



AUSTRALIAN CAPITAL TERRITORY

# Public Sector Management (Amendment) Act 1995

No. 51 of 1995

## TABLE OF PROVISIONS

Section

### PART I—PRELIMINARY

1. Short title
2. Commencement
3. Principal Act

### PART II—AMENDMENTS OF PRINCIPAL ACT

4. Interpretation
5. ACT Public Service
6. Powers relating to certain staff providing services for Calvary Hospital
7. Substitution—
  28. Engagement
  - 28A. Early termination of contract
  - 28B. Effect of contracts on responsibilities of Ministers
  - 28C. Application of merit principle to re-engagements
8. Substitution—
  30. Temporary performance of duties
  31. Negotiation and execution of contracts
  - 31A. Tabling of contracts and variations of contracts
  32. Effect of defects or irregularities
  33. Employment to perform the duties of multiple positions
  34. Notification
9. Repeal
10. Substitution—

*Division 1—Creation and abolition of Executive offices*

  - 54A. Creation and abolition of offices

**TABLE OF PROVISIONS—continued**

Section

*Division 1A—Creation and abolition of offices other than offices of Chief Executives and Executive offices*

- 54B. Interpretation
- 11. Repeal
- 12. Insertion—
  - 59A. Interpretation
- 13. Application of merit principle
- 14. Heading to Division 3 of Part V
- 15. Insertion—
  - 66A. Application
- 16. Employment in the Service
- 17. Appointments generally
- 18. Classification of unattached officers
- 19. Appointments to be on probation
- 20. Substitution—
  - Division 4—Engagement of Executives*
  - 72. Engagement
  - 73. Early termination of contract
  - 74. Effect of contracts on responsibilities of Ministers
  - 75. Application of merit principle to re-engagements
  - 76. Temporary performance of duties
  - 77. Chief Executive Officer, Calvary Hospital
  - 78. Negotiation and execution of contracts
  - 79. Tabling of contracts and variations of contracts
  - 80. Effect of defects or irregularities
  - 81. Notification
- 21. Heading to Division 5 of Part V
- 22. Insertion—
  - 82. Interpretation
- 23. Transfers and promotions
- 24. Review of non-appellable promotion decisions by Merit Protection Agency
- 25. Transfer or promotion on advice of Joint Selection Committee
- 26. Transfer or promotion on advice of management-initiated Joint Selection Committee
- 27. Heading to Division 6 of Part V
- 28. Interpretation
- 29. Power to engage employees
- 30. Engagement of certain former officers as employees, and contracts with certain former officers, prohibited
- 31. Officers of Australian Public Service to have certain rights of entry to ACT Public Service
- 32. Substitution—
  - 116. Officers of the Australian Public Service engaged to perform the duties of Chief Executive or Executive offices
- 33. Reappointment of retired officers
- 34. Reappointment of unsuccessful election candidates
- 35. Repeal
- 36. Heading to Division 3 of Part VI

**TABLE OF PROVISIONS—continued**

Section	
37.	Interpretation
38.	Interpretation
39.	Meaning of failure to fulfil duty as officer
40.	Repeal
41.	Heading to Division 3 of Part IX
42.	Repeal
43.	Disciplinary action
44.	Inquiries into misconduct
45.	Suspension
46.	Removal and variation of suspension
47.	Heading to Division 5 of Part IX
48.	Interpretation
49.	Heading to Division 6 of Part IX
50.	Interpretation
51.	Furnishing of documents to appellants and persons requesting review
52.	Repeal
53.	Recording of action taken
54.	Imprisonment
55.	Application to unattached officers performing duty in an administrative unit
56.	Interpretation
57.	Application of Merit Protection Act
58.	Insertion—
	248A.    Engagement of certain former officers and employees prohibited
59.	Management standards
<b>PART III—TRANSITIONAL</b>	
60.	Interpretation
61.	Certain offices to become vacant
62.	Application of merit principle
63.	Conditions of employment of former Chief Executives and Senior Executive Service officers
64.	Retirement and redeployment of certain Chief Executives
65.	Retirement and redeployment of former Senior Executive Service officers
66.	Regulations

**SCHEDULE  
ADDITIONAL OFFICES TO BECOME VACANT  
ON COMMENCEMENT DAY**





AUSTRALIAN CAPITAL TERRITORY

## **Public Sector Management (Amendment) Act 1995**

**No. 51 of 1995**

---

---

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

*[Notified in ACT Gazette S313: 20 December 1995]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### **PART I—PRELIMINARY**

