



Australian Capital Territory

Public Sector Management (One ACT Public Service) Amendment Act 2011

A2011-21

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J2011-165

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Australian Capital Territory

Public Sector Management (One ACT Public Service) Amendment Act 2011

A2011-21

An Act to amend the *Public Sector Management Act 1994*

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

1 Name of Act

This Act is the *Public Sector Management (One ACT Public Service) Amendment Act 2011*.

2 Commencement

This Act commences on 1 July 2011.

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

3 Legislation amended

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

**4 Legal effect
Section 11 (2)**

omit

part 9

substitute

the misconduct procedures that apply to a public employee or section 122 (Termination of employment)

5 Division 2.2

substitute

Division 2.2 ACT Public Service

12 ACT Public Service

(1) The ACT Public Service is established.

Note **Establish** includes constitute and continue in existence (see Legislation Act, dict, pt 1).

- (2) The ACT Public Service is made up of the administrative units established under section 13.
- (3) The members of the ACT Public Service are—
 - (a) the head of service; and
 - (b) the directors-general; and
 - (c) the executives; and
 - (d) other employees; and
 - (e) officers.
- (4) The Territory is the employer of all members of the service.

6 Section 13

substitute

13 Administrative units

- (1) The Chief Minister may establish administrative units.
- (2) An administrative unit is made up of the offices within the administrative unit.

Note The office of director-general for an administrative unit is established when the administrative unit is established (see s 27 (1)).

- (3) An instrument under subsection (1) is a notifiable instrument.

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

**7 Machinery of government changes—officers
Section 15 (1)**

omit

Chief Minister or the commissioner

substitute

head of service

**8 General functions
Section 20 (1) (b)**

omit

9 Section 20 (2)

omit

**10 Review of government agencies or functions
Sections 21 (4) and (5)**

substitute

- (4) The commissioner must notify the head of service and the relevant agency manager in writing before starting the review.
- (5) On completion of the review, the commissioner may make recommendations to the head of service and the relevant agency manager on the action that should be taken, or could be taken, to give effect to any proposals arising from the review.

11 Section 21 (6)

substitute

- (6) If the relevant agency manager disagrees with the recommendations or does not implement them within a reasonable time, the relevant agency manager must—
- (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) give a copy of the reasons to the commissioner and the head of service.

12 New section 21 (8)

insert

- (8) In this section:

relevant agency manager means—

- (a) in relation to an administrative unit—the director-general of the 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 mentioned in section 24 (2) (a) 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 mentioned in section 25 (2A) (a) in relation to the staff.

13 New division 3.2A

insert

Division 3.2A Head of service

23A Office of head of service

The office of Head of Service is established.

23B Head of service—functions

- (1) The head of service is responsible for the service as a whole.
- (2) Without limiting subsection (1), the head of service has the following functions:
 - (a) management of the service;
 - (b) development and implementation of whole-of-government strategies;
 - (c) provision of advice and reports to the Chief Minister about whole-of-government issues;
 - (d) coordination of activities and outcomes across administrative units;
 - (e) direction of administrative units in relation to critical or potentially critical issues;
 - (f) approval of the structure of the administrative units;
 - (g) management of the employment of members of the service;
 - (h) management of the exercise by directors-general of their functions;
 - (i) any other function given to the head of service—
 - (i) by the Chief Minister; or

- (ii) under this Act or another territory law.

23C Head of service—engagement

- (1) The Chief Minister may engage a person as the head of service.
- (2) The person must be engaged under a contract with the Territory.
- (3) The contract must—
 - (a) be in writing; and
 - (b) be signed by the person and the Chief Minister, on behalf of the Territory; and
 - (c) state the period during which the person is engaged as head of service.
- (4) The period mentioned in subsection (3) (c) must not be longer than 5 years.
- (5) Subject to this Act, the employment of the head of service under this section is governed by the contract under which the head of service is engaged.

23D Head of service may also be engaged as director-general of Chief Minister’s administrative unit

- (1) The person engaged as the head of service may also be engaged by the Chief Minister as the director-general (the *CM director-general*) of the administrative unit administered by the Chief Minister.
- (2) The engagement of the person as the CM director-general under this section is governed by the contract made under section 23C.

23E Head of service—contract variation

- (1) The head of service's contract may be varied at any time by a written agreement signed by the head of service and the Chief Minister, on behalf of the Territory.

Note If the head of service is transferred or assigned under s 23N, the head of service's contract is taken to be varied by the transfer or assignment (see s 23N (3)).

