

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**PUBLIC SECTOR MANAGEMENT (CONSEQUENTIAL AND
TRANSITIONAL AMENDMENTS) BILL 1994**

EXPLANATORY MEMORANDUM

Circulated by authority of
Rosemary Follett, Chief Minister

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Outline

The *Public Sector Management Act 1994* ("the PSMA") will establish the Australian Capital Territory Government Service to facilitate the management of the public sector of the Territory. Under the PSMA there will be common employment arrangements for the vast majority of employees in the public sector.

The Public Sector Management (Consequential Amendments) Bill 1994 ("the Bill") makes consequential amendments to various Acts of the Territory consistent with the new arrangements under the PSMA. For example, departmental heads will be referred to in the PSMA as "Chief Executives" rather than as "administrative heads" and all references to "administrative heads" in the various Acts are replaced and amended accordingly by this Bill. Similarly, references to the "Public Service" are no longer appropriate and have been replaced with references to the "Government Service". The Bill also provides for the transitional arrangements under which most existing public sector employees will become members of the new ACT Government Service (ACTGS).

Financial Implications

There are no financial implications of any substance arising from the Bill.

Short title

Clause 1 provides the short title of the Bill.

Commencement

Clause 2 provides for commencement. Clauses 1 and 2 commence on notification of the Act in the Gazette. The remaining provisions commence on the day or days fixed by Gazette notice.

Application of Part II to prescribed entities

Clause 3 allows for the Part II, which contains transitional arrangements of general application, to be commenced in relation to different prescribed entities on the day or days fixed by Gazette notice.

Interpretation

Clause 4 provides for interpretation. The term "prescribed entity" is of particular interest and is used to identify the various Territory employing authorities whose staff will be joining the new ACTGS. Clause 4(2) adopts definitions from the Public Sector Management Bill.

PART II - TRANSITIONAL ARRANGEMENTS FOR OFFICERS AND EMPLOYEES

DIVISION 1 - GENERAL PROVISIONS

Transitional staff arrangements to cease.

Clause 5 is the formal mechanism for ceasing the Commonwealth provisions under which members of the Australian Public Service (APS) ("the transitional staff") have been made available to the Territory. The Commonwealth will be introducing the Australian Capital Territory Government Service (Consequential Provisions) Bill 1994 into the Federal Parliament to enact complementary provisions on the ceasing of the transitional arrangements. That Bill will also provide for the continuation of mobility between the two public services and for other continuing links with Commonwealth services such as workers' compensation (Comcare) and superannuation. Among other things the Commonwealth Bill will amend the successor of business provisions in the *Industrial Relations Act 1988* (Commonwealth) to make it clear that the Territory is the successor to the Commonwealth as employer of transitional staff.

Officers and employees of the Australian Public Service

Clause 6 provides for the transfer of the transitional staff into the new Service.

Under clause 6(2) transitional staff who are officers become officers of the ACTGS at their current classification.

Clause 6(3) continues the probation of any such officer.

Clause 6(4) transfers transitional staff who were employees, other than "continuing employees" into the ACTGS. These persons are short term or fixed term staff.

Clause 6(5) transfers "continuing employees", who are mostly physical grades staff, but also include some long term temporary office-based staff, into the new Service, as officers. This implements the Government's commitment that all permanent employees should be treated equally, whether originally appointed as officers or not.

Officers and employees of prescribed entities

Clause 7 provides for the movement into the Service of persons who were not members of the Australian Public Service, but were employed under Territory legislation, such as the *Teaching Service Act 1972*. Where these staff are officers or permanent employees under current legislation, they will become officers of the ACTGS. Where they are temporary employees, their temporary employment is continued in the new Service.

However, under clause 9(4), the temporary employment of such a person may only be renewed or extended under the provisions governing the new Service.

Creation and allocation of offices

Clause 8 has the effect of creating offices for members of the transitional staff transferred into the new Service as officers. Each office created will correspond to an

office that existed under the previous employment legislation in the agency in which the person currently works.

Clause 8(3) then places the officers in the offices so created.

Clause 8(4) allows the Commissioner to allocate offices to persons transferred into the new Service as officers, where these persons did not previously hold an office. Pending such an allocation, clause 8(5) places an unattached officer in their current agency as an unattached officer.

Terms and conditions of officers and employees

Clause 9 deals with the terms and conditions of persons who become officers and employees of the ACTGS under clause 6 and 7. For those who become officers, their terms and conditions are provided for in the Public Sector Act and Standards. Their previous terms and conditions apply to the extent not covered by that legislation. For employees (whose employment is, by definition, temporary) their previous terms and conditions apply for the balance of their term of employment. Under clause 9 (4) any extension or renewal of employment must be under the Public Sector Act or Standards.

Accrued rights preserved

Clause 10 preserves the accrued rights of persons who become members of the ACTGS under clauses 6 or 7.

Recognition of previous service

Clause 11 recognises the original dates of employment and appointment of persons brought into the new Service, where that employment has been continuous. It also recognises previous employment where that employment was recognised under existing provisions. This ensures that the person's length of service and entitlements related to length of service (eg long service leave) are recognised.

Certain employment matters to be continued

Clause 12 continues in effect anything done or pending under previously applicable employment laws in relation to persons who become members of the ACTGS under clauses 6 or 7.

