



Australian Capital Territory

Public Sector Management Amendment Act 2005 (No 2)

A2005-44

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Australian Capital Territory

Public Sector Management Amendment Act 2005 (No 2)

A2005-44

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

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

2004 028B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Public Sector Management Amendment Act 2005 (No 2)*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Public Sector Management Act 1994*.

Note This Act also amends other legislation (see sch 1).

4 Definitions for Act **Section 3, definition of *relevant chief executive***

substitute

relevant chief executive means—

- (a) in relation to an administrative unit, including the officers and employees employed, or to be employed, in the administrative unit—the chief executive responsible for the administrative unit; or
- (b) in relation to a territory instrumentality, including the officers and employees employed, or to be employed, in the territory

instrumentality—the person who has the powers of a chief executive in relation to the staff; or

- (c) in relation to a statutory office, including the officers and employees employed, or to be employed, to assist the statutory office-holder—the statutory office-holder, if the office-holder has the powers of a chief executive in relation to the staff; or

Note Certain statutory office-holders have all the powers of a chief executive of an administrative unit (see s 25).

- (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.

5 Sections 24 to 26

substitute

24 Powers of chief executive officers of certain territory instrumentalities

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, of a territory instrumentality (the *instrumentality staff*) must be employed under this Act.
- (2) The chief executive officer of the territory instrumentality has all the powers of a chief executive in relation to the instrumentality staff (including, for example, in relation to the appointment of people to, or the employment of people for, that staff).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), this Act applies in relation to the territory instrumentality as if—
- (a) the instrumentality were an administrative unit; and

- (b) the chief executive officer were the chief executive of that administrative unit; and
- (c) all other necessary changes were made.

25 Powers of certain statutory office-holders

- (1) This section applies if an Act provides (however expressed) that the staff, or particular staff, assisting a statutory office-holder (the *office staff*) must be employed under this Act.
- (2) The statutory office-holder has all the powers of a chief executive in relation to the office staff (including, for example, in relation to the appointment of people to, or the employment of people for, that staff) if—
 - (a) the Chief Minister makes a declaration under subsection (4); or
 - (b) this Act or another territory law gives (however expressed) all the powers of a chief executive to the statutory office-holder.

Examples for par (b)

- 1 the clerk under section 54 (2)
- 2 the auditor-general under the *Auditor-General Act 1996*, section 23
- 3 the director of public prosecutions under the *Director of Public Prosecutions Act 1990*, section 30
- 4 the occupational health and safety commissioner under the *Occupational Health and Safety Act 1989*, section 34

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), if, under that subsection, the statutory office-holder has all the powers of a chief executive in relation to the office staff, this Act applies in relation to the statutory office-holder and office staff as if—
 - (a) the statutory office-holder and the office staff were an administrative unit; and

-
- (b) the statutory office-holder were the chief executive of that administrative unit; and
 - (c) all other necessary changes were made.
- (4) The Chief Minister may, in writing, declare that the statutory office-holder has all the powers of a chief executive in relation to the office staff.
- (5) A declaration under subsection (4)—
- (a) is a notifiable instrument; and
 - (b) has effect subject to the Act under which the statutory office-holder holds office.

Note A notifiable instrument must be notified under the Legislation Act.

26 Powers relating to certain Calvary Health Care staff

- (1) This section applies if an agreement is in force between the Territory and Calvary Health Care ACT Limited for staff at Calvary Health Care ACT Limited (Public Division) to be employed under this Act.
- (2) The chief executive officer, Calvary has all the powers of a chief executive in relation to the people employed in Calvary public health care (including, for example, in relation to the appointment of people to, or the employment of people for, Calvary public health care).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Without limiting subsection (2), this Act applies in relation to Calvary public health care as if—
- (a) Calvary public health care were an administrative unit; and
 - (b) the chief executive officer, Calvary were the chief executive of that administrative unit; and

(c) all other necessary changes were made.

