has, in the exercise of powers and the performance of duties and functions as a member in relation to an inquiry, the same protection and immunity as a Judge of the Supreme Court.

“(2) Subject to this Act, a person appearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

**Contempt**

“60L. A person shall not—

- (a) insult or disturb a member of the Council in the exercise of his or her powers or the performance of his or her functions or duties as a member of the Council;
- (b) interrupt an inquiry;
- (c) use insulting language towards a member of the Council;
- (d) create a disturbance, or take part in creating or continuing a disturbance, in a place where the Council is holding an inquiry; or
- (e) do any other act or thing that would, if the Council were a court of record, constitute a contempt of that court.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**Powers in relation to documents produced**

“60M. (1) A member of the Council may inspect any books or documents furnished to the Council for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

“(2) A book or document so furnished may be retained by the Council for such reasonable period as is necessary for the purposes of the Council, but during that period the Council shall permit a person otherwise entitled to possession of the book or document to inspect, make copies of, and take extracts from, the book or document at such places and times as the Council thinks appropriate.

**SCHEDULE 3**—continued

**Allowances to witnesses**

“60N. A person served with a summons under section 60F is entitled to be paid by the Territory such allowances for travelling and other expenses as are prescribed.

**Witness not to be prejudiced in employment**

“60P. An employer shall not—

- (a) dismiss, or threaten to dismiss, an employee from his or her employment;
- (b) injure, or threaten to injure, an employee in his or her employment; or
- (c) prejudice, or threaten to prejudice, an employee in his or her employment;

because the employee—

- (d) has appeared, or proposes to appear, as a witness at an inquiry; or
- (e) has given, or proposes to give, any evidence at an inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**Report to be given to Minister in certain circumstances**

“60Q. (1) Where, under subsection 60C (4), the Council has made a request to an employer for particulars of any action proposed to be taken as a result of conclusions or recommendations contained in a report under section 60C or taken or proposed to be taken in respect of a notice issued under section 76 or 77 and—

- (a) the employer fails, without reasonable excuse, to provide the particulars within the period specified in the request;
- (b) the action taken or proposed to be taken is not, in the Council’s opinion, adequate having regard to the duties imposed by the Act and the regulations; or
- (c) so far as action not yet taken is concerned—the Council forms the opinion that the action proposed to be taken as a result of the conclusions or recommendations contained in the report, or proposed to be taken in respect of a notice issued under section 76 or 77, has not been taken within a reasonable time;

**SCHEDULE 3**—continued

the Council may prepare and give to the Minister a report to this effect, being a report that includes—

- (d) a copy of the report under section 60C;
- (e) a copy of any response by the employer to that request; and
- (f) where the Council has conducted an inquiry under section 60E—the findings of that inquiry.

“(2) The Minister shall cause a copy of the report to be laid before the Legislative Assembly within 15 sitting days after the report is given to the Minister.

**Report to be given to Minister of failures to comply with directions etc.**

“60R. (1) Where the Council forms the opinion that an employer has failed to comply with—

- (a) a direction given under section 78; or
- (b) a notice issued under section 76 or 77;

the Council may prepare and give to the Minister a report to that effect.

“(2) The Minister shall cause a copy of the report to be laid before the Legislative Assembly within 15 sitting days after the report is given to the Minister.

**Delegation by Council**

“60S. The Council may, in writing, delegate to any person all or any of its powers under this Part.”.

**Section 62—**

Add at the end the following subsections:

“(4) An inspector is entitled, in the exercise of his or her powers, to be assisted by a consultant and such consultant may accompany an inspector during any inspection of a work place by that inspector.

“(5) The exercise by an inspector of his or her powers under this section in relation to any matter affecting 1 or more public employees, shall, for the purposes of Part IVA, be taken to be an investigation by that inspector.”.

**After section 62—**

**SCHEDULE 3**—continued

Insert the following section:

**Request for investigation**

“62A. An involved union may make a request to an inspector or to the Registrar that an investigation be conducted at a work place, being a work place at which an employee, who is a member of the union, performs work for an employer.”.

**After section 71—**

Insert the following section:

**Arrangements with Commonwealth or States for services of officers**

“71A. Where the Registrar considers that it is in the public interest to do so, arrangements may be made in accordance with section 120 of the *Public Sector Management Act 1994* for officers or employees of the public service of the Commonwealth, a State or another Territory to exercise the powers and perform the duties of inspectors in relation to the investigation of matters affecting public employees.”.

**Section 87—**

Add at the end the following subsections:

“(7) A code of practice that—

- (a) relates exclusively to the occupational health and safety of public employees; and
- (b) is specified in the management standards in force at the commencement of section 249 of the *Public Sector Management Act 1994*;

shall be taken to be an approved code of practice for the purposes of this Act.

“(8) A code of practice that is taken to be an approved code of practice in accordance with subsection (7) shall take effect from the date of the commencement of section 249 of the *Public Sector Management Act 1994*.”.