- (2) However, a variation of the head of service's contract that would do either 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 head of service to be on leave for the period of employment that is longer than 5 years; or
 - (ii) to longer than 5 years and 3 months, whether or not the contract as varied requires the head of service to be on leave for the period of employment that is longer than 5 years;
 - (b) increase the rate at which remuneration or an allowance is payable to the head of service otherwise than in accordance with the management standards.

23F Head of service—early termination of contract

- (1) The head of service's contract may include provision for termination of the head of service's employment before the end of the period of employment stated in the contract (a *termination provision*).
- (2) If the head of service's contract includes a termination provision, the contract must state the grounds for termination.
- (3) The grounds must not include—
 - (a) the ground that the head of service is incompatible with another person; or

- (b) any ground to the same effect.
- (4) If a contract is terminated in accordance with a termination provision, no benefit is payable in relation to the termination other than the benefit, if any, prescribed for this subsection.
- (5) The head of service's employment may not be terminated on the ground of invalidity unless—
 - (a) if the head of service is an eligible employee for the *Superannuation Act 1976* (Cwlth)—
 - (i) the head of service has not reached the head of service's maximum retiring age within the meaning of the Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under the Act, section 54C for the head of service; or
 - (b) if the head of service is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the head of service is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 13 for the head of service; or
 - (c) if the head of service is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
 - (i) the head of service is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under the Act, section 43 for the head of service.

(6) In this section:

invalidity means—

- (a) for an eligible employee for the *Superannuation Act 1976* (Cwlth)—invalidity under the Act; or
- (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under the Act; or
- (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under the Act.

23G Head of service—effect of contract on responsibilities of Ministers

Nothing in the head of service’s contract limits 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.

23H Head of service—application of merit principle to re-engagements

Section 65 (1), (3) and (4) does not apply in relation to a second or subsequent engagement of a person to exercise the functions of the office of head of service if—

- (a) the period of the second or subsequent engagement is to start immediately on the day after the previous engagement ends; and
- (b) the Chief Minister has certified in writing that the Chief Minister is satisfied that it would be in the interests of the service for the person to be re-engaged to exercise those functions.

23I Head of service—notice or payment if not re-engaged

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

Note Section 248C provides that the Territory must not, without consulting the commissioner, within 3 months after the day the contract ends, employ a person who has received, or is entitled to, an amount mentioned in this subsection.

- (3) The amount must be paid within 3 months after the day the head of service's contract ends.
- (4) This section does not apply if the head of service's contract is terminated before the end of the period of employment stated in the contract.

Note For the termination of the head of service's contract, see s 23F (Head of service—early termination of contract).

- (5) In this section:

final annual salary, for the head of service, means the head of service's annual remuneration under the head of service's 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).

23J Head of service—temporary contract

- (1) This section applies if—
- (a) the head of service cannot for any reason exercise the head of service's functions; or
 - (b) the office of head of service is vacant.
- (2) A director-general may be engaged to act as head of service.
- (3) The person must be engaged under a contract with the Territory.
- (4) The contract—
- (a) must be in writing; and
 - (b) must be signed by the person and the Chief Minister, on behalf of the Territory; and
 - (c) must state the period during which the person is to act as head of service; and
 - (d) may vary the terms of the person's contract under section 28 (Directors-general—engagement).
- (5) The period mentioned in subsection (4) (c) must not be longer than 2 years.

- (6) Subject to this Act, the employment of a person under this section is governed by the contract under which the person is engaged.

23K Head of service—termination of temporary contract

- (1) A contract under section 23J may be terminated at any time by one party giving written notice to the other.
- (2) A person is not entitled to any compensation for the termination of a contract under this section.

23L Head of service—variation of temporary contract

- (1) A contract under section 23J may be varied at any time by a written agreement signed by the acting head of service and the Chief Minister, on behalf of the Territory.
- (2) However, a variation that extends the period of employment under the contract to longer than 2 years is void.

23M Head of service—presentation of contract and contract variations

The Chief Minister must present a copy of the following contracts and any contract variation to the Legislative Assembly within 6 sitting days after the day the contract or variation is made:

- (a) the head of service's contract under section 23C;
- (b) any temporary contract under section 23J.

23N Head of service—transfer or assignment

- (1) The Chief Minister may, in writing—
- (a) transfer the person engaged as the head of service under section 23C from that office to an office of director-general; 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) The transfer or assignment is taken to be a variation of the head of service's 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 23F (Head of service—early termination of contract).
- (5) If a person engaged as the head of service is transferred to an office of director-general, or assigned to exercise stated functions, under this section, the person must exercise the functions of the office or exercise the stated functions.