DIVISION 2 - SPECIFIC PROVISIONS

Administrative Heads

Clause 13 provides for persons who are currently administrative heads (ie department heads) to be taken to be Chief Executives (or acting Chief Executives) in the new Service.

Under clause 13(3) such appointments are taken to be from their original date and under the terms and conditions applying in the new Service. Where there is no such provision made, previous terms and conditions apply.

Clauses 13(4) and (5) preserve accrued rights and recognise previous service.

Clerk of the Legislative Assembly

Clause 14 appoints the Clerk of the Legislative Assembly immediately before the commencement of the new Service to the new office of Clerk of the Legislative Assembly under the Public Sector Act.

Clause 14(2) preserves the Clerk's accrued rights and recognises prior service as if he or she were an officer.

Officers under Part IV of the Public Service Act

Clause 15 preserves the rights of certain members of the transitional staff (ie members of the APS) who are joining the new Service. These are persons who formerly worked in a public service position associated with a Territory function but who are currently in other Commonwealth employment and who thereby have a right of return to the APS under Part IV of the *Public Service Act 1922* (Cth). An example is a person who left an ACT Department to work in the CSIRO. The Part IV rights of persons whose last office was not associated with a Territory function will continue under Commonwealth law.

Milk Authority Act 1971

Clause 16 provides for the current Secretary and Assistant Secretary of the Milk Authority to be transferred to offices in the new Service corresponding to their current offices under the *Milk Authority Act*. This is consequent upon the provisions in the schedule relating to the Milk Authority, under which these previously statutory offices will become public service offices.

Vocational Training Act 1989

Clause 17 alters the title of Chief Executive of the Vocational Training Authority to Chief Executive Officer and makes it clear that the current Chief Executive continues in the new office. This change has been made in order to avoid any confusion with the term Chief Executive as defined in the Public Sector Management Bill.

DIVISION 3 - MISCELLANEOUS**Power of Commissioner to appoint or employ staff**

Notwithstanding other more general provisions, clause 18 enables the Commissioner to bring existing employees into the new Service by instrument. This clause will be used for employees not otherwise provided for, or for employees whose particular circumstances are more appropriately addressed by a specific instrument of appointment. It also enables employment to be continued under this Act, rather than under the PSM Act, where the terms and conditions of the person's employment are such that employment under the PSMA would not be appropriate. An example is a continuing employee who, if appointed as an officer, would be employed for a number of hours less than the award minimum.

Clause 18(3) will allow such appointments to be made retrospectively (during the first twelve months of the new Service), in case any employees are identified after the commencement of the new Service and they have not otherwise been transferred into the new Service.

Clauses 18(4) and (5) deal with the terms and conditions that apply after appointment, in a similar fashion to clause 9.

Under clauses 18(9) and (10), a sunset clause of 12 months applies and the Commissioner must include in the annual report instances of the use of the employment power with retrospective effect. This ensures accountability for the use of this broad power.

Transfer of personnel files

Clause 19 is an adjunct to the inter-Service mobility provisions of the PSMA and provides formal authority for the exchange of personnel files with APS agencies. The inclusion of this provision will ensure compliance with the *Privacy Act 1988 (Cth)* in its application to the Territory.

Regulations

Clause 20 provides for the making of regulations to amend Acts consequent upon the establishment of the ACTGS. This provision is required because of the large scale of amendment, including amendment of a technical or minor nature, to the statute book. Regulations would not be made for amendments of this type. The clause provides for retrospectivity to commencement day to ensure that any errors are corrected without leaving a gap during which the law was not as it should have been. A 12 month sunset clause is included because of the broad nature of this power.

PART III - CONSEQUENTIAL PROVISIONS

Repeal of Acts

Clause 21 repeals Acts no longer required as a result of the transfer of the staff to whom they relate into the new Service.

Amendment of Acts

Clause 22 amends the Acts in the Schedule consequent upon the establishment of the new Service.

Amendment of Regulations

Clause 23 amends the Regulations in the Schedule consequent upon the establishment of the new Service. Schedule 2 contains amendments to terminology in various regulations as a consequence of the new public sector management arrangements.

SCHEDULE 1

AMENDMENT OF ACTS

Details of the amendments to the Acts listed in the Schedule follow.

Administration Act 1989

Section 3 is repealed as it defines "administrative head" for the purposes of the Act. All references in this Act to "an administrative head" have been removed and hence section 3 is no longer required.

Section 5 is amended to remove the power of an administrative head to delegate powers conferred on her or him under an Act or subordinate law. This power is now contained in section 36 of the PSMA. The power of subdelegation in subsection 5(2) is omitted completely. There is no subdelegation power in the PSMA (this is consistent with the general rule in paragraph 29B(b) of the *Interpretation Act 1967* which states that where an Act contains the power to delegate a power or function then the power does not extend to the delegation of the power to delegate - that is, *delegatus non potest delegare*).

Sections 6 and 7 are omitted as a consequence of the inclusion in the *Interpretation Act 1967* of equivalent provisions by this Bill. These sections are concerned with the effect on delegations of changes in the occupancy of an office or changes in administration which are matters more appropriately dealt with as general interpretative provisions as they have effect across a broad range of Acts.

Administrative Appeals Tribunal Act 1989

The definition of "Department" in subsection 3(1) is omitted as it is no longer required.

