

**NORTHERN TERRITORY OF AUSTRALIA**

**PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT**

As in force at 27 October 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 27 October 2004

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## PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT

**An Act for the regulation of the Public Service of the Northern Territory and the human resource administration and management of other agencies established for government or public purposes, and for related purposes**

### **Part 1            Preliminary**

#### **1            Short title**

This Act may be cited as the *Public Sector Employment and Management Act*.

#### **2            Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### **3            Interpretation**

(1) In this Act, unless the contrary intention appears:

**Agency** means a unit of government administration, or office or statutory corporation, nominated in an Administrative Arrangement Order as an Agency for the purposes of this Act.

**Appeal Board** includes a Promotions Appeal Board, an Inability Appeal Board and a Disciplinary Appeal Board.

**appropriate minister**, when used in relation to an Agency, means the minister for the time being administering the Agency or to whom the administration of the Act by which the Agency was established or continued in existence is allotted by an Administrative Arrangements Order.

**award** means an award, determination, decision, order or certified agreement in force under the *Workplace Relations Act 1996* of the Commonwealth or the *Prisons (Arbitral Tribunal) Act*, or under any other Act of the Commonwealth or of the Territory that provides for the determination of conditions of employment of a person.

**breach of discipline** means an action or omission which, under section 49, shall be taken to be a breach of discipline.

**Chief Executive Officer** means a person appointed under section 19 or continued in office by, or specified under, the *Public Sector Employment and Management (Transition and Savings) Act*, and includes:

- (a) a person appointed under section 21 to act as the Chief Executive Officer; and
- (b) in the case of an Agency specified in Schedule 1, a person appointed under the Act by which the relevant office referred to in the second column of that Schedule was established, to act in that office,

while the person is so acting.

**Commissioner** means the Commissioner for Public Employment appointed under section 8 or continued in office by the *Public Sector Employment and Management (Transition and Savings) Act*, and includes:

- (a) a person appointed under section 10 to act as the Commissioner, while the person is so acting; and
- (b) in relation to employees employed in the Department of the Legislative Assembly, the Speaker of the Legislative Assembly.

**designation** means a specified level or range of salaries assigned to an employee in an Agency on a scale described in an award or determined by the Commissioner.

**employee** means a person employed in the Public Sector, other than the Commissioner or a Chief Executive Officer.

**employment**, in relation to an employee, means employment in an Agency.

**Employment Instructions** means Employment Instructions issued under section 16.

**Executive Contract of Employment** means a contract of service:

- (a) as the Commissioner;
- (b) as a Chief Executive Officer; or

- (c) in relation to duties or a class of duties determined under section 34(1)(b) as duties or a class of duties which may only be performed for a fixed period,

and which is nominated as an Executive Contract of Employment in the contract document.

**fixed period**, in relation to an appointment, means the maximum period for which (subject to this Act and the terms of the appointment) the appointment has effect.

**medical practitioner** includes a person registered as a medical practitioner (by whatever name called) in a State or another Territory of the Commonwealth.

**Minister** means the Minister to whom the administration of this Act is allocated by an Administrative Arrangements Order.

**permanent employee** means an employee appointed as described in section 29(3)(a).

**promotion** means giving to an employee a higher attainable maximum salary than the salary previously attainable by the employee.

**Public Sector** means all the Agencies.

**repealed Act** means the *Public Service Act* as in force immediately before the commencement of this Act.

**remuneration** includes salary and allowances.

**salary** includes wages, and salary or wages payable by increments within a range of salary or wages.

**this Act** includes the Regulations, the By-laws made under section 60 and the Employment Instructions.

- (2) A reference in this Act to the merit principle is a reference to the principle that an appointment, promotion or transfer under this Act should be on the basis of, and only on the basis of, the capacity of the person to perform particular duties, having regard to the person's knowledge, skills, qualifications and experience and the potential for future development of the person in employment in the Public Sector.
- (3) Subject to section 4(3), where there is an inconsistency between this Act and any other law of the Territory, being a law that makes specific provision for the appointment of a person to perform duties in an Agency, to the promotion of an employee or an employee of a

class of employees or a matter relating to the employment of such an employee, that law shall be read subject to this Act.

- (4) Where there is an inconsistency between this Act and an award in force in the Territory or any legislation relating to superannuation applying to an employee, the Commissioner or a Chief Executive Officer, this Act shall be read subject to the award or that legislation.
- (5) For the purposes of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the Public Sector shall be taken to be the Public Service of the Territory referred to in that Act and the Commissioner the Public Service Commissioner of the Territory.

#### **4 Application**

- (1) This Act does not apply to or in relation to a person who is:
  - (a) remunerated by fees, allowances or commission only; or
  - (b) employed in an honorary capacity only.
- (2) A prescribed provision of this Act does not apply to or in relation to:
  - (a) a prescribed person or a person of a prescribed class of persons;
  - (b) a prescribed Agency; or
  - (c) a prescribed designation, or a designation of a prescribed class of designations, in an Agency.
- (3) Nothing in this Act affects the functions, powers, privileges, immunities or liabilities of:
  - (a) the Electoral Commissioner or the holder of an office mentioned in Schedule 1; or
  - (b) the Speaker of the Legislative Assembly (other than in his or her capacity as Commissioner as defined in paragraph (b) of the definition of **Commissioner** in section 3(1)),

conferred or imposed by or under any other law in force in the Territory and, where there is an inconsistency between this Act and such a law, this Act shall be read subject to that law.

## **Part 2 Administration**

### **6 Duties of Minister**

It is the duty of the Minister to:

- (a) advise other ministers on policies, practices and procedures that should be applied to any aspect of human resource management in the Public Sector generally or in Agencies for which they have ministerial responsibility;
- (b) advise other ministers on structural changes that should, in the opinion of the Minister, be made in order to improve the efficiency and effectiveness of Public Sector operations;
- (c) cause to be carried out planning for the future management of the Public Sector;
- (d) cause to be reviewed, on the Minister's own motion or at the request of another minister, the efficiency and effectiveness of any aspect of Public Sector operations; and
- (e) cause to be devised programs and initiatives for management improvement in the Public Sector and recommend their implementation to other ministers.

### **7 Establishment, change of name and abolition of Agencies**

- (1) An Agency not otherwise established or continued in existence by or under an Act is established, by the name under which it is nominated, on the publication in the *Gazette* of the Administrative Arrangements Order by which it is nominated as an Agency.
- (2) An Agency not established or continued in existence by or under an Act (other than the repealed Act or the *Public Sector Employment and Management (Transitional and Savings) Act*) is abolished, or established by a different name nominated, on the publication in the *Gazette* of the Administrative Arrangements Order or amendment nominating the Agency by its new name or, in the case of the abolition of an Agency, the first Administrative Arrangements Order from which it is omitted or an amendment to the Administrative Order omitting its name, whichever is the earliest.

## **Part 3 Commissioner for Public Employment**

### **8 Appointment of Commissioner**

- (1) The Administrator shall appoint a person to be the Commissioner for Public Employment.

- (2) An appointment under subsection (1) shall, as soon as practicable after it is made, be notified in the *Gazette*.

## **9 Termination of appointment**

An appointment under section 8 continues in force until the Executive Contract of Employment under which the person is employed expires or is terminated by either party under the contract, or the Administrator, in his or her absolute discretion, at any time, otherwise terminates the appointment.