230 Head of service—notification of head of service's engagement etc

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

- (a) the making of the head of service's contract under section 23C;
- (b) any termination of the contract;
- (c) the end of the period of engagement of the head of service;

- (d) any transfer or assignment of the head of service under section 23N.

23P Head of service—paid employment outside the service

The head of service must not, except in accordance with the written approval of the Chief Minister, accept or engage in any paid employment other than in relation to the exercise of the head of service's functions in the service.

23Q Head of service—engagement or transfer not affected by defect etc

- (1) An engagement or transfer, or anything done in relation to the engagement or transfer, is not invalid only because of a defect or irregularity in or in relation to the engagement or transfer.
- (2) In this section:

engagement means an engagement of the head of service under section 23C (Head of service—engagement) or section 23J (Head of service—temporary contract).

transfer means a transfer or assignment of the head of service under section 23N (Head of service—transfer or assignment).

**14 Powers of chief executive officers of certain territory instrumentalities
Section 24 (2) and (3)**

substitute

- (2) The chief executive officer of the territory instrumentality has the following powers in relation to the instrumentality staff as if the staff were employed in an administrative unit:
- (a) the powers of the head of service relating to the appointment, engagement and employment of people;
 - (b) the powers of a director-general.

**15 Powers of certain statutory office-holders
Section 25 (2) to (4)**

substitute

- (2) Subsection (3) applies if—
- (a) the Chief Minister makes a declaration under subsection (4); or
 - (b) this Act or another territory law gives (however expressed) the powers mentioned in subsection (3) to the statutory office holder.

Examples—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

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) The statutory office-holder has the following powers in relation to the office staff as if the staff were employed in an administrative unit:
 - (a) the powers of the head of service relating to the appointment, engagement and employment of people;
 - (b) the powers of a director-general.
- (4) The Chief Minister may declare that the statutory office-holder has the powers mentioned in subsection (3) in relation to the office staff.

**16 Powers relating to certain Calvary Health Care staff
Section 26 (2) and (3)**

substitute

- (2) The chief executive officer, Calvary has the following powers in relation to the people employed in Calvary public health care as if the people were employed in an administrative unit:
 - (a) powers of the head of service relating to the appointment, engagement and employment of people;
 - (b) powers of a director-general.

17 Sections 27, 28 and 28AA

substitute

27 Office of director-general

- (1) An office of director-general for an administrative unit is established when the administrative unit is established.
- (2) An office of director-general for an administrative unit ceases to exist if the administrative unit ceases to exist.

28 Directors-general—engagement

- (1) The head of service may engage a person to exercise the functions of an office of director-general.

Note The head of service may also be engaged as the director-general (the **CM director-general**) of the administrative unit administered by the Chief Minister (see s 23D (1)). The engagement of the head of service as the CM director-general is governed by the contract made under section 23C (see s 23D (2)).

- (2) The person must be engaged under a contract with the Territory.
- (3) The contract must—
 - (a) be in writing; and
 - (b) be signed by the person and the head of service, on behalf of the Territory; and
 - (c) state the period during which the person is engaged as a director-general.
- (4) The period mentioned in subsection (3) (c) must not be longer than 5 years.
- (5) Subject to this Act, the employment of a director-general under this section is governed by the contract under which the director-general is engaged.

28AA Directors-general—functions

- (1) A director-general has the following functions in relation to the administrative unit under the director-general's control:
 - (a) under the relevant Minister, management of the administration and business of the unit;
 - (b) provision of advice and reports to the relevant Minister on all matters relating to the unit;

- (c) implementation, at the direction of the head of service of—
 - (i) whole-of-government strategies; and
 - (ii) responses to critical or potentially critical issues;
 - (d) any other function given to the director-general—
 - (i) by the head of service; or
 - (ii) under this Act or another territory law.
- (2) A director-general must, in exercising the director-general's functions, take into account—
- (a) whole-of-government strategies and issues; and
 - (b) how the exercise of those functions will impact on the service as a whole.

28AB Directors-general—contract variation

- (1) A contract under section 28 may be varied at any time by a written agreement signed by the director-general and the head of service, on behalf of the Territory.

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 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 is longer than 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 is longer than 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.

18 Section 28A heading

substitute

28A Directors-general—early termination of contract

19 Section 28B heading

substitute

28B Directors-general—effect of contracts on responsibilities of Ministers

20 Section 28C heading

substitute

28C Directors-general—application of merit principle to re-engagements

21 Section 28D heading

substitute

28D Directors-general—notice or payment if not re-engaged

**22 Chief executives—responsibilities
Section 29**

omit

**23 Chief executives—temporary contracts
Section 30 (3)**

substitute

- (3) The contract must—
 - (a) be in writing; and
 - (b) be signed by the person and the head of service, on behalf of the Territory; and
 - (c) state the period during which the person is engaged to act as a director-general.