Subsections 57(3) and (4) are amended to reflect the passage of the Public Sector Management Bill and at the same time to enable the continuation of present staffing arrangements under which a Deputy Registrar of the Commonwealth's Administrative Appeals Tribunal is also the Registrar of the Territory's Tribunal.

Subsections 60(1) and (2) are amended to replace references to "Head of Administration" with references to "Chief Executive".

Administrative Decisions (Judicial Review) Act 1989

The term "public servant" in the definition of "duty" in subsection 3(1) is replaced by the term "public employee".

Section 13 of the Judicial Review Act provides that persons who may apply to the Supreme Court for the review of a decision under the Act may request a statement of reasons for the decision. That section does not apply to all decisions, and does not apply to decisions to which Schedule 2 applies. Schedule 2 is amended by including, in the Schedule, decisions relating to personnel management, including the making or terminating of appointments and to industrial disputes, and reflects, but is not identical with, provisions contained in Schedule 2 of the Commonwealth's *Administrative Decisions (Judicial Review) Act 1977*. The exclusion under the Commonwealth Act of decisions relating to the engagement of consultants has not been included in the Schedule as its inclusion would be anomalous.

Adoption Act 1993

The reference in subsection 4(1) to "Public Service" has been removed in the definition of "relevant administrative unit". Amendments made by this Bill insert a definition of the term "administrative unit" into the *Interpretation Act 1967* and it is therefore not

necessary to qualify the definition in subsection 4(1) of the *Adoption Act 1993* any further.

Agents Act 1968

Sections 48 and 49 of this Act are amended by omitting the references to "administrative head" and substituting "Chief Executive". Amendments made by this Bill insert a definition of "Chief Executive" into section 14 of the *Interpretation Act 1967* and hence this term will have the same meaning in all Territory legislation.

Annual Holidays Act 1973

The definition of "prescribed officer" in subsection 2(1) has been omitted as this term is only used in section 7 of the Act and does not need to be defined for the purposes of the rest of the Act.

Subsection 7(4) provides for the appointment of a "prescribed officer". This subsection is amended to omit the reference to the *Public Service Act 1922* of the Commonwealth so that the Minister will simply appoint a "public servant" as a prescribed officer. "Public servant" is defined in section 14 of the *Interpretation Act 1967* (as amended by this Bill) as a person employed in the Government Service.

Audit Act 1989

The definition of "administrative unit" in section 3 is now defined so that it includes a prescribed authority. The inclusion should be read in conjunction with the new general definition of "administrative unit" in the *Interpretation Act 1967*.

References to the "Head of Administration" and "administrative head" have been omitted in sections 37, 38, 43, 57, 71, 116, 117, 118, 119, 121, 124 and 126 and replaced with "Chief Executive".

Subsection 5(1) provides that the Head of Administration in control of an administrative unit is responsible for making arrangements for implementing the Act, the regulations and any directions in relation to that unit. The reference to "Head of Administration" is replaced with "Chief Executive".

Subsection 5(2) provides that the reference to "Head of Administration" in subsection 5(1) includes a reference to an Associate Head of Administration. Subsection 5(2) is repealed as it is no longer required under the new arrangements. Subsection 71(3) is repealed for the same reason.

Section 15 of the Act is repealed and a new section substituted to bring the staffing arrangements for the Auditor-General in line with the PSMA.

Section 21 is amended to remove the reference to officers or employees under the *Public Service Act 1922* of the Commonwealth. An "authorised officer" may therefore be an officer (which includes a public servant by virtue of the definition in subsection 3(1) of the Act) or any other person authorised by the Auditor-General to act under section 21.

Subsection 67(10)(c) has been amended so that the reference to the "Head of Administration" is replaced with a reference to the office of the "Commissioner for Public Administration" appointed under the PSMA. Subsection 67(10), as amended, will require the Auditor-General, in certain circumstances, to furnish copies of any report of the results of an efficiency audit of the operations of a relevant body to the body, the Minister and to the Commissioner for Public Administration.

Subsection 114(1) omits the definition of "Head of Administration" and replaces it with a definition of "Chief Executive". This is an inclusive definition and it applies only in relation to the Part XI of the Act (LOSS OF AND DAMAGE TO PUBLIC PROPERTY). A definition of "Chief Executive" is contained in the *Interpretation Act 1967* (which would be applicable where no definition exists) and therefore is not required for the purposes of the Act generally.

Section 114 has been further amended by deleting the reference in paragraph 114(1)(b) to "member of the ACT Teaching Service". The ACT Teaching Service is now under the umbrella of the PSMA, whereas previously it was established under the *Teaching Service Act 1972* which is repealed by this Bill. Paragraphs (a) and (c) have been consequentially amended to delete the references to paragraph (b).

Betting (Totalizator Administration) Act 1964

Section 28 is amended to provide that the staff of the Board shall be employed under the PSMA and that Act governs the management of those staff. Clause 24 of the Public Sector Management Bill will then, by virtue of this clause, apply to confer Chief Executive powers on the Chief Executive Officer of the Board.

Section 29 has been amended to provide that the power of the Board to engage consultants is not a power of employment.

Building Act 1972

Section 5 of this Act has been consequentially amended to omit the reference to the "Public Service" in the definition of "government agency". The definition will therefore rely on the new definition of "administrative unit" in the *Interpretation Act 1967*.