## **10 Acting Commissioner**

- (1) The Administrator may, in writing, appoint a person to act as the Commissioner during any period, or during all periods, when the Commissioner is absent from duty or from the Territory, or during a vacancy in the office.
- (2) A person appointed to act as the Commissioner during a vacancy in the office shall not continue so to act for more than 12 months after the occurrence of the vacancy.
- (3) The Administrator may:
- (a) determine the terms and conditions (including the remuneration) of a person appointed to act as the Commissioner; and
  - (b) at any time, in the Administrator's absolute discretion, terminate such an appointment.
- (4) Where a person appointed to act as the Commissioner is otherwise employed under an Executive Contract of Employment, that contract shall be deemed to have been varied for the duration of the period of his or her appointment under subsection (1) to the extent of the determination under subsection (3)(a).
- (5) A person appointed to act as the Commissioner may resign office in writing delivered to the Administrator.

## **11 Delegation by Commissioner**

- (1) Subject to subsection (2), the Commissioner may, in writing, delegate to a person (or to the holder from time to time of a particular designation or office) any of the Commissioner's functions and powers under this Act, other than this power of delegation.

- (2) The Commissioner shall not, under subsection (1), delegate a function or power to a delegate employed in an Agency unless the Commissioner has first consulted with the Chief Executive Officer of the Agency.
- (3) A function or power delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Commissioner.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Commissioner.

## **12 Commissioner deemed to be employer**

The Commissioner shall be deemed to be the employer of all employees on behalf of the Territory or an Agency.

## **13 Functions of Commissioner**

The functions of the Commissioner are:

- (a) to determine the respective designations and other terms and conditions (including the remuneration) of employment for employees;
- (b) subject to this Act, to promote, uphold and ensure adherence to the merit principle in the selection of persons as, and the promotion and transfer of, employees;
- (c) to determine practices and procedures relating to the recruitment and appointment of persons as employees, the promotion of employees and the employment, transfer, secondment, redeployment, discipline and termination of employment of employees and any other matters relating to human resource management;
- (d) to consult with and advise Chief Executive Officers in relation to the development and application of appropriate human resource practices and procedures in their Agencies;
- (e) to consult with Chief Executive Officers in relation to the application of public employment policies in their Agencies;
- (f) to advise the Minister on, and monitor the implementation of, public employment policies;
- (g) to develop uniform systems, standards and procedures for the determination of designations and the allocation of designations to employees in their Agencies and assist Chief

Executive Officers in the application of those systems, standards and procedures;

- (h) to assist as appropriate Chief Executive Officers in evaluating the performance of employees employed in their Agencies;
- (j) to co-ordinate training, education and development programs in conjunction with Chief Executive Officers;
- (k) to conduct or cause to be conducted inquiries and investigations into, and reviews of, the management practices of Agencies;
- (m) to consult with Chief Executive Officers on the development of appropriate standards and programs of occupational health and safety;
- (n) to assist as appropriate Chief Executive Officers in the performance of their functions relating to the management of their Agencies; and
- (p) such other functions as are imposed on him or her by or under this or any other Act, or as directed by the Minister.

#### **14 Powers of Commissioner**

- (1) The Commissioner has power to do all things necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercising of his or her powers.
- (2) The Commissioner may, by instrument in writing, determine all matters permitted by this Act or an award to be determined by the Commissioner.

#### **15 Special powers of investigation**

- (1) The Commissioner may, at any time, for the purposes of this Act:
  - (a) enter land or a building occupied or used by an Agency;
  - (b) summon a person whose evidence appears to the Commissioner to be material;
  - (c) take evidence on oath and, for that purpose, may administer an oath; and
  - (d) require a person to produce documents in the possession or under the control of the person.

- (2) A person who, without reasonable excuse (and to whom, where the person is not an employee, payment or tender of reasonable expenses has been made), neglects or fails to attend in obedience to a summons under subsection (1) or to be sworn or make an affirmation, to answer relevant questions or to produce relevant documents when required to do so under that subsection, is guilty of an offence.

Penalty: \$5,000.

- (3) Nothing in this section shall be construed as compelling a person to answer a question or produce a document that may tend to incriminate the person.

## **16 Employment instructions**

- (1) The Commissioner may, by notice in the *Gazette*, make rules, not inconsistent with this Act, to be known as **Employment Instructions**:
- (a) relating to the functions and powers of the Commissioner under this Act; or
  - (b) otherwise relating to the good management of the Public Sector.
- (2) Without limiting the generality of subsection (1), the Employment Instructions may:
- (a) require a matter affected by them to be approved by, or be to the satisfaction of, a specified person or body;
  - (b) confer on a specified person or body, or a person or body of a specified class, a discretionary authority; and/or
  - (c) include a Code of Conduct to be observed in the Public Sector.
- (3) Sections 57 and 63 of the *Interpretation Act* do not apply to or in relation to Employment Instructions.

## **17 Commissioner to keep record of employees**

The Commissioner shall keep a record of all employees showing in respect of each of them:

- (a) their age and date of appointment;
- (b) their designation;

- (c) their remuneration; and
- (d) such other particulars, if any, as are prescribed.

## **18 Reports by Commissioner**

- (1) The Commissioner shall, within 3 months after the end of each financial year, report in writing to the Minister on human resource management in the Public Sector during that financial year.
- (2) A report under subsection (1) shall refer to:
  - (a) the extent to which observance of the prescribed principles of human resource management have been achieved in the Public Sector over the period to which the report relates, and include a reference to:
    - (i) measures taken to ensure observance of the principles; and
    - (ii) any significant breaches or evasions of the principles detected by or brought to the attention of the Commissioner;
  - (b) measures, if any, taken to improve human resource management in the various Agencies;
  - (c) the extent to which disciplinary, redeployment and inability procedures were invoked in the Public Sector;
  - (d) those matters specified in section 28(2) in so far as they relate to the Commissioner's Office; and
  - (e) such other matters, if any, as are prescribed.
- (3) The Commissioner may, at any time, report in writing to the Minister on any matter relating to human resource management in the Public Sector or a part of the Public Sector.
- (4) The Minister shall, within 6 sitting days of the Legislative Assembly after receiving a report under subsection (1) or (3), lay a copy of the report before the Assembly.

## **Part 4 Chief Executive Officers**

### **19 Chief Executive Officers**

- (1) There shall be a Chief Executive Officer for each Agency.

- (2) The Administrator may, in writing, appoint a person to be the Chief Executive Officer of an Agency or more than one Agency.
- (3) An appointment under subsection (2) shall, as soon as practicable after it is made, be notified in the *Gazette*.

## **20 Termination of appointment**

An appointment under section 19 continues in force until the Executive Contract of Employment under which the person is employed expires or is terminated by either party under the contract, or the appropriate minister, in his or her absolute discretion, at any time, otherwise terminates the appointment.

## **21 Acting Chief Executive Officer**

- (1) The appropriate minister may, in writing, appoint a person to act as Chief Executive Officer during any period, or during all periods, when the Chief Executive Officer is absent from duty or from the Territory, or during a vacancy in the office.
- (2) A person appointed to act as Chief Executive Officer during a vacancy in the office shall not continue so to act for more than 12 months after the occurrence of the vacancy.
- (3) The appropriate minister may:
  - (a) determine the terms and conditions (including the remuneration) of a person appointed to act in the office of the Chief Executive Officer; and
  - (b) at any time, in his or her absolute discretion, terminate such an appointment.
- (4) Where a person appointed to act as a Chief Executive Officer is otherwise employed under an Executive Contract of Employment, that contract shall be deemed to have been varied for the duration of the period of his or her appointment under this section to the extent of the determination under subsection (3).
- (5) A person appointed to act as a Chief Executive Officer may resign office in writing delivered to the appropriate minister.