##### **Short title**

**1.** This Act may be cited as the *Public Sector Management (Amendment) Act 1995*.

##### **Commencement**

**2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

**(2)** The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

**(3)** If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

**Principal Act**

3. In this Act, “Principal Act” means the *Public Sector Management Act 1994*.<sup>1</sup>

**PART II—AMENDMENTS OF PRINCIPAL ACT****Interpretation**

4. Section 3 of the Principal Act is amended—

- (a) by omitting all the words after “person” from the definition of “Chief Executive” in subsection (1) and substituting “employed under section 28 or 30 to perform the duties of an office of Chief Executive”;
- (b) by omitting “a Senior Executive Service” from paragraphs (a) and (b) of the definition of “classification” in subsection (1) and substituting “an Executive”;
- (c) by omitting paragraph (b) of the definition of “officer” in subsection (1);
- (d) by omitting “Government Service established by” from the definition of “Service” in subsection (1) and substituting “Public Service referred to in”;
- (e) by omitting from subsection (1) the definitions of “Senior Executive Service office” and “Senior Executive Service officer”;
- (f) by omitting from subsection (1) the definition of “employee” and substituting the following definition:
  - “ ‘employee’ means—
    - (a) a Chief Executive;
    - (b) an Executive;
    - (c) a person engaged under Division 7 of Part V; or
    - (d) a person who is an employee by virtue of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*;”;
- (g) by inserting in subsection (1) the following definitions:
  - “ ‘administering Chief Executive’ means the Chief Executive of the administrative unit responsible for administering this Act;
  - ‘Executive’ means a person employed under section 72 or 76 to perform the duties of an Executive office;
  - ‘Executive office’ means an office created under section 54A;
  - ‘office of Chief Executive’ means an office created under section 27;”.

## **ACT Public Service**

5. Section 12 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) The body known as the Australian Capital Territory Government Service that was, immediately before the day fixed for the purposes of subsection 2 (2) of the *Public Sector Management (Amendment) Act 1995*, in existence by virtue of this Act continues in existence by force of this subsection under the name of the Australian Capital Territory Public Service.”; and

(b) by omitting paragraphs (2) (b), (c) and (d) and substituting the following paragraphs:

- “(b) the Executives;
- (c) other employees; and
- (d) officers.”.

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

6. Section 26 of the Principal Act is amended by omitting paragraph (a) of the definition of “Chief Executive Officer, Calvary Hospital” in subsection (4) and substituting the following paragraph:

“(a) performing the duties of an Executive office; and”.

## **Substitution**

7. Section 28 of the Principal Act is repealed and the following sections are substituted:

### **Engagement**

“28. (1) A person may be engaged by a contract under this section to perform the duties of an office of Chief Executive.

“(2) The parties to a contract under this section are the Territory and the person engaged.

“(3) A contract under this section shall—

- (a) be in writing;
- (b) be signed by or on behalf of each party;
- (c) specify the day on which the person engaged is to commence to perform the duties of the office; and
- (d) specify a day on which the period of employment is to end, being a day that is not more than 5 years after the day specified in accordance with paragraph (c).

“(4) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

“(5) Subject to subsections (6) and (7), a contract under this section may be varied at any time by an agreement in writing between the parties.

“(6) A variation of a contract under this section that would—

- (a) extend the period of employment provided for by the contract to more than 5 years and 2 months; or
- (b) increase the rate at which remuneration or an allowance is payable to the person employed;

is void.

“(7) A contract under this section may only be varied to extend the period of employment provided for by the contract to more than 5 years if the contract as varied will require the person employed to be absent from duty on leave for so much of the period of employment as exceeds 5 years.

#### **Early termination of contract**

“28A. (1) A contract under section 28 may provide for termination of the employment of the person employed before the expiration of the period of employment specified in the contract.

“(2) A contract under section 28 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.

“(3) The grounds specified pursuant to subsection (2) shall not include—

- (a) the ground that the person employed under the contract is incompatible with another person; or
- (b) any ground to the same effect.

“(4) Where a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in respect of the termination other than the benefit, if any, prescribed for the purposes of this subsection.

“(5) Where a Chief Executive—

- (a) is employed under a contract under section 28;
- (b) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (c) has not reached his or her maximum retiring age within the meaning of that Act;

the employment of the Chief Executive under that contract is not capable of being terminated 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.

“(6) Where a Chief Executive—



- (a) is employed under a contract under section 28;
- (b) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and
- (c) is under 60 years of age;

the employment of the Chief Executive under that contract is not capable of being terminated 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.

#### **Effect of contracts on responsibilities of Ministers**

“28B. Nothing in a contract under section 28 shall be taken to derogate in any way from the responsibility of the Minister administering an administrative unit for—

- (a) the policies developed or applied by the administrative unit; or
- (b) the financial and other performance of the administrative unit.

#### **Application of merit principle to re-engagements**

“28C. Subsections 65 (1), (3) and (4) do not apply in relation to a second or subsequent engagement of a person to perform the duties of the same office of Chief Executive, or an office of Chief Executive with similar duties, if—

- (a) the period of the second or subsequent engagement is to commence immediately upon the expiration of the period of the preceding engagement; and
- (b) the Chief Minister has certified in writing that he or she is satisfied that it would be in the interests of the Service for the person to be re-engaged to perform those duties.”.

#### **Substitution**

**8.** Sections 30 to 34 (inclusive) of the Principal Act are repealed and the following sections substituted:

#### **Temporary performance of duties**

“30. (1) Where—

- (a) a person employed to perform the duties of an office of Chief Executive is absent from duty or is, for any other reason unable to perform the duties of that office; or
- (b) no person is employed to perform the duties of such an office;

an Executive, an officer or another person may be engaged by a contract under this section to temporarily perform the duties of that office.

“(2) The parties to a contract under this section shall be the Territory and the person engaged.

“(3) A contract under this section shall—

- (a) be in writing;
- (b) specify the period during which the person engaged is to perform the duties of the office; and
- (c) be signed by or on behalf of each party.