(4) In this section:

Calvary public health care means the branch of the service that provides services required to enable Calvary Care ACT Limited (Public Division) to exercise its public functions.

chief executive officer, Calvary means the person engaged to exercise the functions of the position of chief executive officer (however described) of Calvary Health Care ACT Limited (Public Division) under the rules of Calvary Health Care ACT Limited.

6 Section 28 heading

substitute

28 Chief executives—engagement

7 Section 28 (5) to (7)

omit

8 New section 28AA

after section 28, insert

28AA Chief executives—contract variation

(1) A contract under section 28 may be varied at any time by a written agreement between the parties.

Note If a person engaged by a contract under s 28 is transferred or assigned under s 33A, the person's contract is taken to be varied by the transfer or assignment (see s 33A (4)).

(2) However, a variation of a contract under section 28 that would do either or both of the following is void:

(a) extend the period of employment under the contract—

-
- (i) to longer than 5 years, unless the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years; or
 - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years;
- (b) increase the rate at which remuneration or an allowance is payable to the person employed otherwise than in accordance with the management standards.
- (3) This section, and section 28 as amended by the *Public Sector Management Amendment Act 2005 (No 2)*, section 7, apply in relation to a contract under section 28 whether the contract was entered into before or after the day this section commences.
- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

9 New section 28D

insert

28D Notice or payment if chief executive not re-engaged

- (1) This section applies in relation to a person engaged by a contract under section 28 (Chief executives—engagement) if the Chief Minister does not intend to re-engage the person under that section to exercise the functions of the same office of chief executive or another office of chief executive.
- (2) However, to remove any doubt, this section does not apply if the contract is terminated before the end of the period of employment specified in the contract.

Note For the termination of a contract under s 28, see s 28A (Early termination of contract).

- (3) At least 3 months before the day the contract ends, the Chief Minister may give the person written notice that the person will not be re-engaged.
- (4) An amount equal to $\frac{1}{4}$ of the person's final annual salary is payable to the person by the Territory if, when the person's contract ends—
- (a) the Chief Minister has not given a notice under subsection (3); and
 - (b) the person has not accepted another position in the public sector; and
 - (c) the person is not entitled to a redundancy payment (however described) for not being re-engaged.

Note Section 248B provides that the Territory or a territory instrumentality must not, within 3 months after the day the contract ends, and without the commissioner's written consent, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (5) The amount must be paid within 3 months after the day the contract ends.
- (6) In this section:

final annual salary, for a person engaged by a contract under section 28, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments instead of employer-provided benefits).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) This section applies in relation to a contract—
- (a) whether the contract was entered into before or after the day this section commences (the ***commencement day***); but

- (b) only if the contract ends later than 3 months after the commencement day.
- (8) Subsection (7) and this subsection expire 1 year after the commencement day.

10 Section 29

substitute

29 Chief executives—responsibilities

- (1) This section applies to a person exercising the functions of an office of chief executive.
- (2) For each administrative unit under the person's control, the person—
 - (a) is responsible, under the relevant Minister, for the unit's administration and business; and
 - (b) must advise that Minister on all matters relating to the unit; and
 - (c) must have regard to the interests of the government and the service as a whole.
- (3) The Chief Minister may assign a chief executive to special duties on behalf of the Territory.

11 Section 30 heading

substitute

30 Chief executives—temporary contracts**12 Section 30 (4)**

substitute

- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.

13 Section 30 (10) to (12)

omit

14 New section 30A

insert

30A Chief executives—variation of temporary contracts

- (1) A contract under section 30 may be varied at any time by a written agreement between the parties.
- (2) However, a variation of a contract under section 30 that extends the period of employment under the contract to longer than 2 years is void.
- (3) This section, and section 30 as amended by the *Public Sector Management Amendment Act 2005 (No 2)*, section 13, apply in relation to a contract under section 30 whether the contract was entered into before or after the day this section commences.
- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

**15 Negotiation and execution of contracts
Section 31 (1)**

substitute

- (1) The following contracts and contract variations must be signed for the Territory by the Chief Minister:
 - (a) a contract under section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts);
 - (b) a variation of a contract under section 28AA (Chief executives—contract variation) or section 30A (Chief executives—variation of temporary contracts).