## **22 Directions by appropriate Minister**

- (1) Subject to subsection (2) and anything to the contrary in an Act by or under which an Agency is established or continued in existence, the Chief Executive Officer is subject to the direction of the appropriate minister.

- (2) The Minister or appropriate minister shall not give to a Chief Executive Officer a direction:
- (a) relating to the appointment, promotion, assignment, reassignment or terms and conditions of employment (including the remuneration) of a particular person;
  - (b) relating to the designation to apply to an employee or to the performance of particular duties; or
  - (c) requiring a Chief Executive Officer to commence or refrain from commencing an action under Part 7 or 8 in relation to a particular employee.

### **23 Accountability of Chief Executive Officers**

- (1) A Chief Executive Officer is responsible to the appropriate minister for the performance of the Chief Executive Officer's functions under this Act in relation to his or her Agency and for its proper, efficient and economic administration.
- (2) A Chief Executive Officer shall comply with all Employment Instructions applicable to the Chief Executive Officer or his or her Agency and to all directions given under this Act by the Commissioner or an Appeal Board.

### **24 Functions of Chief Executive Officers**

In relation to the Chief Executive Officer's responsibilities referred to in section 23(1) but subject to the Employment Instructions, the Chief Executive Officer has the following functions:

- (a) to direct the employees employed by or in the Chief Executive Officer's Agency;
- (b) to ensure the attainment by the Agency of any objectives set by the appropriate minister;
- (c) to devise organisational structures and arrangements for the Agency;
- (d) to assign designations to employees in the Agency and to vary such designations in accordance with:
  - (i) award requirements; and
  - (ii) designation systems, standards and procedures determined by the Commissioner or, where no such systems, standards or procedures have been determined, with the approval of the Commissioner,

within the limits of the amount that has been allocated or is otherwise available for the remuneration of employees in the Agency;

- (e) to assign duties to be performed by each employee in the Agency;
- (f) to evaluate the performance of employees in the Agency;
- (g) to assist employees in the Agency to undertake relevant training, education and development programs;
- (h) to devise and implement financial and management plans for his or her Agency and monitor the Agency's financial and administrative performance;
- (j) to devise and implement programs to ensure that employees have equal opportunities in relation to their employment in accordance with the merit principle;
- (k) to ensure the application in his or her Agency of appropriate health and safety standards and programs; and
- (m) such other functions as are imposed on the Chief Executive Officer by or under this or any other Act.

## **25 Powers of Chief Executive Officers**

A Chief Executive Officer has such powers as are necessary to enable the Chief Executive Officer to carry out his or her functions, or exercise his or her powers, under this or any other Act and, subject to this Act, including the power to enter into any contract required or permitted under this Act to be entered into in relation to the employment of a person as an employee in his or her Agency.

## **26 Chief Executive Officer may employ number of employees necessary**

A Chief Executive Officer may divide the duties to be performed by employees in his or her Agency between such number of employees as the Chief Executive Officer considers necessary for the efficient operation of the Agency, but so that the total payable as remuneration of the Chief Executive Officer and employees employed or who could be employed in the Agency will not at any time exceed the limits of the amount available for that purpose.

**27 Delegation by Chief Executive Officers**

- (1) A Chief Executive Officer may, in writing, delegate to:
- (a) an employee employed in (or the holder from time to time of a particular designation or office in) his or her Agency;
  - (aa) a person appointed to an office under an Act the administration of the provisions of which is allotted to his or her Agency;
  - (b) with the agreement of the Chief Executive Officer of another Agency:
    - (i) the Chief Executive Officer of; or
    - (ii) an employee employed in (or the holder from time to time of a particular designation or office in),  
that other Agency;
  - (ba) if the Chief Executive Officer is the Commissioner of Police – a member of the Police Force; or
  - (c) the Commissioner,  
any of the Chief Executive Officer's functions or powers under this Act, other than this power of delegation.
- (2) A function or power delegated under this section, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Chief Executive Officer.
- (3) A delegation under this section does not prevent the performance of a function or the exercise of a power by the Chief Executive Officer.

**28 Reports by Chief Executive Officers**

- (1) Subject to subsection (3), a Chief Executive Officer must present a report to the appropriate minister on the operations of his or her Agency during a financial year:
- (a) within 3 months after the end of the financial year; or
  - (b) if the Treasurer has determined under section 10 or 11 of the *Financial Management Act* a longer period for the preparation of a financial statement in respect of the Agency – within that longer period.

- (2) To the extent that it is not required to be included in a report referred to in subsection (3), a report under subsection (1) shall contain information about:
- (a) the functions and objectives of the Agency;
  - (b) the legislation administered by the Agency;
  - (c) the organisation of the Agency, including the number of employees of each designation in the Agency and any variation in those numbers since the last report;
  - (d) the Agency's operations, initiatives and achievements (including those relating to planning, efficiency, effectiveness and performance and, where appropriate, delivery of services to the community);
  - (e) the financial planning and performance of the Agency;
  - (f) equal opportunity management programs and other initiatives designed to ensure that employees employed in the Agency have equal employment opportunities;
  - (g) management training and staff development programs in the Agency; and
  - (h) occupational health and safety programs in the Agency.
- (3) Where the Chief Executive Officer is under some other statutory obligation to make an annual report, or present an audited financial statement under section 10 or 11 of the *Financial Management Act*, to the appropriate minister, the report required by this section to be presented may be incorporated with that other report or financial statement and, if it is so incorporated:
- (a) the period to which the report relates shall be the same as for that other report or financial statement; and
  - (b) the report shall be presented to the appropriate minister within 6 months after the end of the period to which it relates or such earlier time as that other report or financial statement is required to be presented to the appropriate minister.
- (4) The appropriate minister shall, within 6 sitting days of the Legislative Assembly after it is received by him or her or, if it is incorporated with another report in accordance with subsection (3) within such longer period as is allowed for the tabling of the other report, lay a copy of the report before the Assembly.

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## **Part 5                      Appointment, promotion, transfer, resignation and age retirement**

### **29                      Chief Executive Officers to appoint, promote and transfer**

- (1) Subject to this Act, the Chief Executive Officer may appoint a person as an employee, or promote or transfer an employee, to perform duties in his or her Agency.
- (2) Subject to this Act, a Chief Executive Officer shall not appoint a person as an employee, or promote or transfer an employee, except in accordance with the merit principle and this Act.
- (3) An appointment under subsection (1) may be on:
  - (a) a permanent basis – that is, on the basis that there is no fixed period of appointment and the appointment cannot be terminated except in accordance with this Act; or
  - (b) a temporary basis – that is, otherwise than on a permanent basis.
- (4) A promotion or transfer under subsection (1) may be from within the Chief Executive Officer's Agency or from another Agency.
- (5) Nothing in this Act authorises the appointment, promotion or transfer of a person to perform duties in an Agency where it would result in expenditure of a greater amount than has been allocated or is otherwise available to the Agency for the payment of the remuneration of the Chief Executive Officer of, and employees employed in, the Agency.
- (6) A reference in this section to an appointment on a temporary basis is to be read as including a reference to an appointment under an Executive Contract of Employment.

### **30                      Procedure for filling vacancies**

- (1) Where duties are to be performed for a period exceeding 6 months by a person appointed, or by an employee promoted or transferred, under section 29 to perform the duties, the Chief Executive Officer of the Agency in which the duties are to be performed:
  - (a) shall advertise for applications from persons and employees who wish to be appointed, promoted or transferred to perform the duties; or
  - (b) may, with the approval of the Commissioner, select without advertising, a person or employee who satisfies the requirements of section 31.