Paragraph 58B(a) has been amended to replace the reference to an authority established under a Territory Act with the phrase, "a Territory authority". "Territory authority" is defined in the *Interpretation Act 1967* as a body established by or under an Act and this amendment removes any ambiguity.

Building and Services Act 1924

Section 3 of this Act is amended by replacing the reference to "officers" with "public employees" which is a new term included in section 14 of the *Interpretation Act 1967* by this Bill as a consequential amendment arising out of the PSMA.

Canberra Institute of Technology Act 1987

Section 7C is amended by inserting subsection (3A), to make it clear that the Institute's general power to contract is not a power to employ.

Section 19 is repealed and replaced with a provision that the staff of the Institute shall be employed under the PSMA and to provide that that Act governs the management of those staff. Clause 24 of the PSMA will then, by virtue of this clause, apply to confer Chief Executive powers on the Director of the Institute.

Similarly, the reference to "Head of Administration" has been replaced with "Commissioner for Public Administration" in subsections 19A(6) and (7).

The reference to "Head of Administration" has been replaced with "Commissioner for Public Administration" in subsections 19A(6) and (7). The Commissioner for Public Administration is appointed under the PSMA and is included in section 14 of the *Interpretation Act 1967* as such.

Canberra Theatre Trust Act 1965

Subsections 22 and 22A are repealed and replaced with a new Section 22 that provides for the Trust to make arrangements with the Chief Executive in relation to staffing. The employment provisions of the PSMA apply in relation to all staff of the Trust.

Casino Control Act 1988

Section 19 of this Act refers to the application of particular provisions of the *Public Service Act 1922* of the Commonwealth. This has been replaced so that the equivalent provisions of the PSMA will apply.

Cemeteries Act 1933

Sections 19 and 19A have been repealed and replaced with a new Section 19 that allows the Trustees to make staffing arrangements with the Chief Executive. The PSMA applies to all staff of the Trustees.

Children's Services Act 1986

All references in this Act to "administrative head" have been replaced with "Chief Executive" (sections 117, 132, 133).

Clinical Waste Act 1990

Similarly, the reference to "administrative head" in section 13 of this Act has been replaced with "Chief Executive".

Commissioner for the Environment Act 1993

A new definition of "administrative unit" has been included in this Act. An administrative unit has the same meaning as in the Public Sector Management Bill.

Various definitions in this Act have required amendment to be consistent with the PSMA. In the definition of "agency", the reference to "Department" has been omitted and "administrative unit" substituted. The definition of "Department" in subsection 3(1) has been omitted. The term "administrative unit" is defined in the *Interpretation Act 1967*.

The definitions of "officer" and "principal officer" have been amended as a consequence of these changes and to reflect the PSMA terms "Commissioner for Public Administration" and "Chief Executive" instead of, respectively, "Head of Administration" and "Chief Executive".

Paragraph 15(11)(a) has been replaced with a new paragraph, again to reflect the new terms and titles established by the PSMA. The reference to "Department" has been replaced with "administrative unit" and references to "Head of Administration" have been removed in line with the amendments to the definition of "principal officer".

The references in section 18 to "head of an agency" and "agency head" have been replaced with the principal officer concept in line with the above amendments to the Act.

Common Boundaries Act 1981

The reference in section 18(1)(a) to "administrative head" has been replaced with "Chief Executive".

Community Advocate Act 1991

Section 11 of the Act is repealed and a new section 11 substituted to require the staff assisting the Community Advocate to be public servants.

The definition of "staff" in section 3 of the Act is amended as a consequence of the new section 11.

Construction Industry Training Fund Act 1994

New subsections 13 (1) and (2) allow the Board to make staffing arrangements with the Chief Executive. The PSMA applies to the management of staff under these arrangements.

These amendments have been prepared on the assumption that the *Construction Industry Training Fund Bill 1994* will be passed by the Assembly before this Bill.

Credit Act 1985

The reference in paragraph 156(1)(a) to "a public authority or body established by or under an Act or Ordinance" has been simplified to "Territory authority" which is defined in the *Interpretation Act 1967*.

Crimes Act 1900

The reference in paragraphs 35(2)(a) and (b) to "public official" has been changed to "public employee" which is defined in the *Interpretation Act 1967*.

The reference in the definition of "authorised officer" in section 453 to "administrative head" has also been changed to "Chief Executive".

Crimes (Offences against the Government) Act 1989

The reference in paragraph 20(a) to "Public" has been changed to "Government", so that the reference to "Public Service" is changed to "Government Service" consistently with the new title under the PSMA.

Criminal Injuries Compensation Act 1983

The reference in paragraph 12(2)(c) and subsection 29(2) to "administrative head" has been replaced with "Chief Executive".

Crown Proceedings Act 1992

The reference to the "Public Service" in the definition of "Chief Solicitor" (subsection 3(1)) has been changed to the "Government Service".

Subsection 19(2) has also been amended consistently with the new arrangements under the PSMA so that there is no longer a reference to a "department" but to an "administrative unit". The effect of the subsection remains unchanged.

Defamation (Amendment) Act 1909 (NSW) in its application in the Territory

Paragraph 5(g) is amended to remove the reference to "the Public service" in relation to an administrative unit (which is defined in the *Interpretation Act 1967*).

Director of Public Prosecutions Act 1990

Section 30 of the Act is repealed and a new section 30 substituted to require the staff of the Director of Public Prosecutions to be public servants and to provide that the PSMA applies to the management of those staff.