16 Section 32 heading*substitute***32 Chief executive engagements not affected by defects etc****17 New sections 33A and 33B***insert***33A Chief executives—transfer or assignment**

- (1) The Chief Minister may, in writing, for a person engaged by a contract under section 28 (Chief executives—engagement)—
 - (a) transfer the person from the office of chief executive under the contract to—
 - (i) another office of chief executive; or
 - (ii) any other office (including an executive office) in an administrative unit; or
 - (b) assign the person to exercise other stated functions in the public sector.
- (2) The Chief Minister may transfer or assign the person only if the Chief Minister has—
 - (a) given the person an opportunity to state the person's views about the transfer or assignment; and
 - (b) considered the person's views (if any).
- (3) A transfer under subsection (1) (a) (i) may be made only to an office that has the same classification as, or a lower classification than, the office from which the person was transferred.
- (4) The transfer or assignment is taken to be a variation of the contract.

- (5) The transfer or assignment of a person under this section does not affect—
 - (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
 - (b) the period of the person’s employment under the contract; or
 - (c) the right to terminate the person’s employment if the contract provides for termination under section 28A (Early termination of contract).
- (6) If a person engaged by a contract under section 28 is transferred to an office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the office or exercise the stated functions.
- (7) This section applies in relation to a person engaged by a contract under section 28 whether the contract was entered into before or after the day this section commences.
- (8) Subsection (7) and this subsection expire 1 year after the day this section commences.

33B Chief executive transfers or assignments under s 33A not affected by defects etc

- (1) A transfer, or anything done in relation to a transfer, is not invalid only because of a defect or irregularity in relation to the transfer.
- (2) In this section:
transfer means a transfer or assignment of a person under section 33A.

18 Section 34

substitute

34 Notification of chief executive's engagement etc

The Chief Minister must notify in the gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 28 (Chief executives—engagement);
- (b) the termination of a contract made under that section;
- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 33A (Chief executives—transfer or assignment).

**19 Application of merit principle
New section 65 (1) (ba)**

insert

- (ba) an engagement by a contract under section 30 (Chief executives—temporary contracts) or section 76 (Executives—temporary contracts), if the period of engagement is 9 months or more; or

20 Section 65 (1)

renumber paragraphs when Act next republished under Legislation Act

21 Section 72 heading

substitute

72 Executives—engagement

22 Section 72 (5) to (7)

omit

23 New section 72A

insert

72A Executives—contract variation

- (1) A contract under section 72 may be varied at any time by a written agreement between the parties.

Note If a person engaged by a contract under s 72 is transferred or assigned under s 80A, the person's contract is taken to be varied by the transfer or assignment (see s 80A (3)).

- (2) However, a variation of a contract under section 72 that would do either or both of the following is void:
- (a) extend the period of employment under the contract—
 - (i) to longer than 5 years, unless the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years; or
 - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the person employed to be on leave for the period of employment that exceeds 5 years;
 - (b) increase the rate at which remuneration or an allowance is payable to the person employed otherwise than in accordance with the management standards.
- (3) This section, and section 72 as amended by the *Public Sector Management Amendment Act 2005 (No 2)*, section 22, apply in relation to a contract under section 72 whether the contract was entered into before or after the day this section commences.
- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

24 New section 75A

insert

75A Notice or payment if executive not re-engaged

- (1) This section applies in relation to a person engaged by a contract under section 72 (Executives—engagement) if the relevant chief executive for the person does not intend to re-engage the person under that section.
- (2) However, to remove any doubt, this section does not apply if the contract is terminated before the end of the period of employment specified in the contract.

Note For the termination of a contract under s 72, see s 73 (Early termination of contract).

- (3) Three months or more before the day the contract ends, the relevant chief executive may give the person written notice that the person will not be re-engaged.
- (4) An amount equal to $\frac{1}{4}$ of the person's final annual salary is payable to the person by the Territory if, when the person's contract ends—
 - (a) the relevant chief executive has not given a notice under subsection (3); and
 - (b) the person has not accepted another position in the public sector; and
 - (c) the person is not entitled to a redundancy payment (however described) for not being re-engaged.