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- (2) Except where otherwise directed by the Commissioner, all appointments, promotions and transfers shall be notified in the manner that the Commissioner directs and where the Commissioner directs that an appointment, promotion or transfer be not so notified, the appointment, promotion or transfer shall not be subject to appeal under section 55 or review under section 59.
  - (3) Except as directed by the Commissioner, the Chief Executive Officer need not appoint, promote or transfer a person to perform duties as advertised under subsection (1)(a).
  - (4) Where the Commissioner believes, on reasonable grounds, that the process of selection of an employee or other person under this section is not being conducted in a manner likely to result in the selection of a person or employee in accordance with the merit principle, the Commissioner shall, within 7 days after forming that belief, direct the Chief Executive Officer to:
    - (a) make a selection, in accordance with the merit principle, from the applicants to perform the duties; or
    - (b) re-advertise as provided in subsection (1)(a).
  - (5) Where a Chief Executive Officer making the selection under this section is satisfied that:
    - (a) all employees eligible to appeal against the selection in accordance with section 55 have waived their right to appeal against the selection or the period within which they may appeal has expired and no such appeal has been lodged; or
    - (b) where such an appeal has been lodged:
      - (i) the appeal has been heard and determined and the selection by the Chief Executive Officer has been confirmed; or
      - (ii) the appeal has been withdrawn,

the Chief Executive Officer shall appoint the person or promote or transfer, as the case may be, the employee selected to perform the duties.

### **31 Conditions for appointment, &c.**

A person shall not be appointed or an employee promoted or transferred to perform duties in an Agency unless the person or employee possesses such educational qualifications and meets such other requirements (including as to health and physical fitness) as are determined by the Commissioner as being required

for the performance of the duties.

### **32 Appointments on permanent basis to be on probation**

- (1) Subject to this section, the appointment of a person to perform duties in an Agency on a permanent basis shall be on probation for 6 months commencing on the day on which the person commences duty in pursuance of his or her appointment.
- (2) The Chief Executive Officer may appoint a person to perform duties in his or her Agency on a permanent basis without probation:
  - (a) where, in the opinion of the Chief Executive Officer, the appointee merits appointment without probation; or
  - (b) where appointment without probation is authorised by or under this or any other Act.
- (3) Where an employee has been on probation for 6 months or an extension of that period under paragraph (c), the Chief Executive Officer shall:
  - (a) confirm the appointment, and the employee shall cease to be on probation;
  - (b) terminate the appointment; or
  - (c) extend the probation for a further period not exceeding 6 months or, where under subsection (4) a maximum period of probation has been determined in relation to the class of employee to which the employee belongs, for such period as the Chief Executive Officer thinks fit, but so that the total period of probation does not exceed that maximum.
- (4) For the purposes of subsection (3)(c), the Commissioner may determine, in relation to a class of employees, a maximum period for which an employee of that class may be employed on probation.
- (5) At any time during which an employee is employed on probation in an Agency, the Chief Executive Officer of the Agency may:
  - (a) confirm the appointment, and the employee shall cease to be on probation; or
  - (b) terminate the appointment.

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- (6) The Chief Executive Officer shall not take action under subsection (3)(b) or (5)(b) unless the Chief Executive Officer has given the employee not less than 14 days notice of the Chief Executive Officer's intention to take the action and:
- (a) the employee has waived the right to request the Commissioner to review the Chief Executive Officer's intention to take the action or the period within which the employee may make the request has expired and no such request has been made; or
  - (b) if such a request has been made, the Commissioner has confirmed the intended action or the request has been withdrawn.
- (7) In determining for the purposes of this section the period for which an employee has been on probation, all periods during which the employee has been on leave without pay, or during which the employee was not employed in the Public Sector between the time of his or her resignation and re-appointment in accordance with section 38, shall be disregarded.

### **33 Termination of temporary appointment**

Subject to any contract of employment under which the employee is employed, the Chief Executive Officer may, at any time, terminate the appointment of an employee employed on a temporary basis in his or her Agency.

### **34 Temporary and fixed period employment**

- (1) The Commissioner may, from time to time, determine the duties or classes of duties in an Agency or the Public Sector generally that:
- (a) may be performed on an appointment for a fixed period; or
  - (b) may only be performed on an appointment for a fixed period.
- (2) Duties referred to in subsection (1) may, subject to the relevant determination under that subsection and to subsection (6), be performed either by the appointment under section 29 of a person on a temporary basis or by the promotion or transfer of a permanent employee for a fixed period.
- (3) In making a determination under subsection (1), the Commissioner shall specify a period, not exceeding 5 years, as the period for which a person may be employed to perform the duties.
- (4) The Commissioner may determine the terms and conditions to apply to and in relation to employment to perform duties referred to

in subsection (1), and where such a term or condition is inconsistent with this Act, the term or condition so determined prevails and the conditions of or under this Act, to the extent of the inconsistency, have no effect.

- (5) The period of employment to perform duties referred to in subsection (1) may be renewed by the Chief Executive Officer for a period not exceeding the duration of the original period, but may not be renewed on more than one occasion except with the approval in writing of the Commissioner or where the appointment is under an Executive Contract of Employment.
- (6) A Chief Executive Officer shall not employ a person to perform duties referred to in subsection (1) unless the Commissioner has made a determination under subsection (4) in relation to employment to perform those duties.
- (7) Where duties referred to in subsection (1) are performed by a permanent employee promoted or transferred as referred to in subsection (2), the terms and conditions to which he or she is subject as a permanent employee at his or her designation shall be deemed to be varied, to the extent of the determination under subsection (4), for the duration of the period during which he or she performs those duties.
- (8) A reference in this section to an appointment on a temporary basis is to be read as including a reference to an appointment under an Executive Contract of Employment.

### **35 Transfers**

- (1) The Chief Executive Officer of an Agency may transfer an employee employed in his or her Agency to perform other duties in the Agency, being duties the Chief Executive Officer considers the employee is capable of performing and is competent and qualified to perform, and such duties may be required to be performed in a different locality from the duties previously being performed by the employee.
- (2) The Chief Executive Officer of an Agency may, with the agreement of the Chief Executive Officer of another Agency, transfer an employee employed in the first mentioned Agency to perform duties normally performed or to be performed by employees of the same designation in the second-mentioned Agency, being duties both Chief Executive Officers consider the employee is capable of performing and is competent and qualified to perform, and such duties may be required to be performed in a different locality from the duties previously being performed by the employee.

- (3) The Commissioner may transfer an employee from performing duties in one Agency to perform duties in another Agency, and such duties may be required to be performed in a different locality from the duties previously being performed by the employee.
- (4) A transfer referred to in this section may be permanent or for a fixed period.
- (5) An employee transferred as referred to in subsection (1) or (3) shall not, without the employee's consent, be paid a salary lower than the salary payable to the employee immediately before the transfer.
- (6) An employee transferred as referred to in this section shall not refuse to commence the duties which the employee is transferred to perform in accordance with the directions given to the employee by the relevant Chief Executive Officer or the Commissioner, as the case may be.
- (7) The merit principle does not apply to or in relation to a power referred to in this section.

### **37 Resignation**

- (1) Subject to the terms of any contract under which he or she may be employed in the Public Sector, an employee may at any time, in writing signed by him or her and delivered to his or her Chief Executive Officer, resign from employment in the Public Sector.
- (2) The Regulations may require a period of notice to be given or acceptance by a specified person or body of the resignation of an employee included in a specified class of employees or of an employee resigning in prescribed circumstances.
- (3) A resignation under this section may not be withdrawn except with the approval of the Chief Executive Officer.