**24 Chief executives—variation of temporary contracts
Section 30A (1)**

substitute

- (1) A contract under section 30 may be varied at any time by a written agreement signed by the director-general and the head of service, on behalf of the Territory.

25 Section 31

substitute

31 Head of service must consult with Ministers about engagements etc

- (1) This section applies to the engagement, or proposed engagement, of a person to exercise the functions of an office of director-general.
- (2) The head of service must have regard to the advice of the Chief Minister and the Minister responsible for the administrative unit about the proposed engagement before entering into a contract with the person, or any variation of the contract.

(3) In this section:

engagement means an engagement under section 28 (Directors-general—engagement) or section 30 (Directors-general—temporary contracts).

26 Section 31A heading

substitute

31A Directors-general—presentation of contracts and variations of contracts

27 Section 32 heading

substitute

32 Directors-general—engagements not affected by defects etc

28 Section 33 heading

substitute

33 Directors-general—employment to perform duties of multiple positions

29 Section 33B heading

substitute

33B Directors-general—transfers or assignments under s 33A not affected by defects etc

30 Section 34 heading

substitute

34 Directors-general—notification of engagement etc

31 Section 35 heading

substitute

35 Directors-general—paid employment outside the service

32 Section 36

substitute

36 Meaning of *public sector officer*—div 3.5

In this division:

public sector officer means—

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

36A Delegation by head of service

The head of service may—

- (a) delegate to a public sector officer the head of service's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer the functions delegated to the head of service under a law other than this Act.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

36B Delegation by commissioner

The commissioner may—

- (a) delegate to a public sector officer the commissioner's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer the functions delegated to the commissioner under a law other than this Act.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

36C Delegation by directors-general

A director-general may—

- (a) delegate to a public sector officer the director-general's functions under this Act or any other law; or
- (b) subdelegate to a public sector officer—
 - (i) the functions in relation to the appointment or employment of people delegated to the director-general by the head of service under this Act; and
 - (ii) the functions under the management standards delegated to the director-general by the head of service under this Act; and

- (iii) the functions delegated to the director-general under a law other than this Act.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

36D Delegations by head of service, commissioner and directors-general—generally

- (1) A delegator must not delegate a function under this division to a non-service delegate unless the delegator considers that the tasks to be undertaken by the non-service delegate require the exercise of that function.
- (2) A delegator who has delegated or subdelegated a function under this division may give directions to the delegate or subdelegate in relation to the exercise of the function.
- (3) Subsection (4) applies if the delegation or subdelegation of a function under this division is expressed to be given to people who occupy or exercise the functions of an office of a kind described in the delegation or subdelegation.
- (4) The delegation or subdelegation extends to any person who occupies, or exercises the functions of, an office of a kind described in the delegation or subdelegation, even if the office does not come into existence until after the delegation or subdelegation is given.
- (5) In this section:
delegator means—
 - (a) the commissioner; or
 - (b) the head of service; or
 - (c) a director-general.

non-service delegate means a person exercising a function on behalf of the Territory otherwise than as—

- (a) an officer or employee; or
- (b) a statutory office-holder.

**33 Equal employment opportunity programs
Section 40 (1)**

omit everything before paragraph (a), substitute

- (1) The commissioner must—

34 Section 40 (1) (c) and (2)

after

Chief Minister

insert

and the head of service

**35 Access and equity programs
Section 41 (1)**

omit everything before paragraph (a), substitute

- (1) The commissioner must—

36 Section 41 (1) (c) and (2)

after

Chief Minister

insert

and the head of service

**37 Industrial democracy programs
Section 42 (1)**

omit everything before paragraph (a), substitute

- (1) The commissioner must—

38 Section 42 (1) (c) and (2)

after

Chief Minister

insert

and the head of service

**39 Development of programs in autonomous
instrumentalities
Section 43 (c)**

substitute

- (c) the reference to Chief Minister and the head of service is taken to be a reference to the Chief Minister, the relevant Minister and the head of service.

40 Section 54

substitute

54 Legislative Assembly—staff

- (1) The staff required to assist the clerk in the exercise of the clerk's functions must be employed under this Act.
- (2) The clerk has the powers mentioned in section 25 (3) in relation to the clerk's staff.