Note Section 248B provides that the Territory or a territory instrumentality must not, within 3 months after the day the contract ends, and without the commissioner's written consent, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (5) The amount must be paid within 3 months after the day the contract ends.

- (6) In this section:

final annual salary, for a person engaged by a contract under section 72, means the person's annual remuneration under the contract as at the day the contract ends, but does not include cash payments (for example, cash payments instead of employer-provided benefits).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (7) This section applies in relation to a contract—
- (a) whether the contract was entered into before or after the day this section commences (the *commencement day*); but
 - (b) only if the contract ends later than 3 months after the commencement day.
- (8) Subsection (7) and this subsection expire 1 year after the commencement day.

25 Section 76 heading

substitute

76 Executives—temporary contracts

26 Section 76 (4)

substitute

- (4) The period mentioned in subsection (3) (b) must not be longer than 2 years.

27 Section 76 (10) to (12)

omit

28 New section 76A

insert

76A Executives—variation of temporary contracts

- (1) A contract under section 76 may be varied at any time by a written agreement between the parties.
- (2) However, a variation of a contract under section 76 that extends the period of employment under the contract to longer than 2 years is void.
- (3) This section, and section 76 as amended by the *Public Sector Management Amendment Act 2005 (No 2)*, section 27, apply in relation to a contract under section 76 whether the contract was entered into before or after the day this section commences.
- (4) Subsection (3) and this subsection expire 1 year after the day this section commences.

29 Section 77

substitute

77 Chief executive officer, Calvary

- (1) A person may be engaged under section 72 (Executives—engagement) or section 76 (Executives—temporary contracts) to exercise the functions of the position of chief executive officer, Calvary only if Calvary Health Care ACT Limited has agreed to the engagement in writing.
- (2) A contract under section 72 or section 76 by which a person is engaged to exercise the functions of the position of chief executive officer, Calvary may be varied only if Calvary Health Care ACT Limited has agreed to the variation in writing.

- (3) In this section:

chief executive officer, Calvary—see section 26 (4) (Powers relating to certain Calvary Health Care staff).

30 **Negotiation and execution of contracts**
Section 78 (1) and (2)

substitute

- (1) The following contracts and contract variations must be signed for the Territory by the chief executive who is, or will become, the relevant chief executive of the person engaged:
- (a) a contract under section 72 (Executives—engagement) or section 76 (Executives—temporary contracts);
 - (b) a variation of a contract under section 72A (Executives—contract variation) or section 76A (Executives—variation of temporary contracts).
- (2) However, the following contracts and contract variations must be signed for the Territory by the administering chief executive:
- (a) a contract under section 72 or section 76 to engage a person to exercise the functions of the position of chief executive officer, Calvary;
 - (b) a variation of a contract mentioned in paragraph (a) under section 72A or section 76A.

31 **New section 78 (4)**

insert

- (4) In this section:

chief executive officer, Calvary—see section 26 (4) (Powers relating to certain Calvary Health Care staff).

32 Section 80 heading*substitute***80 Executive engagements not affected by defects etc****33 New sections 80A and 80B***insert***80A Executives—transfer or assignment**

- (1) The relevant chief executive may, in writing, for a person engaged by a contract under section 72 (Executives—engagement)—
 - (a) transfer the person from the executive office under the contract to another executive office that has the same classification; or
 - (b) assign the person to exercise other stated functions in the public sector.
- (2) The relevant chief executive may transfer or assign the person only if the relevant chief executive has—
 - (a) if it is proposed to transfer the person to an executive office in another administrative unit—consulted the chief executive of the other administrative unit; and
 - (b) given the person an opportunity to state the person's views about the transfer or assignment; and
 - (c) considered the person's views (if any).
- (3) The transfer or assignment is taken to be a variation of the contract.
- (4) The transfer or assignment of a person under this section does not affect—
 - (a) the rate at which remuneration or an allowance is payable to the person under the contract; or
 - (b) the period of the person's employment under the contract; or

- (c) the right to terminate the person's employment if the contract provides for termination under section 73 (Early termination of contract).
- (5) If a person engaged by a contract under section 72 is transferred to another executive office, or assigned to exercise stated functions, under this section, the person must exercise the functions of the executive office or exercise the stated functions.
- (6) This section applies in relation to a person engaged by a contract under section 72 whether the contract was entered into before or after the day this section commences.
- (7) Subsection (6) and this subsection expire 1 year after the day this section commences.