### **38 Re-appointment of persons resigning to become candidates at elections**

- (1) Where the Chief Executive Officer of an Agency in which a person was employed immediately before the person's resignation is satisfied that:
  - (a) the person:
    - (i) resigned from the Public Sector in order to become a candidate for election, or to take his or her seat as a person elected, as a member of a House of Parliament of the Commonwealth or as a member of the Legislative Assembly;

- (ii) was a candidate at the election; and
  - (iii) was not duly elected; and
- (b) the resignation took effect not earlier than one month before the date on which nominations for the election closed,

the Chief Executive Officer shall, subject to this Act, on application by the person within 2 months after the declaration of the results of the election, re-appoint the person to the Public Sector, without probation, at a salary equivalent, or as nearly as possible equivalent, to the salary that the person had immediately before the date on which his or her resignation took effect.

(2) Where:

- (a) proceedings in respect of an offence against a law of the Commonwealth or the Territory or of a State or another Territory of the Commonwealth are pending against a person who has made an application under subsection (1); or
- (b) proceedings in respect of an offence against a law of a foreign country (being an offence which, if committed in the Territory, would have constituted an offence against a law of the Commonwealth or of the Territory) are pending against a person who has made such an application,

the person is not eligible for re-appointment until the proceedings have been determined and unless the person has been acquitted of the offence or the Chief Executive Officer is of the opinion that the nature and circumstances of the offence are such that, if the offence had been committed by an employee, it is unlikely that the employment of the employee in the Public Sector would be terminated.

- (3) A person shall be re-appointed under this section without being required to undergo any medical examination and whether or not the person possesses the appropriate educational qualifications or meets the appropriate requirements.
- (4) A person re-appointed under this section shall be deemed to have continued in the Public Sector as if he or she had been on leave without salary during the period from the day of the person's resignation to and including the day immediately preceding the day on which the person was re-appointed and, subject to section 32(7), that period shall, for all purposes (other than calculating recreation or sick leave entitlements), be taken to form part of his or her service in the Public Sector.

## **Part 6            Secondment and redeployment**

### **Division 1        Secondment**

#### **39            Chief Executive Officers may make secondment arrangements**

A Chief Executive Officer of an Agency may, if he or she considers it to be in the public interest to do so, enter into an arrangement with an authority or an employer which or who is not an Agency, for the secondment of an employee of the Agency to perform functions or services for, or duties in the service of, that authority or employer during such period, not exceeding 3 years, as is specified in the document evidencing the arrangement.

#### **40            Procedure where arrangement ceases**

- (1) Where the period of an arrangement under section 39 comes to an end, the Chief Executive Officer of the Agency from which the employee was seconded may transfer the employee to perform duties in the Agency which the Chief Executive Officer considers the employee is capable of performing and is competent and qualified to perform, being duties normally performed or to be performed by an employee of the same designation as that of the employee at the time the arrangement under section 39 was first entered into.
- (2) The Chief Executive Officer may transfer an employee referred to in subsection (1) notwithstanding that the duties have not been advertised in accordance with section 30(1).
- (3) Where a Chief Executive Officer is unable under subsection (1) to transfer an employee, the Chief Executive Officer may recommend to the Commissioner that the Commissioner transfer the employee to perform duties in another Agency and, notwithstanding section 35(5), the Commissioner may, at his or her discretion, transfer the employee accordingly.
- (4) Where the Commissioner receives a recommendation under subsection (3) and declines to transfer the employee to whom the recommendation relates to perform duties in another Agency, the Commissioner shall advise the Chief Executive Officer accordingly and direct the Chief Executive Officer to take such action as the Commissioner specifies.
- (5) The merit principle does not apply to or in relation to a power under this section.
- (6) The transfer of an employee under this section is not subject to review under section 59.

## **Division 2            Redeployment and redundancy**

### **41            Declaration of permanent employee to be potentially surplus to requirements**

- (1) Where a Chief Executive Officer is of the opinion that a permanent employee is potentially surplus to the requirements of his or her Agency, the Chief Executive Officer shall, by notice in writing to the employee, declare the employee to be potentially surplus to the requirements of the Agency and state the reasons for the declaration.
- (2) The Chief Executive Officer shall forward a copy of a notice under subsection (1) to the Commissioner and the prescribed employee organisation.

### **42            Transfer of surplus employees**

- (1) Without derogating from his or her powers under section 41, a Chief Executive Officer may transfer under this section a permanent employee declared under section 41(1) to be potentially surplus, including to perform duties in a different locality from the duties previously being performed by the employee.
- (2) The merit principle does not apply to or in relation to a power under this section.

### **43            Redeployment and redundancy**

- (1) Where a Chief Executive Officer is unable under section 35 or 42 to transfer a permanent employee declared under section 41(1) to be potentially surplus, the Chief Executive Officer may request the Commissioner to exercise the Commissioner's powers under this section.
- (2) Where the Commissioner receives a request under subsection (1), the Commissioner may:
  - (a) direct the Chief Executive Officer to take such steps in relation to the training and redeployment of the employee, within such time, as the Commissioner thinks fit; and/or
  - (b) give any other Chief Executive Officer directions relating to the transfer of the employee under section 35,

or direct the Chief Executive Officer to terminate the employment of the employee in the Public Sector on such conditions as the Commissioner thinks fit.

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**Part 7                      Inability of employee to discharge duties****44                      Inability of employee to discharge duties**

Where a Chief Executive Officer is of the opinion, on reasonable grounds, that an employee employed in his or her Agency is not:

- (a) fit to discharge, suited to perform or capable of efficiently performing, the duties he or she is employed to perform;
- (b) performing those duties efficiently or satisfactorily; or
- (c) qualified for the efficient and satisfactory performance of those duties,

the Chief Executive Officer shall, by notice in writing, advise the employee of the Chief Executive Officer's opinion and the grounds on which he or she has formed the opinion, and invite the employee, within 14 days, to indicate in writing whether the employee agrees with the Chief Executive Officer's assessment or to explain in writing any matter referred to in the notice.

**45                      Investigation of grounds**

- (1) As soon as practicable after the expiration of the 14 days referred to in section 44, the Chief Executive Officer, if not satisfied with the employee's explanation, if any, shall arrange for an investigation to be carried out by one or more persons to determine whether the Chief Executive Officer's opinion is well founded and shall, in writing, advise the employee accordingly.
- (2) In the course of an investigation referred to in subsection (1), if the person or persons carrying out the investigation are of the opinion that it is relevant to the investigation for the employee to be so examined, the person or persons may direct the employee to submit to an examination by one or more:
  - (a) medical practitioners; and/or
  - (b) other persons having relevant qualifications,approved for that purpose by the Commissioner, as the person or persons carrying out the investigation think fit.
- (3) Where an employee refuses to comply with a direction under subsection (2), the person or persons carrying out the investigation shall notify the Chief Executive Officer of the refusal and the Chief Executive Officer, on receiving the notification, shall take such action under this Act as he or she thinks fit.

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- (4) On completion of an investigation, the person or persons who carried out the investigation must advise the Chief Executive Officer in writing of their findings and the reasons for those findings.
  - (5) Within 14 days after receiving that advice, the Chief Executive Officer must advise the employee of those findings and reasons.