**41 Creation and abolition of offices
 Section 54A (2)**

omit

42 Division 4.1A heading

substitute

**Division 4.1A Creation and abolition of
 non-executive offices**

43 Section 54B

substitute

54B Meaning of *office*—div 4.1A

In this division:

office means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

**44 Creation and abolition of offices
 Section 55 (1)**

substitute

- (1) For the purpose of enabling an administrative unit to exercise its functions, the head of service may in writing—
 - (a) create an office in an administrative unit; or
 - (b) abolish an office in an administrative unit.

**45 Reclassification of offices
Sections 58 (1) and (2)**

substitute

- (1) Subject to the management standards, the head of service may, in writing, alter the classification of an office in an administrative unit to the classification stated in the instrument.
- (2) The stated classification must be an approved classification under section 56 (1).

**46 Reclassification of offices in autonomous
instrumentalities
Section 59**

omit

47 Section 59A

substitute

59A Meaning of *office*—div 4.2

In this division:

office means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

**48 Hours of attendance of certain unattached officers
Section 62 (2) (a)**

omit

section 192 or section 193

substitute

section 118A

**49 Application of merit principle
Section 65 (1) (b) and (c)**

substitute

(b) an engagement under section 23C (Head of service—engagement);

(c) an engagement under section 28 (Directors-general—engagement) or section 72 (Executives—engagement);

(ca) an engagement by a contract under section 23J (Head of service—temporary contract), section 30 (Directors-general—temporary contracts) or section 76 (Executives—temporary contracts), if the period of engagement is more than 9 months;

50 Section 65 (2)

omit everything before paragraph (a), substitute

(2) The head of service in exercising the function must ensure that—

51 Section 66A

substitute

66A Application—div 5.3

This division does not apply in relation to the engagement of the head of service, a director-general or an executive.

**52 Employment in the service
Sections 67 (a) and (b)**

substitute

- (a) by engagement under section 23C or section 23J to exercise the functions of the office of the head of service; or
- (b) by engagement under section 28 or section 30 to exercise the functions of an office of director-general; or
- (ba) by engagement under section 72 or section 76 to exercise the functions of an executive office; or

**53 Appointments generally
Section 68 (2) (c)**

omit

the commissioner, or the chief executive making the appointment, as the case may be,

substitute

the head of service

**54 Classification of unattached officers
Section 69**

omit

chief executive making the appointment

substitute

the head of service

**55 Appointment on probation
Section 70 (6)**

substitute

- (6) The head of service must not, without consulting the commissioner, appoint an officer, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

**56 Appointment on probation—prescribed training office
Section 71 (6)**

substitute

- (6) The head of service must not, without consulting the commissioner, appoint an officer, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

**57 Appointment on probation—teachers
Section 71A (6)**

substitute

- (6) The head of service must not, without consulting the commissioner, appoint an officer as a teacher, whose appointment has been ended under this section, within 12 months after the day the appointment ends.

**58 Appointment without probation
Section 71C (1)**

omit everything before paragraph (a), substitute

- (1) The head of service may appoint a person to an office without probation if satisfied that—

59 Section 71C (2)

omit everything before paragraph (a), substitute

- (1) The head of service must not appoint a person to an office without probation unless satisfied that—

**60 Notice or payment if executive not re-engaged
Section 75A (1)**

omit

relevant chief executive for the person

substitute

head of service

61 Section 75A (4) (c), note

omit

without the commissioner's written consent

substitute

without consulting the commissioner

62 Section 78

substitute

78 Executives—negotiation and execution of contracts

- (1) The following contracts and contract variations must be signed for the Territory by the head of service:
- (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);

(c) a contract under section 72 or section 76 to engage a person to exercise the functions of the position of chief executive officer, Calvary;

(d) a variation of a contract mentioned in paragraph (c) under section 72A or section 76A.

(2) In this section:

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

**63 Executives—transfer or assignment
Section 80A (2) (a)**

substitute

(a) consulted—

(i) the relevant agency manager that would gain the person;
and

(ii) the relevant agency manager that would release the person; and

64 New section 80A (6)

insert

(6) In this section:

relevant agency manager—see section 21 (8) (Review of government agencies or functions).

65 Definitions—div 5.5
Section 82, definition of *office*

substitute

office means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

66 Section 83

substitute

83 Promotion to vacant office

- (1) The head of service may promote an officer to fill a vacant office if the prescribed requirements are met.
- (2) If an officer is promoted under this division the head of service must give written notice of the promotion to the officer.