Section 31 gives the Director of Public Prosecutions power to engage consultants. An additional subsection (3) has been included to make it clear that this does not give the Director power to enter into a contract of employment as this would be contrary to the intention of section 30.

Section 32 is repealed and a new section 32 substituted which is of the same effect as the old section 32 in providing that the Director of Public Prosecutions may make arrangements with a Chief Executive for the use of public servants under the administrative control of that Chief Executive. However, there is an additional subsection (2) which ensures that the PSMA applies to the management of any such staff by the Director.

Disability Services Act 1991

Section 4 of this Act has been amended (definition of "organisation") to omit "of the Public Service".

Discrimination Act 1991

The definition of "Territory employee" in subsection 4(1) is omitted and a new definition substituted. The substance of the definition remains unchanged however it is expressed in terms that are consistent with the PSMA arrangements.

Section 118 of the Act is repealed and a new section substituted to require that the staff assisting the Commissioner be public servants.

Drugs of Dependence Act 1989

Section 200 of this Act has been amended to delete the reference to "public servant or other person engaged by the Territory" and substitute with "public employee". This term is used in the PSMA and is intended to cover both the person employed in the Government service or employed by a Territory authority.

Education Act 1937

Sections 5 and 16 of this Act have been amended to delete references to "administrative head" and replace them with "Chief Executive".

Egg Industry Act 1975

Sections 5, 6, 11, 16 and 17 of this Act have been amended to replace the references to "administrative head" with "Chief Executive".

Electoral Act 1992

The definition of staff in section 3 is repealed and replaced by a new section 27A. The definition of "staff" is amended as a consequence of new section 27A and the amendment of section 27B.

The reference in section 11 to "an administrative head" has been replaced with a reference to a Chief Executive.

Section 27A of the Act is repealed and a new section substituted to require that the staff assisting the Commissioner be public servants.

Section 27B of the Act deals with the engagement of consultants. An additional subsection (4) has been included to make it clear that this does not give the Commissioner or the Commission power to enter into a contract of employment as this would be contrary to the intention of section 27A.

Section 332 is amended to substitute the "Commissioner for Public Administration" for "Head of Administration" in line with the new arrangements.

Electricity and Water Act 1988

The definition in section 3 of "Government Law Office" has been omitted as this reference is now obsolete.

The reference in section 91 to "an officer of the Government Law Office" has therefore been replaced with "public servant" which is defined in the *Interpretation Act 1967*. Further, the reference in section 32B to "Head of Administration" is omitted and "Commissioner for Public Administration" substituted.

New subsection (4) provides that the power to enter into contracts in 6(1)(y) does not include the power to enter into a contract of employment, except for the Chief Executive Officer position.

Section 31 has been amended to provide that the staff of the Authority shall be employed under the Public Sector Management Act and that Act governs the management of those staff. Clause 24 of the Public Sector Management Bill will then, by virtue of this clause, apply to confer Chief Executive powers on the Chief Executive Officer of the Authority.

Section 32 has been amended to make it clear that the power to engage consultants is not a power of employment.

Evidence Act 1971

Paragraph 6(a) of this Act has been amended by removing the reference to "Public Service" in the definition of "government department" and replacing it with a reference to the Government. Further, the definition of "public authority" in section 6 has been revised to include a Territory authority. The meaning of this provision has not been changed.

Paragraph 10H(1)(a)(v) of this Act has also been amended by replacing the reference to "Head of Administration" with "Commissioner for Public Administration".

Fair Trading Act 1967

Subsection 5(1) of this Act has been amended by omitting the definition of "authority of the Territory" as the term is not used in the Act at all making the definition unnecessary.

Financial Institutions (Application of Laws) Act 1992

References in this Act to "an authority of the Territory" have been replaced with "a Territory authority" (paragraphs 6(3)(a), 9(4), 33(4)(a)). This brings the Act into line with the *Interpretation Act 1967* and makes the Act more readable.

Financial Institutions Duty Act 1987

Section 19 of this Act has been amended by rearranging paragraph 19(1)(ca) to replace the reference to a statutory authority of the Territory with a reference to a Territory authority which is defined in the *Interpretation Act 1967*. A Territory Authority encompasses a statutory authority.

Financial Institutions (Supervisory Authority) Act 1992

New subsection 7(3A) makes it clear that a power to engage a consultant is not a power to employ.

New section 15 requires that the staff assisting the Registrar be public servants, managed under the PSMA.

Fishing Act 1967

References in this Act to "administrative head" have been substituted with "Chief Executive". These occur in sections 22, 31 and 37.

Freedom of Information Act

Subsection 4(1) is amended by omitting the definition of "Department" and replacing this term with "administrative unit" in the definition of "agency". The definition of "principal officer" in subsection 4(1) is amended to provide that "principal officer", in relation to an administrative unit, means the Chief Executive of that unit.

Paragraph 5(b) replaces the reference to "a Department" with a reference to "an administrative unit".

Section 15 provides for the transfer of requests between agencies where that is appropriate and subsection 15(2) is amended to provide for transfer of certain requests to an administrative unit, rather than to a Department.

The references to "the Head of Administration" in subsections 35(3) and (5) are replaced by references to "a Chief Executive of an administrative unit".