80B Executive transfers or assignments under s 80A not affected by defects etc

- (1) A transfer, or anything done in relation to a transfer, is not invalid only because of a defect or irregularity in relation to the transfer.
- (2) In this section:
transfer means a transfer or assignment of a person under section 80A.

34 Section 81

substitute

81 Notification of executive's engagement etc

The administering chief executive must notify in the gazette each of the following within 28 days after the day each happens:

- (a) the making of a contract under section 72 (Executives—engagement);
- (b) the termination of a contract made under that section;

- (c) the end of a period of engagement by a contract under that section;
- (d) the transfer or assignment of a person under section 80A (Executives—transfer or assignment).

35 New section 248B

insert

248B Engagement of certain former chief executives and executives prohibited

- (1) This section applies to a person if—
 - (a) the person was engaged by a contract under section 28 (Chief executives—engagement) and has received, or is entitled to, an amount mentioned in section 28D (4) (Notice or payment if chief executive not re-engaged) in relation to the contract; or
 - (b) the person was engaged by a contract under section 72 (Executives—engagement) and has received, or is entitled to, an amount mentioned in section 75A (4) (Notice or payment if executive not re-engaged) in relation to the contract.
- (2) The Territory or a territory instrumentality must not, without the commissioner's written consent, employ the person within the 3-month period after the day the contract ends.

36 **New part 16**

insert

Part 16 **Transitional**

274 **Application of certain amendments—Public Sector Management Amendment Act 2005 (No 2)**

- (1) To remove any doubt, the *Public Sector Management Amendment Act 2005 (No 2)*, section 4 and section 5 apply in relation to the employment (including the appointment) of people in the service before the commencement of this section, and are taken for all purposes to have always applied.
- (2) Without limiting subsection (1) and to remove any doubt, anything done in relation to the employment is taken to be valid if it would have been valid if the provisions mentioned in subsection (1) were in force when the thing was done.

275 **Expiry of pt 16**

This part expires 1 year after the day it commences.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 ACTION Authority Act 2001

[1.1] Section 22 (3)

substitute

- (3) The authority's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def *chief executive officer*, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

Part 1.2 Crimes Act 1900

[1.2] Section 49A, definition of *senior officer*, example for paragraph (a) (ii)

omit

section 28 (Engagement) or section 30 (Temporary performance of duties)

substitute

section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts)

Part 1.3 Emergencies Act 2004

[1.3] Section 22 (1)

substitute

- (1) The authority's staff must be employed under the *Public Sector Management Act 1994*.

[1.4] Section 22 (2), note

omit

Part 1.4 Legislation Act 2001

[1.5] Section 163 (1)

omit

section 28 (Engagement) or section 30 (Temporary performance of duties)

substitute

section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts)

Part 1.5 Planning and Land Act 2002

[1.6] Section 23

substitute

23 Authority staff

The authority's staff must be employed under the *Public Sector Management Act 1994*.

[1.7] Section 72

substitute

72 Land agency staff

The land agency's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, s 24 provides that the chief executive officer of a territory instrumentality has all the powers of a chief executive under the Act in relation to the instrumentality staff to be employed under that Act (including, for example, in relation to the appointment of people to, or the employment of people for, that staff). Under that Act, s 3, def **chief executive officer**, the chief executive officer of an instrumentality is the person who has responsibility for managing its affairs.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 August 2005.

2 Notification

Notified under the Legislation Act on 30 August 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Public Sector Management Amendment Bill 2005 (No 2), which originated in the Legislative Assembly as the Public Sector Management Amendment Bill 2005 (No 3) and was passed by the Assembly on 25 August 2005.

Clerk of the Legislative Assembly

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