67 Promotion on advice of joint selection committee
Section 87 (1)

omit everything before paragraph (a), substitute

- (1) The head of service may promote an officer to fill a vacant office if—

68 **Definitions—div 5.6**
Section 91, definition of *office*

substitute

office means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

69 **Transfer to vacant office**
Section 92 (2)

substitute

- (2) The head of service may transfer an officer from within an administrative unit to fill a vacant office in the unit if—
 - (a) the head of service consults with the director-general of the administrative unit; and
 - (b) the prescribed requirements are met.

70 **Simultaneous transfer within administrative unit**
Section 93 (2)

substitute

- (2) The head of service may transfer the officers if—
 - (a) the head of service consults with the director-general of the administrative unit; and
 - (b) the prescribed requirements are met.

71 Section 94

substitute

94 Transfer between administrative units

The head of service may transfer an officer in an administrative unit to a vacant office in another administrative unit, if the head of service consults—

- (a) the director-general of the administrative unit that would gain the officer; and
- (b) the director-general of the administrative unit that would release the officer.

72 Section 95

omit everything before subsection (3), substitute

95 Management initiated transfer—within administrative unit

- (1) This section applies if the head of service is satisfied on reasonable grounds that the efficient administration of an administrative unit requires the transfer of an officer from one part of the unit to another.
- (2) The head of service may transfer an officer to fill a vacant office in the administrative unit if—
 - (a) the head of service consults the director-general of the unit; and
 - (b) gives the officer an opportunity to state the officer's views in relation to the transfer; and
 - (c) considers the views of the officer.

**73 Management initiated transfer—between administrative units
Section 96 (2)**

omit everything before paragraph (b), substitute

- (2) The head of service may transfer the officer from one administrative unit to another if the head of service—
- (a) consults—
 - (i) the officer; and
 - (ii) the director-general of the administrative unit that would gain the officer; and
 - (iii) the director-general of the administrative unit that would release the officer; and

**74 Transfer on advice of joint selection committee
Section 96B (1)**

omit everything before paragraph (a), substitute

- (1) The head of service may transfer an officer to fill a vacant office in an administrative unit if—

75 New section 96B (2A)

insert

- (2A) The head of service must consult the director-general of the administrative unit about the recommendation.

**76 Transfers and promotions to specified offices may be made in accordance with order of passing examinations
Section 97 (4)**

omit

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

substitute

then, if the head of service—

**77 Promotion of officers who complete courses of training for special positions
Section 98 (4)**

omit everything before paragraph (a), substitute

- (4) Subject to subsection (5), if there is a vacancy in an office that is, in relation to a training office, a relevant higher office, the head of service must—

**78 Temporary transfer
Section 100 (1)**

substitute

- (1) The head of service may temporarily transfer an officer from an administrative unit to exercise the whole, or part, of the functions of another office in the unit if—
- (a) the head of service consults the director-general of the unit; and
 - (b) the prescribed requirements are met.

79 Sections 100 (6) and (7)

substitute

- (6) The head of service may temporarily transfer an officer from an administrative unit to exercise the whole, or part, of the functions of an office in another unit if the prescribed requirements are met.

**80 Lapsing or discontinuing of appeal
Section 103 (2)**

substitute

- (2) An appeal against a temporary transfer under section 102 must be discontinued if the appellant gives written notice that the appeal has been withdrawn to the person or body that considers the appeal under the temporary transfer appeal procedure mentioned in section 102 (2).

81 Section 105

substitute

105 Meaning of *office*—div 5.7

In this division:

office means an office other than—

- (a) the office of head of service; or
- (b) an office of director-general; or
- (c) an executive office.

**82 Power to engage temporary employee
Section 106 (1)**

omit everything before paragraph (a), substitute

- (1) The head of service may engage a person for temporary employment in an administrative unit if satisfied that—

**83 Temporary employment—fixed term less than 12 months
Section 107 (1)**

substitute

- (1) The head of service may engage a person in temporary employment to exercise functions in an administrative unit for a fixed term of less than 12 months.

**84 Temporary employment—fixed term not more than
5 years
Section 108 (1)**

substitute

- (1) The head of service may engage a person in temporary employment to exercise functions in an administrative unit for a fixed term of not longer than 5 years.

**85 Termination of temporary employment
Section 112 (2)**

omit everything before paragraph (a), substitute

- (2) The head of service may terminate the employment of—

**86 Engagement of certain former officers as employees, and contracts with certain former officers, prohibited
Section 114**

omit everything before paragraph (a), substitute

The head of service must not, without consulting with the commissioner—

87 Section 114 (c)

omit

**88 Reappointment of retired officers
Sections 117 (1) and (2)**

substitute

- (1) Subject to this section, the head of service may reappoint to an office in an administrative unit a person who has ceased to be an officer.
- (2) Subsection (2A) applies to a person if—
 - (a) the person has—
 - (i) 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
 - (ii) 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

Note Section 144 provides for the date retirement under section 143 takes effect.