“(4) The period specified pursuant to paragraph (3) (b) shall not exceed 6 months.

“(5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

“(6) Where a contract under this section is made with an Executive, the contract may vary the terms and conditions of the current contract with the Executive under section 72.

“(7) Where a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.

“(8) A contract under this section may be terminated at any time by one party giving notice in writing to the other party.

“(9) A person is not entitled to any compensation for the termination of a contract under subsection (8).

“(10) Subject to subsection (11), a contract under this section may be varied at any time by an agreement in writing between the parties.

“(11) A variation of a contract under this section that extends the period of employment of the person engaged to more than 9 months is void.

“(12) Subsections 65 (1), (3) and (4) do not apply in relation to the engagement of a person under this section.

### **Negotiation and execution of contracts**

“31. (1) A contract, or a variation of a contract, under section 28 or 30 shall be executed on behalf of the Territory by the Chief Minister.

“(2) If an office to which a contract under section 28 or 30 relates, or will relate, is an office in an administrative unit for which the Chief Minister has allocated responsibility to another Minister, the Chief Minister shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of that other Minister.

### **Tabling of contracts and variations of contracts**

“31A. The Chief Minister shall cause a copy of—

- (a) each contract made under section 28 or 30; and
- (b) each instrument by which such a contract is varied;

to be laid before the Legislative Assembly within 6 sitting days after the day on which the contract or variation is made.

### **Effect of defects or irregularities**

“32. The engagement of a person under section 28 or 30 to perform the duties of an office of Chief Executive is not invalid, and shall not be called into question, by reason of a defect or irregularity in connection with the engagement.

### **Employment to perform the duties of multiple positions**

“33. A person may be employed to perform the duties of more than 1 office of Chief Executive.

### **Notification**

“34. The Chief Minister shall cause to be notified in the Gazette—

- (a) the making of a contract under section 28;
- (b) the termination of a contract made under that section; or
- (c) the completion of a period of employment provided for by a contract under that section;

within 28 days after the making or termination of the contract, or the completion of the period of employment, as the case may be.”.

### **Repeal**

9. Division 6 of Part III of the Principal Act is repealed.

### **Substitution**

10. The heading to Division 1 of Part IV of the Principal Act is repealed and the following Division, Division heading and section are substituted:

#### ***“Division 1—Creation and abolition of Executive offices***

### **Creation and abolition of offices**

“54A. (1) The administering Chief Executive may, by instrument, create or abolish an Executive office in an administrative unit or other branch of the Service.

“(2) The administering Chief Executive shall not create or abolish an Executive office in an administrative unit, or other branch of the Service, in respect of which he or she is not the relevant Chief Executive unless the relevant Chief Executive has recommended the creation or abolition of that office.

“(3) The administering Chief Executive shall, in the instrument creating an office under subsection (1), state that the office is created as an Executive office.

“(4) In the application of this section to the Office of the Director of Public Prosecutions, a reference to the administering Chief Executive shall be read as a reference to the Director of Public Prosecutions.

***“Division 1A—Creation and abolition of offices other than offices of Chief Executives and Executive offices***

**Interpretation**

“54B. In this Division, unless the contrary intention appears—  
‘office’ means an office other than an office of Chief Executive or an Executive office.”.

**Repeal**

11. Section 57 of the Principal Act is repealed.

**Insertion**

12. Before section 60 of the Principal Act the following section is inserted in Division 2 of Part IV:

**Interpretation**

“59A. In this Division, unless the contrary intention appears—  
‘office’ means an office other than an office of Chief Executive or an Executive office.”.

**Application of merit principle**

13. Section 65 of the Principal Act is amended—
- (a) by inserting after paragraph (1) (a) the following paragraph:  
“(ab) an engagement under section 28 or 72;”;
  - (b) by inserting in paragraphs (1) (d) and (e) and in subsection (3) “engagement,” after “appointment;” and
  - (c) by omitting from subsection (3) “or the promotion or transfer within, the Service” and substituting “or employment in the Service, or the promotion or transfer within the Service,”.

**Heading to Division 3 of Part V**

14. The heading to Division 3 of Part V of the Principal Act is amended by omitting “*other than Chief Executives*”.

**Insertion**

15. Before section 67 of the Principal Act the following section is inserted in Division 3 of Part V:

**Application**

“66A. This Division does not apply in relation to the engagement of a Chief Executive or an Executive.”.

### **Employment in the Service**

**16.** Section 67 of the Principal Act is amended by omitting paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) by engagement under section 28 or 30 to perform the duties of an office of Chief Executive;
- (b) by engagement under section 72 or 76 to perform the duties of an Executive office;
- (c) by appointment to be an officer; or
- (d) by engagement for temporary employment in accordance with Division 7.”.

### **Appointments generally**

**17.** Section 68 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Subject to subsection (2), the appointment of a person to the Service as an officer shall be made by the relevant Chief Executive.”.