The reference in subsection 55(1) to "Head of Administration" is replaced by a reference to "Commissioner for Public Administration" and subsection 55(2) is omitted. Section 55 deals with reports made by the Ombudsman concerning action taken by an agency under the Act. Where the Ombudsman, in the course of an investigation, has referred evidence concerning an officer to a Minister or principal officer under the *Ombudsman Act 1989*, the Ombudsman is required, under subsection

55(1), to give a copy of that evidence to the Commissioner for Public Administration. Where the Ombudsman, under the Ombudsman Act, made a report to a Department, following an investigation, subsection 55(2) required the Ombudsman to give a copy of the report to the Head of Administration. Subsection 55(2) is no longer needed as the Head of Administration as such will no longer exist.

Gas Act 1992

Subsection 84(2) of this Act has been amended to omit the reference to "administrative head" and substitute "Chief Executive".

Government Solicitor Act 1989

The reference to "Public Service" in the definition of "Chief Solicitor" (section 3) has been replaced with "Government Service". The reference to "Public Service" has similarly been replaced in the definition of "relevant administrative unit" in section 3. Further, the definition of "transitional Territory staff" has been omitted as it is no longer relevant.

Paragraph 5(3)(f) of this Act has also been amended. Subsection 5(3) specifies for whom the Government Solicitor may act. She/he may act as solicitor for, among others, an officer of the public service, a person employed by the Territory or person employed by an Authority. This paragraph now refers to the Government Solicitor acting for a person who is public servant or employed by an authority established by or under an enactment which encompasses all those previously referred to.

Guardianship and Management of Property Act 1991

Section 64(1) has been amended to omit reference to the Head of Administration, so that it will now simply require staff to be public servants.

Health Act 1993

Various sections in this Act have been amended to replace the reference to "administrative head" with "Chief Executive". These occur in sections 7, 14, 19 and 20.

Health Complaints Act 1993

Section 6 of this Act is amended as a consequence of the amendments made to the staffing arrangements for the Health Complaints Unit in section 13 of the Act.

Subsection 13(1) is amended by replacing subsection (1) and adding a new subsection (1A) to bring the staffing arrangements of the Unit in line with the PSMA. Providing that the staff assisting the Commissioner shall be employed under the PSMA. Subsection 13(2) is amended so that the Commissioner may make arrangements with a Chief Executive of an administrative unit for the use of the staff of that administrative unit. The section has also been amended by omitting the reference to "Public Service" as

this is unnecessary given the definition of "administrative unit" in the *Interpretation Act 1967*.

Section 14 is amended to make it clear that the power to engage consultants is not a power to employ.

Housing Assistance Act 1987

Paragraph 9(1A) has been amended to provide that the power to contract does not include a contract of employment.

Inquiries Act 1991

Subsection 12(1) of this Act has been amended by replacing the reference to "Head of Administration" with "Commissioner for Public Administration".

Interpretation Act 1967

Subsection 14(1) has been amended to provide that new definitions of various terms related to the public sector are added, and old definitions repealed, as a consequence of the PSMA.

A new section 30AA is inserted to preserve delegations where there are changes of office holder or in administrative arrangements.

Judicial Commissions Act 1994

Section 13(1) is amended to require that Chief Executives will make public servants available to assist in the performance of the Commission's functions.

Juries Act 1967

In the Territory, a person may be exempted from jury service under the Juries Act or under the Commonwealth's *Jury Exemption Act 1965* or Jury Exemption regulations made under that Act.

Section 11 of the Juries Act is amended to provide, in respect of Territory officers and employees, the exemptions provided for by Commonwealth legislation. With some exceptions, the Commonwealth exemptions will cease once the Territory establishes its own Government Service as persons, the subject of the exemptions, will generally no longer be Commonwealth employees. The exemptions inserted into the Juries Act generally reflect relevant exemptions under the Commonwealth law but updated and modified as appropriate.

Land (Planning and Environment) Act 1991

Section 38 is amended by adding a subsection to make it clear that the power to contract does not include a power of employment.

Subsection 45(4) of this Act has been amended to replace the reference to "Head of Administration or Associate Head of Administration" with "Chief Executive". Similarly the reference to "Secretary" has been replaced with "Chief Executive of the administrative unit known as" in section 282ZU to accord with the new terminology of the PSMA.

Legal Aid Act 1977

The definition of "members of the staff of the Commission" in section 5 is redefined as an officer or employee within the meaning of the Public Sector Management Bill, working under the direction of the chief executive officer.

Section 20 is repealed and replaced with a section that requires that staff be persons employed under the PSMA. This will invoke clause 24 of the PSMA, with the effect that the Chief Executive Officer will have Chief Executive powers under the PSMA in relation to those staff.

Sections 63 to 68A are repealed as these provisions are either spent or are no longer required because the PSMA will apply to the employment of the staff of the Commission.

Legal Practitioners Act 1970

The definition of "relevant administrative unit" in section 3 is amended so that the term now refers to an administrative unit to which the Chief Minister has, under paragraph 14(b) of the *Public Sector Management Act 1994*, allocated responsibility for the *Government Solicitor Act 1989*.

The term "administrative head" in subsection 200(1) is replaced by "Chief Executive".

Legislative Assembly (Member's Staff) Act 1989

The definition of "administrative unit" in section 3 of this Act has been omitted as a consequence of the inclusion of a definition of this term in section 14 of the *Interpretation Act 1967* by this Bill.