#### **46 Action following investigation**

- (1) If an employee on whom a notice under section 44 is served indicates that he or she agrees with the Chief Executive Officer's assessment or, as a consequence of an investigation referred to in section 45(1), the Chief Executive Officer remains of the opinion on the same or different grounds revealed by the investigation, the Chief Executive Officer may, subject to subsection (2):
  - (a) reduce the salary of the employee within the range determined by the designation of the employee; and/or
  - (b) under section 35, transfer the employee to perform other duties in the Agency or in another Agency, whether or not at a remuneration lower than that payable to the employee immediately before the transfer and whether or not the employee consents to be paid at that lower remuneration,  
  
or terminate the employment of the employee in the Public Sector.
- (2) The Chief Executive Officer shall not take action under subsection (1) unless:
  - (a) the employee has waived the right to appeal against the intention of the Chief Executive Officer to take the action or the period within which the employee may appeal has expired and no such appeal has been lodged; or
  - (b) if such an appeal has been lodged, it has been disallowed or withdrawn.
- (3) Where a Chief Executive Officer is unable under section 35(2) to transfer an employee in pursuance of subsection (1)(b), the Chief Executive Officer may recommend to the Commissioner that the Commissioner transfer the employee in accordance with the recommendation and, notwithstanding section 35(5), the Commissioner may, in his or her discretion, transfer the employee under section 35 accordingly.
- (4) Where the Commissioner receives a recommendation under subsection (3) and the Commissioner declines to transfer the employee to whom the recommendation relates to perform duties in another Agency, the Commissioner shall advise the Chief Executive

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Officer accordingly and request the Chief Executive Officer to take such other action under subsection (1) as the Chief Executive Officer thinks fit.

#### **47 Suspension or transfer pending explanation or investigation**

(1) Where a Chief Executive Officer:

- (a) has formed an opinion about an employee that requires action under section 44 (whether that action is yet to be or has already been taken); and
- (b) is of the opinion that it is appropriate to suspend or transfer the employee,

the Chief Executive Officer may:

- (c) suspend the employee for one or more periods (together not exceeding 3 months), with or without remuneration;
- (d) transfer the employee to perform other duties in the Agency; or
- (e) with the agreement of the Chief Executive Officer of another Agency or as directed by the Commissioner – transfer the employee to perform duties in that other Agency.

(1A) A suspension (unless it expires earlier) or a transfer remains in effect until:

- (a) the employee provides a satisfactory explanation in accordance with the invitation under section 44;
- (b) as a consequence of the investigation under section 45, the Chief Executive Officer no longer holds the opinion referred to in section 44;
- (c) having regard to the employee's agreement with the Chief Executive Officer's assessment under section 44 or the results of the investigation under section 45, the Chief Executive Officer decides not to take action under section 46(1); or
- (d) action is taken under section 46 in respect of the employee.

(2) The Commissioner may, at the request of the Chief Executive Officer, extend or further extend a period of suspension under subsection (1) for such period as the Commissioner thinks fit.

(3) Where an employee appeals against the intention of the Chief Executive Officer of the Agency in which the employee is employed

to take action under section 46(1) and the appeal is allowed, a suspension imposed on the employee under this section terminates on the date on which the appeal is allowed.

- (4) The suspension of an employee under this section, unless it is sooner terminated, terminates on action being taken by the Chief Executive Officer under section 46(1)(a) or (b) or on the employee being transferred to perform duties in another Agency by the Commissioner pursuant to section 46(3).
- (5) Where an employee is suspended under this section without remuneration and continues to be a permanent employee after the termination of the suspension, the employee shall be paid, in respect of the period of the suspension, the remuneration to which the employee would have been entitled had the suspension not been imposed.
- (6) A period of suspension under this section, other than a period that is terminated by or under this section, shall not be taken into account as service in calculating the person's sickness, recreation or long service leave entitlements as an employee.

#### **48 Medical incapacity**

- (1) An employee shall be taken to be totally and permanently incapacitated for the purposes of this section if, because of a physical or mental condition, it is unlikely that the employee will ever be able to work in any employment or hold any office for which he or she is reasonably qualified by education, training or experience or could become reasonably qualified after retraining.
- (2) Where a Chief Executive Officer is of the opinion, on reasonable grounds, that an employee employed in his or her Agency is unable to efficiently or satisfactorily perform his or her duties because of a physical or mental condition, the Chief Executive Officer may direct the employee to submit to an examination by one or more:
  - (a) medical practitioners; or
  - (b) other persons having relevant qualifications,approved for that purpose by the Commissioner as the Chief Executive Officer thinks fit.
- (3) The Chief Executive Officer shall, after considering the results of the examination or examinations under subsection (2) (or under section 45(2) or 51(2)) and all other relevant information available to him or her, determine whether the employee is totally and permanently incapacitated.

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- (4) Where the Chief Executive Officer determines that an employee is totally and permanently incapacitated, the Chief Executive Officer may, after considering the provisions of any superannuation legislation applying to the employee, retire the employee from the Public Sector on the grounds of invalidity or take such action under this Act as he or she thinks appropriate.
- (5) Where the Chief Executive Officer, after considering the results of the examination and examinations under subsection (2) (or under section 45(2) or 51(2)) and all other information available to him or her does not determine that the employee is totally and permanently incapacitated but assesses the employee to be unable to perform his or her duties efficiently or satisfactorily because of a physical or mental condition, the Chief Executive Officer shall take whatever steps he or she considers reasonable and practicable to facilitate the employee resuming those duties or take such other action under this Act as the Chief Executive Officer thinks appropriate.

## **Part 8                    Discipline**

### **49                    Breaches of discipline**

An employee who:

- (a) contravenes or fails to comply with this Act;
- (b) is found guilty in a court of an offence that affects the employee's employment committed before or after the commencement of this Act;
- (c) disregards or disobeys a lawful order or direction given by a person having authority to give such an order or direction;
- (d) uses a substance (including liquor or a drug) in a manner that results in inadequate performance of the employee's duties or improper conduct at the place of employment;
- (e) is negligent or careless in the discharge of any of the employee's duties or fails to perform the duties assigned to him or her;
- (f) in the course of employment or in circumstances having a relevant connection to his or her employment, conducts himself or herself in an improper manner;
- (g) harasses or coerces another employee;
- (h) without good cause, is absent from duty without leave;

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- (j) except as authorised by his or her Chief Executive Officer, engages in any remunerative employment, occupation or business outside the Public Sector;
  - (k) in relation to an application of the employee for appointment, promotion or transfer to perform duties in an Agency or at any stage in the selection process, provides information to the Chief Executive Officer or the Chief Executive Officer's representative that the employee knows, or ought reasonably to know, is false or misleading;
  - (m) provides information in the course of his or her employment that he or she knows or ought reasonably to know is false or misleading;
  - (n) fails to remedy previous unsatisfactory conduct or fails to comply with a formal caution; or
  - (p) otherwise disregards or acts in a manner inconsistent with the prescribed principles,
- commits a breach of discipline.

## **50 Summary dismissal**

Notwithstanding anything in this or any other Act or the rules known as the rules of natural justice (including any duty of procedural fairness), where a Chief Executive Officer is of the opinion that the action or omission constituting a breach of discipline amounts to misconduct of such a nature that it is in the public interest that the employee be immediately dismissed from the Public Sector, the Chief Executive Officer may, after consultation with the Commissioner, dismiss the employee from employment in Public Sector.