### **Classification of unattached officers**

**18.** Section 69 of the Principal Act is amended by omitting “the Commissioner or”.

### **Appointments to be on probation**

**19.** Section 70 of the Principal Act is amended—

- (a) by omitting from subsection (1) “, other than as a Chief Executive,”;
- (b) by omitting from subsection (2) “the Commissioner, or” (first occurring);
- (c) by omitting from paragraph (2) (c) “the Commissioner, or” and “, as the case may be,”;
- (d) by omitting subsections (3), (4) and (5) and substituting the following subsections:

“(3) Subject to subsection (8), the appointment of an officer on probation may be confirmed 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 by the relevant Chief Executive in accordance with subsection (9) 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, the relevant Chief Executive shall, as soon as practicable after that period, either confirm the appointment or terminate it in accordance with subsection (9).”;

- (e) by omitting from subsection (8) “the Commissioner, or” and “, as the case may be,”; and
- (f) by omitting from subsection (9) “Commissioner or the” and “, as the case requires,”.

### **Substitution**

**20.** Division 4 of Part V of the Principal Act is repealed and the following Division substituted:

#### *“Division 4—Engagement of Executives*

### **Engagement**

“72. (1) A person may be engaged by a contract under this section to perform the duties of an Executive office.

“(2) The parties to a contract under this section are the Territory and the person to be engaged.

“(3) A contract under this section shall—

- (a) be in writing;
- (b) be signed by or on behalf of each party;
- (c) specify the day on which the person engaged is to commence to perform the duties of the office; and
- (d) specify a day on which the period of employment is to end, being a day that is not more than 5 years after the day specified in accordance with paragraph (c).

“(4) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

“(5) Subject to subsections (6) and (7), a contract under this section may be varied at any time by an agreement in writing between the parties.

“(6) A variation of a contract under this section that would—

- (a) extend the period of employment provided for by the contract to more than 5 years and 2 months; or
- (b) increase the rate at which remuneration or an allowance is payable to the person employed;

is void.

“(7) A contract under this section may only be varied to extend the period of employment provided for by the contract to more than 5 years if the contract as varied will require the person employed to be absent from duty on leave for so much of the period of employment as exceeds 5 years.

### **Early termination of contract**

“73. (1) A contract under section 72 may provide for termination of the employment of the person employed before the expiration of the period of employment specified in the contract.

“(2) A contract under section 72 that contains a provision of the kind referred to in subsection (1) shall specify the grounds on which the contract may be terminated under that provision.

“(3) The grounds specified pursuant to subsection (2) shall not include—

- (a) the ground that the person employed under the contract is incompatible with another person; or
- (b) any ground to the same effect.

“(4) Where a contract is terminated in accordance with a provision of the kind referred to in subsection (1), no benefit is payable in respect of the termination other than the benefit, if any, prescribed for the purposes of this subsection.

“(5) Where an Executive—

- (a) is employed under a contract under section 72;
- (b) is an eligible employee for the purposes of the *Superannuation Act 1976* of the Commonwealth; and
- (c) has not reached his or her maximum retiring age within the meaning of that Act;

the employment of the Executive under that contract is not capable of being terminated 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.

“(6) Where an Executive—

- (a) is employed under a contract under section 72;
- (b) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990* of the Commonwealth; and
- (c) is under 60 years of age;

the employment of the Executive under that contract is not capable of being terminated 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.

### **Effect of contracts on responsibilities of Ministers**

“74. Nothing in a contract under section 72 shall be taken to derogate in any way from the responsibility of the Minister administering an administrative unit for—

- (a) the policies developed or applied by the administrative unit; or
- (b) the financial and other performance of the administrative unit.

### **Application of merit principle to re-engagements**

“75. Subsections 65 (1), (3) and (4) do not apply in relation to a second or subsequent engagement of a person to perform the duties of the same Executive office, or an Executive office with similar duties, if—

- (a) the period of the second or subsequent engagement is to commence immediately upon the expiration of the period of the preceding engagement; and
- (b) the administering Chief Executive has certified in writing that he or she is satisfied that it would be in the interests of the Service for the person to be re-engaged to perform those duties.

### **Temporary performance of duties**

“76. (1) Where—

- (a) a person employed to perform the duties of an Executive office is absent from duty or is, for any other reason unable to perform the duties of that office; or
- (b) no person is employed to perform the duties of such an office;

an Executive, an officer or another person may be engaged by a contract under this section to temporarily perform the duties of that office.

“(2) The parties to a contract under this section shall be the Territory and the person engaged.

“(3) A contract under this section shall—

- (a) be in writing;
- (b) specify the period during which the person engaged is to perform the duties of the office; and
- (c) be signed by or on behalf of each party.

“(4) The period specified pursuant to paragraph (3) (b) shall not exceed 6 months.

“(5) Subject to this Act, the employment of a person engaged under this section shall be governed by the contract by which he or she is engaged.

“(6) Where a contract under this section is made with an Executive, the contract may vary the terms and conditions of the current contract with the Executive under section 72.

“(7) Where a contract under this section is made with an officer, the contract may vary the terms and conditions of employment that would otherwise be applicable to the officer under this Act.

“(8) A contract under this section may be terminated at any time by one party giving notice in writing to the other party.



“(9) A person is not entitled to any compensation for the termination of a contract under subsection (8).

“(10) Subject to subsection (11), a contract under this section may be varied at any time by an agreement in writing between the parties.

“(11) A variation of a contract under this section that extends the period of employment of the person engaged to more than 9 months is void.

“(12) Subsections 65 (1), (3) and (4) do not apply in relation to the engagement of a person under this section.