Subsections 6(1) and 11(1) have also been amended to replace the reference to the "Australian Public Service" with "Government Service".

Litter Act 1977

Section 2 of this Act has been amended to replace the reference to "Department" with "Territory". This will ensure that it is the Territory, through the appropriate administrative unit, that will be responsible for providing a tip for public use.

Sections 10, 10A and 10B have also been amended to replace all references to "administrative head" with "Chief Executive".

Long Service Leave (Building and Construction Industry) Act 1981

Paragraph 7(d) is amended to correct an error while paragraph 7(e) is omitted as separate employment is no longer required.

Division 4 of Part 2, dealing with personnel management, is repealed because staffing arrangements are to be brought under the PSMA. Section 25C has been included to allow the Board to arrange with the Chief Executive for staff to be made available.

Magistrates Court Act 1930

Section 10F is repealed and replaced with a new clause allowing a Magistrate who has been a public servant to retain accrued rights.

Section 10MA has been inserted to provide that the staff assisting the Magistrate are to be employed under the Public Sector Management Act and the Public Sector Management Act governs the management of these staff.

Magistrates Court (Civil Jurisdiction) Act 1982

The definition of Chief Solicitor in subsection 3(1) is amended consequent on the new ACTGS.

Maintenance Act 1968

Various sections in this Act have been amended to replace the references to "administrative head" with "Chief Executive". These occur in sections 65, 77, 78, 79, 80, 81 and 84.

Milk Authority Act 1971

The definition of Secretary in subsection 4 (1) is omitted and new provisions define the Secretary and Assistant Secretary to the Authority as the public servants who are performing the functions of this positions at a given time.

Sections 14A, 14B and 15 are repealed and replaced by new sections 14A, 15 and 15A.

New section 14A allows the Authority to make staffing arrangements with the Chief Executive.

New Sections 15 and 15A provide for the offices of Secretary and Assistant Secretary to the Authority to be public servants.

Mining Act 1930

Subsection 39(2) of this Act provides that a certificate is to be registered with the office of the administrative unit of the Public Service responsible for matters under the Act. This section now provides that the certificate is to be registered with the Chief

Executive. The definition of "Chief Executive" in the *Interpretation Act 1967* means that the substitution of the term in subsection 39(2) is sufficient to achieve the same end.

National Exhibition Centre Trust Act 1976

Paragraph 5 (1) (d) has been amended to provide that the power to contract does not include a contract of employment.

Section 18 replaces Sections 18 and 18A and allow the Trust to make staffing arrangements with the Chief Executive.

Occupational Health and Safety Act 1989

Section 13 is amended to increase the membership of the Occupational Health and Safety Council to take account of the public sector coverage that the Council will now have under provisions in the PSMA.

Ombudsman Act 1989

Subsection 3(1) is amended to omit the definition of "Department" and to replace the references to "a Department" in the definitions of "agency" and "officer" with references to "an administrative unit". These references are also similarly replaced in subsections 3(6) and (7). "Department" is also replaced, as appropriate, by "administrative unit" in paragraph (a) of the definition of "officer" in subsection 3(1) and in subsections 3(4), (5), (6) and (7).

The definition of "principal officer" in subsection 3(1) is amended to provide that "principal officer", in relation to an administrative unit means the Chief Executive of the administrative unit.

Paragraph 3(4)(a) and subsection 3(5) are amended to replace references to the Head of Administration or an Associate Head of Administration with references to a Chief Executive of an administrative unit.

Section 5 sets out the functions of the Ombudsman. Paragraphs 5(2)(d) and (e) provide that the Ombudsman is not authorised to investigate certain actions taken in respect of the employment or appointment of persons. These paragraphs are amended to reflect the creation of the Government Service.

Section 9 of the Ombudsman Act, deals with some procedural aspects of investigations and reports. Subsection 9(12) deals with the procedure to be followed when the Ombudsman finds evidence of a breach of duty or misconduct on the part of an officer of an agency and sets out the persons to whom the Ombudsman must bring notice of that evidence. Subsection 9(12) is amended to reflect the creation of the Government Service.

Poisons Act 1933

Paragraphs 40(1)(f) and(2)(e) of this Act have been amended to replace the reference to a "public servant or a person engaged by the Territory " with the term "public employee" which is defined in the *Interpretation Act 1967*.

Pounds Act 1928

Subsection 17(3) of this Act has been amended by omitting the reference to "Public" and substituting "Government". This provision will thus refer to the new "Government Service" established by the PSMA.

Proceeds of Crime Act 1991

Subsection 4(1) of this Act has been amended by omitting the reference to "Officer of the Public" (which refers to the Public Service) and substituting the term "officer of the Government" (to refer to an officer of the Government Service).

Protection of Lands Act 1937

The reference in section 16 to "administrative head" has been replaced with "Chief Executive".

Rates and Land Tax 1926

The definition of "Office" in subsection 4(1) of the Act is amended to omit the reference to the Public Service so that the new definition of "administrative unit" in the *Interpretation Act 1967* will apply.

Remand Centres Act 1976

Section 6 of the Act relates to the appointment of staff in relation to remand centres. New subsections (3) and (4) ensure that these staff are appointed under the PSMA and that the PSMA applies.