- (b) the person received a payment from the Territory or a territory instrumentality for being retired.

- (2A) The head of service must not, without consulting the commissioner, reappoint the person to the service.

89 Section 117 (5)

omit

part 9

substitute

section 122

**90 Reappointment of unsuccessful election candidates
Section 118 (3)**

omit

equivalent office in the administrative unit

substitute

equivalent office in the same administrative unit

**91 Quashing etc of conviction
Section 118A (5)**

omit

**92 Section 118A (7), definition of *appropriate office*,
paragraph (b)**

omit

relevant chief executive or commissioner

substitute

head of service

**93 Unattached officers
Section 119 (1)**

substitute

- (1) The head of service may, with the written consent of an officer who holds an office in an administrative unit, declare in writing that the officer will become an unattached officer on a day stated in the declaration.
- (1A) If the head of service makes a declaration under subsection (1), the office held by the officer becomes vacant on the day stated in the declaration.

**94 Definitions—pt 6
Section 139, definition of *officer*, paragraph (b)**

substitute

- (b) the head of service; or
- (ba) a director-general; or

95 Section 140

substitute

140 Power to reduce officer's classification

The power given by this part to the head of service to reduce an officer's classification is a power—

- (a) to assign the officer to an office of a lower classification in an administrative unit; or
- (b) to declare the officer to be an unattached officer of a lower classification; or
- (c) if the officer is an unattached officer—direct that the officer be included in an administrative unit.

**96 Redeploy or retire officer from service
Section 143 (1)**

omit

relevant chief executive for the office

substitute

head of service

97 Section 143 (2)

substitute

- (2) The head of service must take reasonable steps to identify a vacant position in an administrative unit that the officer is capable of performing and qualified to fill.

**98 Forfeiture of office
Section 221 (5)**

omit

**99 Reappointment of officers taken to have retired under
s 221
Section 222 (5)**

omit

**100 Definitions—pt 11
Section 223, definition of *officer***

omit

a chief executive

substitute

the head of service, a director-general

101 Section 241

substitute

241 Returns and information—generally

- (1) A person must give any returns or other information to the head of service required for the purposes of the exercise of the head of service's functions under this Act.
- (2) A person must give any returns or other information to the commissioner required for the purposes of the exercise of the commissioner's functions under this Act.

**102 Engagement of certain former officers and employees prohibited
Section 248A (2)**

omit

shall not, without the written consent of the commissioner,

substitute

must not, without consulting the commissioner,

**103 Engagement of certain former chief executives and executives prohibited
Section 248B (1) (a)**

omit

(Notice or payment if chief executive not re-engaged)

substitute

(Directors-general—notice or payment if not re-engaged)

104 Section 248B (2)

omit

without the commissioner's written consent

substitute

without consulting the commissioner

105 New section 248C

insert

248C Engagement of certain former heads of service prohibited

- (1) This section applies to a person if the person was engaged by a contract under section 23C (Head of service—engagement) and has received, or is entitled to, an amount mentioned in section 23I (2) (Head of service—notice or payment if not re-engaged) in relation to the contract.
- (2) The Territory must not, without the consulting the commissioner, employ the person within the 3-month period after the day the contract ends.

106 Dictionary, definition of *administering chief executive*

omit

107 Dictionary, definition of *appeal committee*

omit

108 Dictionary, definition of *authorised doctor*

omit everything before paragraph (a), substitute

authorised doctor means a doctor authorised by the head of service to—

109 Dictionary, definitions of *authorised officer, chief executive and direction*

omit

110 Dictionary, new definition of *director-general*

insert

director-general means a person employed to exercise the functions of an office of director-general under—

- (a) section 28 (Directors-general—engagement); or
- (b) section 30 (Directors-general—temporary contracts).

111 Dictionary, definition of *eligible public employment*

omit

112 Dictionary, definition of *employee*

substitute

employee means—

- (a) the head of service; or
- (b) a director-general; or
- (c) an executive; or
- (d) a person engaged under division 5.7 (Temporary employment);
or
- (e) a person who is an employee because of the *Public Sector Management (Consequential and Transitional Provisions) Act 1994*.

113 Dictionary, new definition of *head of service*

insert

head of service means the person employed to exercise the functions of the office of head of service under—

- (a) section 23C (Head of service—engagement); or
- (b) section 23J (Head of service—temporary contracts).