### **Chief Executive Officer, Calvary Hospital**

“77. (1) A person shall not be engaged under section 72 or 76 to perform the duties of the office of Chief Executive Officer, Calvary Hospital unless Calvary Hospital A.C.T. Incorporated has, by writing, consented to that engagement.

“(2) A contract under section 72 or 76 by which a person is employed to perform the duties of the office of Chief Executive Officer, Calvary Hospital shall not be varied unless Calvary Hospital A.C.T. Incorporated has, by writing, consented to the variation.

### **Negotiation and execution of contracts**

“78. (1) Subject to subsection (2), a contract, or a variation of a contract, under section 72 or 76 shall be executed on behalf of the Territory by the Chief Executive who is, or will become, the relevant Chief Executive of the person engaged.

“(2) A contract under section 72 or 76 to engage a person to perform the duties of the office of Chief Executive Officer, Calvary Hospital, or a variation of such a contract, shall be executed on behalf of the Territory by the administering Chief Executive.

“(3) If an office to which a contract under section 72 or 76 relates, or will relate, is an office in an administrative unit that is under the control of a Chief Executive other than the administering Chief Executive, the Chief Executive of the administrative unit shall, in entering the contract, or negotiating a variation of the contract, have regard to the advice of the administering Chief Executive.

### **Tabling of contracts and variations of contracts**

“79. The Chief Minister shall cause a copy of—

- (a) each contract made under section 72 or 76; and
- (b) each instrument by which such a contract is varied;

to be laid before the Legislative Assembly within 6 sitting days after the day on which the contract or variation is made.

**Effect of defects or irregularities**

“80. The engagement of a person under section 72 or 76 to perform the duties of an Executive office is not invalid, and shall not be called into question, by reason of a defect or irregularity in connection with the engagement.

**Notification**

“81. The administering Chief Executive shall cause to be notified in the Gazette—

- (a) the making of a contract under section 72;
- (b) the termination of a contract made under that section; or
- (c) the completion of a period of employment provided for by a contract under that section;

within 28 days after the making or termination of the contract, or the completion of the period of employment, as the case may be.”.

**Heading to Division 5 of Part V**

21. The heading to Division 5 of Part V of the Principal Act is amended by omitting “*other than Chief Executives and Senior Executive Service Officers*”.

**Insertion**

22. Before section 83 of the Principal Act the following section is inserted in Division 5 of Part V:

**Interpretation**

“82. In this Division, unless the contrary intention appears—

‘office’ means an office other than an office of Chief Executive or an Executive office.”.

**Transfers and promotions**

23. Section 83 of the Principal Act is amended by omitting from subsections (1) and (2) “(other than a Senior Executive Service office)”.

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

24. Section 87 of the Principal Act is amended by omitting from subsection (1) “a Senior Executive Service” and substituting “an Executive”.

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

25. Section 88 of the Principal Act is amended by omitting from subsection (2) “(other than an office of Chief Executive or a Senior Executive Service office)”.

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

26. Section 89 of the Principal Act is amended by omitting from subsection (1) “(other than an office of Chief Executive or a Senior Executive Service office)”.

### **Heading to Division 6 of Part V**

27. The heading to Division 6 of Part V of the Principal Act is amended by omitting “*Senior Executive Service offices*” and substituting “*offices of Chief Executive and Executive offices*”.

### **Interpretation**

28. Section 99 of the Principal Act is amended by omitting “a Senior Executive Service” from paragraph (b) of the definition of “office” in subsection (1) and substituting “an Executive”.

### **Power to engage employees**

29. Section 106 of the Principal Act is amended—

- (a) by omitting from subsection (1) “A Chief Executive” and substituting “Subject to subsection (2), a Chief Executive”;
- (b) by omitting from subsection (1) “, otherwise than to perform the duties of a Senior Executive Service office,”; and
- (c) by omitting subsection (2) and substituting the following subsection:

“(2) A Chief Executive shall not engage a person under this Division to perform the duties of an Executive office.”.

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

30. Section 114 of the Principal Act is amended by inserting in paragraph (1) (c) “and before the day fixed for the purposes of subsection 2 (2) of the *Public Sector Management (Amendment) Act 1995*” after “year”.

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

31. Section 115 of the Principal Act is amended by omitting from paragraphs (6) (g) and (7) (g) “Government” and substituting “Public”.

### **Substitution**

32. Section 116 of the Principal Act is repealed and the following section substituted:

**Officers of the Australian Public Service engaged to perform the duties of Chief Executive or Executive offices**

“116. (1) Where a person who is a Commonwealth officer is engaged under section 28 to perform the duties of an office of Chief Executive, paragraphs 115 (7) (f) and (g) apply in respect of the person unless the Chief Minister, with the person’s consent, directs that the paragraphs are not to so apply.

“(2) Where a person who is a Commonwealth officer is engaged under section 28 to perform the duties of an Executive office, paragraphs 115 7 (f) and (g) apply in respect of the person unless the administering Chief Executive, with the person’s consent, directs that the paragraphs are not to so apply.”.

**Reappointment of retired officers**

**33.** Section 117 of the Principal Act is amended by inserting in paragraph (2) (a) “and before the day fixed for the purposes of subsection 2 (2) of the *Public Sector Management (Amendment) Act 1995*” after “year”.