## **51 Procedure in respect of breaches of discipline**

- (1) Where a Chief Executive Officer suspects, on reasonable grounds, that an employee employed in his or her Agency has committed a breach of discipline and the employee has not been dismissed under section 50, the Chief Executive Officer may, subject to subsection (3), arrange for an investigation to be carried out to determine whether the employee has in fact committed a breach of discipline.
- (2) In the course of an investigation referred to in subsection (1), if the person or persons carrying out the investigation are of the opinion that it is relevant to the investigation for the employee to be so examined, the person or persons may direct the employee to submit to an examination by one or more:

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- (a) medical practitioners; and/or
  - (b) other persons having relevant qualifications,
- approved for that purpose by the Commissioner, as the person or persons carrying out the investigation think fit.
- (3) Before arranging under subsection (1) for an investigation to be carried out the Chief Executive Officer shall, by notice in writing, advise the employee of the Chief Executive Officer's intention to do so and the grounds on which the employee is suspected of having committed a breach of discipline and request the employee to furnish to the Chief Executive Officer, within 14 days after the service of the notice on the employee, a written explanation of the matters alleged to constitute the breach of discipline.
  - (4) The Chief Executive Officer need not arrange for an investigation to be carried out if:
    - (a) the employee admits in writing to having committed the breach;
    - (b) the Chief Executive Officer is satisfied with the employee's explanation; or
    - (c) the Chief Executive Officer is satisfied that an investigation is not warranted.
  - (5) Nothing in this section prevents the making of preliminary inquiries before an investigation is arranged under subsection (1), but any such inquiries shall cease once the investigation is arranged.
  - (6) Where the Chief Executive Officer:
    - (a) has formed a suspicion about an employee that would justify action under subsection (1) (whether action under subsection (1) or (3) is yet to be or has already been taken); and
    - (b) is of the opinion that the suspected breach of discipline is of such a serious nature that the employee should not continue in the performance of the employee's duties,the Chief Executive Officer may:
    - (c) suspend the employee for one or more periods (together not exceeding 3 months), with or without remuneration;
    - (d) transfer the employee to perform other duties in the Agency; or

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- (e) with the agreement of the Chief Executive Officer of another Agency or as directed by the Commissioner – transfer the employee to perform duties in that other Agency.
  - (6A) The Chief Executive Officer may, in consultation with the Commissioner, vary the suspension of an employee under subsection (6)(c) to be no longer with or without remuneration.
  - (6B) A suspension (unless it expires sooner) remains in effect until it is lifted under section 52.
  - (6C) A transfer remains in effect until:
    - (a) having regard to the employee's explanation or the results of the investigation, the Chief Executive Officer is of the opinion that the employee has not committed a breach of discipline; or
    - (b) action is taken under subsection (10) in relation to the employee.
  - (7) The Commissioner may, at the request of the Chief Executive Officer, extend or further extend a period of suspension under subsection (6) for such period as the Commissioner thinks fit.
  - (7A) The Commissioner may, at the request of the Chief Executive Officer, vary the suspension of an employee that has been extended under subsection (7) to be no longer with or without remuneration.
  - (8) As soon as practicable after completing an investigation referred to in subsection (1), the person or persons who carried out the investigation shall, in writing, advise the Chief Executive Officer of the findings and indicate whether, in his, her or their opinion, the employee has committed a breach of discipline and the reasons for the opinion.
  - (9) Not later than 14 days after receiving the advice and reasons under subsection (8), the Chief Executive Officer shall forward a copy to the employee.
  - (10) If, after considering a written explanation referred to in subsection (3) (where the employee has, as referred to in subsection (4), admitted to having committed a breach of discipline) or the report of the person or persons appointed to carry out the investigation referred to in subsection (1), the Chief Executive Officer is of the opinion, on the same or different grounds, that the employee:

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- (a) has committed a breach of discipline, the Chief Executive Officer may:
- (i) take no further action in the matter;
  - (ii) cause the employee to be formally cautioned in writing;
  - (iii) fine the employee an amount not exceeding an amount equivalent to the payment of 10 days' remuneration to the employee;
  - (iv) require the employee to forego a benefit or entitlement arising from the employee's employment (other than a benefit or entitlement arising from an award) for a period not exceeding one month;
  - (v) reduce the salary of the employee within the range of the employee's designation;
  - (vi) suspend the employee, without remuneration for such period as the Chief Executive Officer thinks fit, which period may include any period during which the employee was already suspended without remuneration under subsection (6); and/or
  - (vii) under section 35 and notwithstanding the merit principle, transfer the employee to perform other duties in the Agency or in another Agency, whether or not at a remuneration lower than that payable to the employee immediately before the transfer and whether or not the employee consents to be paid at that lower remuneration,
- or terminate the employment of the employee in the Public Sector; or
- (b) has not committed a breach of discipline, the Chief Executive Officer shall notify the employee accordingly.
- (11) Where a Chief Executive Officer is unable under section 35(2) to transfer an employee in pursuance of subsection (10)(a)(vii), the Chief Executive Officer may recommend to the Commissioner that the Commissioner transfer the employee in accordance with the recommendation and, notwithstanding section 35(5), the Commissioner may, in his or her discretion, transfer the employee under section 35 accordingly.
- (12) Where the Commissioner receives a recommendation under subsection (11) and declines to transfer the employee to perform duties in another Agency, the Commissioner shall advise the Chief

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Executive Officer accordingly and request the Chief Executive Officer to take such other action under subsection (10) as the Chief Executive Officer thinks fit.

## **52 Lifting of suspension**

- (1) Where an employee who is suspended without remuneration under section 51 is found not to have committed a breach of discipline, or where the employee admits such a breach and the suspension imposed on the employee is subsequently lifted, the employee shall be paid, in respect of so much of the period during which he or she was so suspended that is not included in a period of suspension imposed under section 51(10)(a)(vi), the remuneration to which the employee would have been entitled had the employee not been suspended without remuneration.
- (2) Where, in relation to an employee who is suspended under this Part, the Chief Executive Officer takes action under section 51(10)(a) or is of the opinion that the employee has not committed a breach of discipline, the suspension shall be lifted.
- (3) A Chief Executive Officer may, at any time, lift a suspension imposed under this Part on an employee employed in his or her Agency.
- (4) A period of suspension under section 51(6), other than a period that is terminated by or under this section, shall not be taken into account as service in calculating the person's sickness, recreation or long service leave entitlements as an employee.

## **53 Payment of fines**

A fine imposed under this Part is a debt due and payable to the Territory by the person on whom it is imposed.

## **54 Abandonment of employment**

- (1) Where an employee is absent from duty without permission and has been so absent for a continuous period of not less than 14 days, the Chief Executive Officer may send to the employee, addressed to the employee at the employee's last known address, a notice informing the employee that, unless the employee returns to duty within 14 days after the date of which the notice was sent, the employment of the employee in the Public Sector may be terminated.
- (2) Where an employee to whom a notice has been sent under subsection (1) does not return to duty within the 14 days, the Chief Executive Officer may terminate the employment of the employee in the Public Sector.

## **Part 9                      Appeals and review**

### **55                      Promotion appeals**

- (1) Subject to subsection (2) and section 30(2) an employee aggrieved by the selection of another employee to perform duties in an Agency by way of promotion as referred to in section 30(1) may, within 14 days after notification under section 30(2) of the selection, or such longer period as the Commissioner, in a particular case, allows, appeal to a Promotions Appeal Board against the selection, on the grounds that the appellant has superior merit to the person selected.
- (2) Subject to subsection (2A), an employee may not appeal under subsection (1) unless he or she was an applicant for selection, and had he or she been the successful applicant the selection would have amounted to a promotion of the employee, to perform the duties.
- (2A) An employee who was not an applicant for selection to perform duties the subject of advertising referred to in section 30(1)(a) may, with the approval in writing of the Commissioner, appeal under subsection (1) as though he or she were an applicant.
- (3) The procedures in and in relation to an appeal under this section (including the power to compel the attendance of witnesses and the giving of evidence) are as prescribed or, where there is no procedure prescribed in relation to a particular matter, are in the discretion of the Appeal Board.
- (4) If the Appeal Board thinks fit, an appeal may be determined without a hearing being conducted.