114 Dictionary, definition of *notified*

omit

115 Dictionary, definition of *office*, paragraph (a)

omit

(Creation and abolition of offices other than offices of chief executives and executive offices)

substitute

(Creation and abolition of non-executive offices)

116 Dictionary, new definitions

insert

office of head of service means an office created under section 23A.

public sector officer, for division 3.5 (Powers of delegation)—see section 36.

117 Dictionary, definitions of *relevant chief executive and review*

omit

118 Dictionary, definition of *service*

substitute

service means the ACT Public Service established under section 12 (1).

119 Dictionary, definition of *specified*

omit

120 Dictionary, definition of *unattached officer*

substitute

unattached officer means an officer who does not hold an office.

121 Further amendments, mentions of a *chief executive*

omit

a chief executive

substitute

the head of service

in

- section 98 (9)
- section 101 (2)
- section 109 (2)
- section 117 (3)

122 Further amendments, mentions of *administering chief executive*

omit

administering chief executive

substitute

head of service

in

- section 54A (1), (3) and (4)
- section 75 (b)
- section 81

123 Further amendments, mentions of *chief executive*

omit

chief executive

substitute

director-general

in

- section 28A (5)
- section 28C
- section 28D (1)
- section 30 (1) (a)
- section 32
- section 33
- section 33A (1)
- section 35
- section 248A (1) (a)

124 Further amendments, mentions of *chief executive*

omit

chief executive

substitute

head of service

in

- division 3.3 heading
- section 86 (4) (b)
- section 87 (2) and (3)
- section 96B (2), (3) and (4)
- section 101 (2) (2nd mention)
- section 108 (2)
- section 112 (4)
- section 118A (4)
- section 143 (3) and (4) (a)
- section 176 (3)
- section 221
- section 222 (2), (3) and (4)

125 Further amendment, mention of *chief executive of an administrative unit*

omit

chief executive of an administrative unit

substitute

head of service

in

- section 60 (1)

126 Further amendments, mentions of *chief executive of the administrative unit*

omit

chief executive of the administrative unit

substitute

head of service

in

- section 90 (1)
- section 96D (1)
- section 118 (1) and (3)

127 Further amendments, mentions of *chief executives*

omit

chief executives

substitute

directors-general

in

- division 3.4 heading
- section 28D (1)
- section 30 heading
- section 30A heading
- section 33A
- section 34
- section 248B

128 Further amendment, mentions of *chief executive's*

omit

chief executive's

substitute

director-general's

in

- section 28A (5) (a) (i)

129 Further amendments, mentions of *Chief Minister*

omit

Chief Minister

substitute

head of service

in

- section 28C (b)
- section 28D
- section 33A (1) and (2)
- sections 34 and 35

130 Further amendments, mentions of *commissioner*

omit

commissioner

substitute

head of service

in

- sections 15 (2) and 16 (2)
- section 56 (1) (b) and (6)
- section 58 (4)
- section 64
- section 66
- section 96 (1)
- section 96A
- section 97 (2)
- section 98 (1) (b) and (8)
- section 111 (1)
- section 119 (2)
- sections 120 and 121 (1)
- section 139, definition of *excess officer*
- section 174 (4) (b), (5) and (6)
- section 246
- section 249 (3) (b)

131 Further amendments, mentions of *relevant chief executive*

omit

relevant chief executive

substitute

head of service

in

- section 62 (3) and (4)
- section 65 (6), definition of *identified position*
- section 68 (1)
- section 70 (3) and (4)
- section 71 (3) and (4)
- section 71A (3) and (4)
- section 71B (1) (b), (4) and (5)
- section 75A (3) and (4)
- section 80A (1) and (2)
- section 85 (1)
- section 86 (4)
- section 92 (3)
- section 93 (1) (b)
- section 100 (5)
- section 104 (2) (c) and (3)
- section 107 (2) (b)
- section 108 (3) (b)
- section 112 (3)
- section 118A (2) and (3)
- section 122 (2)
- section 143 (4), (7) and (8)
- section 144 (1)

- section 146 (1)
- sections 171 (1) and 172 (2)
- section 176 (1)
- section 221 (1)
- section 222 (1)
- section 244 (1)
- section 245 (1)
- section 249 (2) (b)

132 Further amendment, mention of *relevant chief executive's*

omit

relevant chief executive's

substitute

head of service's

in

- section 143 (8) (a)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2011.

2 Notification

Notified under the Legislation Act on 30 June 2011.

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 (One ACT Public Service) Amendment Bill 2011, which was passed by the Legislative Assembly on 23 June 2011.

Clerk of the Legislative Assembly

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