**Reappointment of unsuccessful election candidates**

**34.** Section 118 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsections:

“(1) Where—

(a) an Executive performing the duties of an office in an administrative unit pursuant to a contract under section 72—

(i) terminated his or her contract 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 contract was terminated 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, enter a further contract with the person

under section 72 to engage the person to perform the duties of the same office or an equivalent office in the same administrative unit.

“(1A) A contract entered pursuant to subsection (1) shall be expressed to expire on the same day as the terminated contract was expressed to expire.”.

- (b) by omitting from paragraph (2) (a) “(not being a Senior Executive Service office)”; and
- (c) by omitting subsection (4).

### **Repeal**

35. Divisions 1 and 2 of Part VI of the Principal Act are repealed.

### **Heading to Division 3 of Part VI**

36. The heading to Division 3 of Part VI of the Principal Act is amended by omitting “*Senior Executive Service officers*” and substituting “*Executives*”.

### **Interpretation**

37. Section 139 of the Principal Act is amended by omitting from subsection (1) the definition of “officer” and substituting the following definition:

“ ‘officer’ does not include an officer whose appointment to the Service on probation has not been confirmed.”.

### **Interpretation**

38. Section 148 of the Principal Act is amended—

- (a) by inserting “other than a Chief Executive or an Executive” after “an officer” in the definition of “redundancy” in subsection (1); and
- (b) by adding at the end the following subsection:

“(8) For the purposes of this Part, the engagement of a person as a Chief Executive or Executive shall be taken to have been terminated for redundancy if—

- (a) the person was engaged under section 28 or 72;
- (b) his or her engagement was terminated because—
  - (i) his or her employment was unnecessary;
  - (ii) the work for which he or she was engaged was finished; or
  - (iii) a reduction of officers was necessary because the quantity of work had diminished;
- (c) the person was eligible to be re-engaged under section 28 or 72;
- (d) he or she desired to be so re-engaged; and

- (e) he or she was not offered a further re-engagement under either of those sections on terms and conditions that provided for remuneration at a rate equal to or greater than the rate at which remuneration was payable to him or her immediately before the termination of his or her engagement.”.

### **Meaning of failure to fulfil duty as officer**

39. Section 179 of the Principal Act is amended by omitting “2,”.

### **Repeal**

40. Division 2 of Part IX of the Principal Act is repealed.

### **Heading to Division 3 of Part IX**

41. The heading to Division 3 of Part IX of the Principal Act is amended by omitting “*other than Chief Executives*”.

### **Repeal**

42. Section 185 of the Principal Act is repealed.

### **Disciplinary action**

43. Section 186 of the Principal Act is amended—
- (a) by inserting in subsection (1) “or employee” after “officer” (first occurring); and
  - (b) by inserting in subsection (1) “or employee” after “authorised officer” (wherever occurring).

### **Inquiries into misconduct**

44. Section 187 of the Principal Act is amended—
- (a) by inserting in subsection (1) “or employee” after “officer” (second occurring);
  - (b) by inserting in paragraphs (2) (a) and (b) “or employee” after “officer”;
  - (c) by omitting from subsections (3) and (4) “officer holding” and substituting “officer or employee holding”;
  - (d) by omitting from subsection (4) “that officer” and substituting “that officer or employee”;
  - (e) by inserting in subsection (6) “or employee” after “officer” (first occurring);
  - (f) by omitting from subparagraph (6) (a) (vii) “officer so specified” and substituting “office so specified”; and
  - (g) by inserting in subsection (7) “or employee” after “officer” (first occurring).

### **Suspension**

45. Section 189 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “or employee” after “officer”; and
- (b) by inserting in paragraph (4) (a) “or employee” after “officer”.

### **Removal and variation of suspension**

46. Section 190 of the Principal Act is amended—

- (a) by inserting in paragraph (3) (a) “or employee” after “officer” (third occurring); and
- (b) by inserting in paragraph (3) (b) “or employee” after “officer” (first occurring).

### **Heading to Division 5 of Part IX**

47. The heading to Division 5 of Part IX of the Principal Act is amended by adding at the end “*other than Chief Executives and Executives*”.

### **Interpretation**

48. Section 201 of the Principal Act is amended by omitting “an officer” from the definition of “authorised officer” and substituting “a person”.

### **Heading to Division 6 of Part IX**

49. The heading to Division 6 of Part IX of the Principal Act is amended by omitting “*Boards of Inquiry and*”.

### **Interpretation**

50. Section 203 of the Principal Act is amended—

- (a) by omitting the definition of “Board of Inquiry”; and
- (b) by omitting the definition of “proceeding” and substituting the following definition:

“ ‘proceeding’ means a 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 a hearing or review;”.