Paragraph 11(2)(a) is amended to omit the reference to the *Public Service Act 1922* of the Commonwealth as this reference is no longer appropriate.

Removal of Prisoners Act 1968

The reference in subsection 3(1) of this Act to "section 78 of the *Public Service Act 1922* of the Commonwealth" has been replaced with a reference to the equivalent provision in the PSMA.

Royal Commissions Act 1991

Section 12(1) is amended, so that staffing arrangements will now involve the Chief Executive.

Rural Workers Accommodation Act 1938

The reference in section 10 to "administrative head" has been replaced with a reference to "Chief Executive".

Schools Authority Act 1976

New subsection 7(2A) is inserted to provide that power to engage consultants is not a power of employment.

Section 28 is replaced with a new section to provide that the staff of the Authority shall be employed under the Public Sector Management Act and that Act governs the management of those staff.

Stock Act 1991

The reference in subsection 43(1) of this Act to "administrative head" has been replaced with "Chief Executive".

Supreme Court Act

New section 46B is included to provide that the staff assisting the Registrar are to be employed under the Public Sector Management Act and the Public Sector Management Act governs the management of these staff.

Surveyors Act 1967

The reference in section 14 of this Act to "administrative head" has been replaced with "Chief Executive".

Paragraph 44(2)(a) has been amended to omit the reference to "Department" and replace it with the "administrative unit to which responsibility for the Act has been allocated" in line with the PSMA.

Territory Owned Corporations Act 1990

Section 33A is amended so that prior employment includes that under the Public Service Act as well as the Public Sector Management Bill.

Trustee Act, 1925-1942 (NSW) in its application in the Territory

The amendment to section 47 (3B) effects a change of title in respect of the giving of receipts.

Vocational Training Act 1989

Subsection 6(1) of this Act has been amended to insert a new definition of "chief executive officer" as a substitute title.

Sections 24 and 25 of this Act have been repealed and substituted. These sections deal with the appointment of the chief executive officer of the Vocational Training Authority and require that a public servant is to be appointed chief executive by the Commissioner for Public Administration (section 24). This section is in substantially the same terms as the old section 24 of the Act. Under section 25, the Authority will be able to make staffing arrangements with the Chief Executive.

There are also a number amendments listed under "Further amendments" to change "Chief Executive" to "chief executive officer" to reflect the changes made to sections 6, 24 and 25.

Weapons Act 1991

Subsection 4(1) of this Act (definition of "government agency") has been amended by omitting the reference to "Public Service" so that the new definition of "administrative unit" in the *Interpretation Act 1967* has effect. The definition of "Head" has been amended by removing the references to "Head of Administration, Associate Head of Administration" and replacing them with the revised terms, "Commissioner for Public Administration, Chief Executive who has control of an administrative unit" in accordance with the PSMA.

SCHEDULE 2

AMENDMENT OF REGULATIONS

Details of amendments to the Regulations listed in the Schedule follow.

Administrative Appeals Tribunal Regulations

Subregulation 2 (3) is amended to change the references to "Head of Administration" to "Chief Executive" in accordance with the amendments made to section 60 of the Act by Schedule 1 of this Bill.

Subregulation 14(1) is amended to replace the reference to "Public Service" with a reference to "Government Service".

Finance Regulations

The regulations are amended to remove the references to "head of administration" and "administrative head" consistently with the new arrangements under the PSMA. The definition of "head of administration" in subregulation 2(1) has a specific meaning which would translate to a "Chief Executive" under the PSMA. The references to "the administrative head" translate to "the Chief Executive" (who is the Chief Executive who has control of the administrative unit that is the responsibility of the Minister for the time being administering the Act). To avoid confusion between references to "a Chief Executive" and "the Chief Executive" the term "Under Treasurer" has been used to refer to "the Chief Executive". The amendments to regulation 2 make these changes

to the interpretative provisions. The other amendments made by paragraphs (a) and (b) at "Further amendments" substitute the appropriate terms throughout the regulations.

The references to "Public Service" are changed to "Government Service" in regulations 24 and 79. The Forms in the Schedule to the regulations are amended in accordance with the various name changes in the regulations.

The term "Under Treasurer" is currently used in regulation 25 where it is defined. The internal definition in subregulation 25(2) is omitted so that the new general definition will apply. Other amendments to regulation 25 change the references to "administrative head" to "Chief Executive". Subregulation 25(2) is amended due to the change in delegation arrangements made to the *Administration Act 1989* by this Bill.

Motor Omnibus Services Regulations

Regulations 3A and 35A are amended to change "administrative head" and "Secretary" (respectively) to "Chief Executive" in accordance with the new arrangements under the PSMA.

Public Health (Dairy) Regulations

In subregulation 101(2) the reference to "a person employed by the Territory" is omitted and the term "public employee" substituted. "Public employee" is defined in section 14 of the *Interpretation Act 1967*.

Registrar-General (Office Hours) Regulations

Subregulation 2(2) of these regulations are amended so that the office of the Registrar-General will not be open on any day that is observed as a holiday in the Government Service.

Vocational Training Regulations

Regulations 4 and 5 are amended to reflect the change in title from "Chief Executive" to "chief executive officer" made to the *Vocational Training Act 1989* by this Bill. Schedule 2 is also amended to change the reference to "Public Service Sector" to "Government Service" in accordance with the PSMA.