**After section 91—**

Insert the following sections:

**SCHEDULE 3**—continued

**Certain matters to be included in annual reports**

“91A. (1) The annual report in relation to a financial year—

- (a) of each administrative unit of the Australian Capital Territory Government Service through which the Territory acts; and
- (b) of each Territory instrumentality that is required, under the Act or other law by or in accordance with which the instrumentality is established or incorporated, to prepare an annual report of its activities with a view to that report being laid before the Legislative Assembly;

shall include details of the following matters:

- (c) the occupational health and safety policy of the administrative unit or instrumentality during the financial year, including details of—
  - (i) any agreement made with public employees relating to occupational health and safety;
  - (ii) the establishment of committees to deal with occupational health and safety matters; and
  - (iii) the selection of health and safety representatives;
- (d) measures taken during the year to ensure the health, safety and welfare at work of public employees and contractors dealing with the administrative unit or instrumentality;
- (e) statistics of any accidents or dangerous occurrences during the year that arose out of the conduct of undertakings by the administrative unit or instrumentality and that required the giving of notice under section 85;
- (f) any investigations conducted during the year that relate to undertakings carried on by the employer, including details of all—
  - (i) tests conducted on any plant, substance or thing in the course of such investigations;
  - (ii) directions given to the employer under section 78 during the year; and
  - (iii) notices given to the relevant employer under sections 76 and 77;



**SCHEDULE 3—continued**

- (g) such other matters as are prescribed.

**Institution of proceedings**

“91B. (1) Proceedings for an offence against this Act or the regulations in relation to a matter affecting public employees may be instituted by the Registrar.

“(2) Where proceedings for an offence against this Act or the regulations of the kind referred to in subsection (1) have not been instituted within 6 months after the occurrence of an act or omission which, in the opinion of a health and safety representative for a designated work group or an involved union in relation to such a designated work group, constitutes an offence against this Act or the regulations, that health and safety representative or that involved union may, in writing, request the Registrar to institute such proceedings.

“(3) The Registrar shall within 3 months after receiving a request under subsection (2), advise the health and safety representative or the involved union, as the case may be, whether proceedings under subsection (1) have been or will be instituted or give reasons why such proceedings will not be instituted.”.

**Schedule (Part 1—Inspector’s Decisions)**

**Item 2 (column headed “Eligible Persons”)—**

- (a) Omit from paragraph (a) “or”.
- (b) Insert after paragraph (a) the following paragraph:
- “(aa) An involved union in relation to an employee whose work is affected by the notice; or”.

**Item 3 (column headed “Eligible Persons”)—**

- (a) Omit from paragraph (a) “or”.
- (b) Insert after paragraph (a) the following paragraph:
- “(aa) An involved union in relation to an employee whose work is affected by the seizure; or”.

**Item 4 (column headed “Eligible Persons”)—**

- (a) Omit from paragraph (a) “or”.

**SCHEDULE 3**—continued

(b) Insert after paragraph (a) the following paragraph:

“(aa) An involved union in relation to an employee whose work is affected by the notice or direction; or”.

**Item 6 (column headed “Eligible Persons”)—**

(a) Omit from paragraph (a) “or”.

(b) Insert after paragraph (a) the following paragraph:

“(aa) An involved union in relation to an employee whose work is affected by the refusal; or”.

**Schedule (Part 2—Registrar’s Decisions)**

**Item 5 (column headed “Eligible Persons”)—**

(a) Omit from paragraph (a) “or”.

(b) Insert after paragraph (a) the following paragraph:

“(aa) An involved union in relation to an employee whose work is affected by the refusal; or”.

**Item 6 (column headed “Eligible Persons”)—**

(a) Omit from paragraph (a) “or”.

(b) Insert after paragraph (a) the following paragraph:

“(aa) An involved union in relation to an employee whose work is affected by the seizure; or”.

**Item 7 (column headed “Eligible Persons”)—**

(a) Omit from paragraph (a) “or”.

(b) Insert after paragraph (a) the following paragraph:

“(aa) An involved union in relation to an employee whose work is affected by the notice or direction; or”.

**Item 9 (column headed “Eligible Persons”)—**

(a) Omit from paragraph (a) “or”.

(b) Insert after paragraph (a) the following paragraph:

*Public Sector Management Act 1994*

**SCHEDULE 3**—continued

- “(aa) An involved union in relation to an employee whose work is affected by the refusal; or”.
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*Public Sector Management Act 1994*

**NOTE**

1. The *Public Sector Management Act 1994* as shown in this reprint comprises Act No. 37, 1994 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Sector Management Act 1994</i>	37, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142)	
<i>Public Interest Disclosure Act 1994</i>	108, 1994	22 Dec 1994	Ss. 1 and 2: 22 Dec 1994 Remainder: 21 June 1995 (see <i>Gazette</i> 1995, No. S126)	—
<i>Electricity and Water (Corporatisation) (Consequential Amendments) Act 1995</i>	7, 1995	28 June 1995	1 July 1995 (see s. 2)	—

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 3 .....	am. No. 7, 1995
S. 5 .....	am. No. 7, 1995
S. 57 .....	am. No. 7, 1995
S. 59 .....	rs. No. 7, 1995
S. 64 .....	rs. No. 7, 1995
S. 68 .....	am. No. 7, 1995
S. 75 .....	rs. No. 7, 1995
S. 115A .....	ad. No. 7, 1995
Part XII (ss. 236-240).....	rep. No. 108, 1994
Ss. 236-240 .....	rep. No. 108, 1994

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