### **Furnishing of documents to appellants and persons requesting review**

51. Section 206 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from paragraph (3) (a) “(1) or”;
- (c) by omitting from paragraph (4) (a) “(1) or” and “charged officer,”;
- (d) by omitting from subsection (4) “charged officer,” (second occurring);
- (e) by omitting from subsection (5) “Board of Inquiry or”;
- (f) by omitting from subsection (6) “a Board of Inquiry or”;

- (g) by omitting from subsection (6) “a charged officer,” and substituting “the”;
- (h) by omitting from subsection (6) “inquiry,”;
- (j) by omitting from paragraph (6) (a) “Board or”;
- (k) by omitting from paragraph (6) (b) “Board or” and “charged officer,”;
- (m) by omitting from subsection (7) “Board of Inquiry or”;
- (n) by omitting from subsection (7) “a charged officer,” and substituting “the”;
- (p) by omitting from subsection (7) “Board or” (first occurring);
- (q) by omitting from paragraph (7) (a) “charged officer,”;
- (r) by omitting from paragraph (7) (b) “charged officer,”;
- (s) by omitting from subsection (7) “charged officer,” (fourth occurring); and
- (t) by omitting from subsection (7) “that Board or” and substituting “the”.

### **Repeal**

52. Sections 207 to 214 (inclusive) of the Principal Act are repealed.

### **Recording of action taken**

53. Section 215 of the Principal Act is amended by omitting from subsection (1) “181, 182,”.

### **Imprisonment**

54. Section 218 of the Principal Act is amended—

- (a) by omitting from subsection (2) “or, in the case of an officer referred to in Division 2, the Commissioner”; and
- (b) by omitting from subsection (2) “the relevant Chief Executive or the Commissioner, as the case may be,” and substituting “he or she”.

### **Application to unattached officers performing duty in an administrative unit**

55. Section 219 of the Principal Act is amended—

- (a) by omitting from subsections (2), (3) and (4) “, 2”; and
- (b) by omitting paragraph (4) (a).

### **Interpretation**

56. Section 223 of the Principal Act is amended—

- (a) by omitting “an officer” from the definition of “authorised person” and substituting “a person”;



- (b) by omitting “that Commissioner” from paragraph (a) of the definition of “internal appeal officer” and substituting “the Commissioner”;
- (c) by omitting “an office having a higher classification than the office of” from subparagraph (b) (i) of the definition of “internal appeal officer” and substituting “, or performs the duties of, an office having a higher classification than the office held by, or the duties of which are performed by,”; and
- (d) by omitting the definition of “employee” and substituting the following definition:
  - “ ‘employee’ means an officer or employee in—
  - (a) an administrative unit; or
  - (b) a Territory instrumentality specified in Schedule 2;
  - but does not include a Chief Executive or an Executive;”.

#### **Application of Merit Protection Act**

**57.** Section 235 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Merit Protection Act applies under subsection (1) subject to the modifications specified in Schedule 2.”.

#### **Insertion**

**58.** After section 248 of the Principal Act the following section is inserted:

#### **Engagement of certain former officers and employees prohibited**

“248A. (1) This section applies to a person—

- (a) who was engaged by a contract under section 28 as a Chief Executive or by a contract under section 72 as an Executive;
- (b) whose employment under that contract was terminated under a provision of the kind referred to in subsection 28A (1) or 73 (1); and
- (c) who received in respect of that termination a benefit prescribed for the purposes of subsection 28A (4) or 73 (4) that included a sum of money calculated by reference to the salary payable in respect of a period of employment of the person (in this section referred to as the ‘benefit period’), being a sum that was not payable for services performed or in respect of leave.

“(2) The Territory or a Territory instrumentality shall not employ a person to whom this section applies within the period immediately after his or her retirement from the Service that corresponds to the length of his or her benefit period.”.

**Management standards**

**59.** Section 251 of the Principal Act is amended by omitting from subparagraph (2) (r) (i) all the words after “Territory”.

**PART III—TRANSITIONAL****Interpretation**

**60. (1)** In this Part and in the Schedule, unless the contrary intention appears—

“commencement day” means the day fixed for the purposes of subsection 2 (2).

**(2)** Unless the contrary intention appears, an expression used in this Part has the same meaning as in the Principal Act.

**Certain offices to become vacant**

**61. (1)** This section applies to—

- (a) all offices of Chief Executive;
- (b) all offices that were immediately before the commencement day Senior Executive Service offices; and
- (c) the offices specified in the Schedule.

**(2)** On the commencement day all offices to which this section applies shall, by force of this subsection, become vacant.

**(3)** Where an office to which this section applies was, immediately before the commencement day, held by an officer who was not at that time acting in another office or performing special duties under subsection 29 (2) of the Principal Act, that officer shall be deemed to have been appointed on the commencement day to act in that office until that appointment is terminated or the office is abolished, whichever first occurs.

**(4)** Notwithstanding the repeal of sections 32 and 82 of the Principal Act by this Act, where an officer was, immediately before the commencement day, acting in an office to which this section applies, that person shall be deemed to have been appointed on the commencement day to act in that office until that appointment is terminated or the office is abolished, whichever first occurs.

**(5)** A person who was, immediately before the commencement day, performing special duties under subsection 29 (2) of the Principal Act shall, until the Chief Minister otherwise directs, continue to perform those duties.

**Application of merit principle**

**62. (1)** This section applies to a person who immediately before the commencement day—

- (a) held an office that became vacant on that day by virtue of subsection 61 (2); or
- (b) was employed under Division 7 of Part V of the Principal Act to perform the duties of such an office.

(2) Subsections 65 (1), (3) and (4) of the Principal Act do not apply to the engagement of a person to whom this section applies under section 28 or 72 of the Principal Act as amended by this Act to perform the duties of an office of Chief Executive or an Executive office if the administering Chief Executive has certified in writing that the performance of those duties will require work at a similar level to the work performed by the person in discharging the duties of the office that he or she occupied or performed the duties of immediately before the commencement day.

### **Conditions of employment of former Chief Executives and Senior Executive Service officers**

**63. (1)** An officer who immediately before the commencement day held an office of Chief Executive or a Senior Executive Service office shall, on that day, become an unattached officer entitled, subject to this Act, to the same conditions of employment (including conditions relating to salary and allowances) as applied to him or her immediately before that day and shall, subject to the Principal Act, continue to be employed in the Service subject to those conditions until—

- (a) he or she is engaged under section 28 or 72 of the Principal Act as amended by this Act to perform the duties of an office of Chief Executive or an Executive office;
- (b) he or she is transferred to an office as an officer; or
- (c) he or she ceases to be an officer.

(2) A person who—

- (a) becomes an unattached officer by virtue of subsection (1); and
- (b) is engaged under section 28 or 72 of the Principal Act as amended by this Act to perform the duties of an office of Chief Executive or an Executive office;

shall, on being so engaged, be employed in the Service subject to the terms and conditions provided for by the contract by which he or she is so engaged.

(3) A person who—

- (a) becomes an unattached officer by virtue of subsection (1); and
- (b) is transferred to an office as an officer;

shall, on being so transferred, be employed in the Service on the terms and conditions applicable to an officer having the same classification as the office to which he or she is transferred.

(4) A person who becomes an unattached officer by virtue of subsection (1) and is—

- (a) engaged under section 28 or 72 of the Principal Act as amended by this Act; or
- (b) transferred to an office as an officer;

retains, subject to the management standards, all the entitlements that have, immediately before that engagement or transfer, accrued to him or her in connection with his or her employment as a member of the Service.

### **Retirement and redeployment of certain Chief Executives**

**64. (1)** Notwithstanding the repeal of Division 1 of Part VI of the Principal Act by this Act, the provisions of that Division, other than sections 126 and 127, continue to apply to an officer who was immediately before the commencement day a Chief Executive.

(2) Where—

- (a) an officer was, immediately before the commencement day, a Chief Executive;
- (b) the officer has refused an offer that would have enabled him or her to retire from the Service with an entitlement to a special benefit under section 128 of the Principal Act as continued in effect by subsection (1); and
- (c) the administering Chief Executive has certified in writing that the services of the officer cannot reasonably be used in the Service to perform the duties of an office of Chief Executive;

the administering Chief Executive may transfer the officer to an office of the highest classification that the officer is qualified to hold, not being an office of Chief Executive or an Executive office.

(3) In this section, a reference to an officer who was, immediately before the commencement day, a Chief Executive includes a reference to an officer who was, immediately before that day, an unattached Chief Executive.

### **Retirement and redeployment of former Senior Executive Service officers**

**65. (1)** Notwithstanding the repeal of Division 2 of Part VI of the Principal Act by this Act, the provisions of that Division, other than sections 132, 133, 134 and 136, continue to apply to an officer who was immediately before the commencement day a Senior Executive Service officer.

(2) Where—

- (a) an officer was, immediately before the commencement day, a Senior Executive Service officer;
- (b) the officer has refused an offer that would have enabled him or her to retire from the Service with an entitlement to a special benefit

under section 137 of the Principal Act as continued in effect by subsection (1); and

- (c) the administering Chief Executive has certified in writing that the services of the officer cannot reasonably be used in the Service to perform the duties of an Executive office;

the administering Chief Executive may transfer the officer to an office of the highest classification that the officer is qualified to hold, not being an office of Chief Executive or an Executive office.

### **Regulations**

**66. (1)** The Executive may make regulations for the purposes of this Act.

**(2)** Without limiting the generality of subsection (1), the regulations may make provision—

- (a) in relation to any matter arising from, connected with or consequential upon the amendments made to the Principal Act by this Act; and
- (b) modifying an enactment or subordinate law for any purpose mentioned in paragraph (a) including (but not limited to) changing references to the Australian Capital Territory Government Service, a Senior Executive Service office or a Senior Executive Service officer to substitute references to the Australian Capital Territory Public Service, an Executive office or an Executive officer respectively.

**(3)** A regulation that is expressed to modify an enactment or subordinate law may take the form of an alteration of the text of the enactment or subordinate law and the enactment or subordinate law operates as so modified but the regulation does not amend the text of the enactment or subordinate law.

**(4)** The power conferred by this section to modify an enactment or subordinate law expires on 1 July 1996.

---

## **SCHEDULE**

Paragraph 61 (1) (c)

### **ADDITIONAL OFFICES TO BECOME VACANT ON COMMENCEMENT DAY**

1. The office of Medical Officer Class 5.
2. All offices of Medical Superintendent Level 1 or 2.
3. The office of Nurse Level 5.5.
4. The office of Senior Specialist (Mental Health).
5. The office of Senior Specialist (Pathology).

6. All offices of Teacher Level 5 in the Department of Education and Training.

**NOTE**

**Principal Act**

1. Act No. 37, 1994 as amended by No. 108, 1994 and No. 7, 1995.

*[Presentation speech made in Assembly on 19 October 1995]*

© Australian Capital Territory 1995