### **56                      Promotions Appeal Boards**

- (1) For the purposes of section 55, the Commissioner shall, from time to time, establish such number of Promotions Appeal Boards as are required to expeditiously deal with appeals under that section.
- (2) An Appeal Board under this section shall be constituted by:
  - (a) a Chairperson appointed by the Commissioner;
  - (b) a person nominated by the Chief Executive Officer; and
  - (c) a person nominated by the prescribed employee organisation.
- (2A) A person nominated by the Chief Executive Officer holds office on the terms and conditions that the Commissioner thinks fit and specifies in writing.

- (3) In determining an appeal under this section an Appeal Board may:
  - (a) disallow the appeal;
  - (b) allow the appeal and direct the Chief Executive Officer concerned to promote the appellant; or
  - (c) direct the Chief Executive Officer to re-advertise the vacancy.

## **57 Inability or disciplinary appeals**

- (1) An employee aggrieved by:
  - (a) the intention of the Chief Executive Officer of the Agency in which the employee is employed to take action under section 46(1);
  - (b) the action of the Chief Executive Officer under section 50; or
  - (c) the action of the Chief Executive Officer under section 51(10)(a),

may, within 14 days after being notified of the action or intention, appeal to an Inability Appeal Board or to a Disciplinary Appeal Board, as the case requires, against the action or intention.

- (2) For the purposes of this section, an Appeal Board shall be constituted by:
  - (a) a Chairperson appointed by the Minister;
  - (b) a person nominated by the Commissioner; and
  - (c) a person nominated by the prescribed employee organisation.
- (3) Nothing in this Act prevents more than one Appeal Board (to deal with different matters under this section) being in existence at the one time.
- (4) A person shall not be appointed as the Chairperson of an Inability Appeal Board or a Disciplinary Appeal Board unless he or she is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth and has been so enrolled for not less than 5 years or, in the opinion of the Minister, the person has other suitable qualifications or experience.
- (5) A Chairperson shall hold office for such period, and on such terms and conditions, as the Minister thinks fit and specifies in the instrument of appointment.

- (5A) A person nominated by the Commissioner holds office on the terms and conditions that the Commissioner thinks fit and specifies in writing.
- (6) In determining an appeal under this section an Appeal Board may:
  - (a) disallow the appeal; or
  - (b) allow the appeal in whole or in part and direct the Chief Executive Officer to take such action as the Appeal Board considers necessary.
- (7) In this section, for the purpose of enabling an appeal under subsection (1)(b) or (c) against the termination of the employment in the Public Sector of a former employee to be made, **employee** includes a former employee.

## **58 Procedure, &c., of appeals**

- (1) This section applies only to and in relation to appeals under section 57.
- (2) An appeal shall be by way of a review of the evidence taken into account by the Chief Executive Officer against whose action or intention the appeal is lodged, but where a party to the appeal, by notice in writing to the Appeal Board, satisfies it that there is additional evidence that was not available to the Chief Executive Officer before the Chief Executive Officer took the action or formed the intention or that evidence available to the Chief Executive Officer was not adequately taken into account, the Appeal Board shall (as the case requires) admit that evidence and, in its discretion, deal with the appeal as it thinks fit.
- (3) The procedure for an appeal is, subject to this Part and the Regulations, within the discretion of the Appeal Board.
- (4) Appeal proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Part and a proper consideration of the matter permit.
- (5) If the Appeal Board thinks fit, an appeal may be determined without a hearing.
- (6) Where an Appeal Board conducts an appeal by holding a hearing, it shall give reasonable notice to the appellant, the Chief Executive Officer of the Agency concerned and any other person who is joined as a party to the proceedings, of the time and place at which the appeal is to be heard.

- (7) An appeal shall not be heard in public unless the Appeal Board and the parties to the appeal agree.
- (8) Where an Appeal Board conducts an appeal by holding a hearing, each party is entitled to appear and to tender evidence.
- (9) Where an Appeal Board conducts an appeal by holding a hearing, a party to the proceedings may nominate any person, including a legal practitioner, to appear in the proceedings as the advocate of the party and the person may (in the case of a legal practitioner, only with the approval of the Appeal Board) appear on behalf of the party concerned and tender evidence.
- (10) Where an Appeal Board conducts an appeal without holding a hearing, each party is entitled to tender written evidence or other material.
- (11) An Appeal Board may admit evidence at an appeal notwithstanding that the evidence would not be admissible in a court of law.
- (12) An Appeal Board may:
  - (a) summon a person whose evidence appears to be material to the appeal;
  - (b) take evidence on oath and, for that purpose, may administer an oath; and
  - (c) require a person to produce documents or records in the person's possession or under the person's control which appear to be material to the appeal.
- (13) A person who, without reasonable excuse (and to whom, where the person is not an employee, payment or tender of reasonable expenses has been made), neglects or fails to attend in obedience to a summons under subsection (12) or to be sworn or make an affirmation, to answer relevant questions or to produce relevant documents when required to do so under that subsection, is guilty of an offence.  
  
Penalty:       \$5,000.
- (14) Nothing in this section shall be construed as compelling a person to answer a question or produce a document that may tend to incriminate the person.
- (15) An Appeal Board must:
  - (a) give its decisions and the reasons for its decisions in writing; and

- (b) cause copies of those decisions and reasons to be served on each of the parties.

## **59 Review of grievances**

- (1) An employee may:
  - (a) where he or she is aggrieved by the intention of the employee's Chief Executive Officer to terminate the employee's employment on probation – within 14 days; or
  - (b) in any other case where the employee is aggrieved by his or her treatment in employment in the Public Sector – within 3 months after the action or decision by which he or she is aggrieved,  
  
request the Commissioner to review the action, intended action or decision complained of.
- (2) Subject to subsections (3) and (5A), the Commissioner shall:
  - (a) in a case referred to in subsection (1)(a) – within 14 days; and
  - (b) in any other case – within 3 months,  
  
after a request under subsection (1) is received, or such longer period as, in the Commissioner's opinion, the circumstances require, review the matter.
- (3) Where the Commissioner believes that an employee making a request under subsection (1) has not taken adequate steps to seek redress of the grievance within the relevant Agency, the Commissioner may refer the matter to the Chief Executive Officer of the Agency for consideration within the time specified by the Commissioner and the Commissioner need not review the matter under this section until that time has expired.
- (4) Subject to this Act, the Commissioner has the powers necessary and convenient to deal with a request under this section, including the same powers and obligations in relation to a review as an Appeal Board has under section 58 in relation to an appeal.
- (5) After reviewing a matter under this section the Commissioner may:
  - (a) confirm the action, intended action or decision; or
  - (b) direct the Chief Executive Officer of the Agency concerned to take or refrain from taking, as the case requires, a specified action.

- (5A) The Commissioner may decline to review an action, intended action or decision if, in the Commissioner's opinion, the request for a review is frivolous or vexatious or has not been made in good faith.
- (6) In this section, for the purpose of allowing a review under this section of treatment resulting in the termination of the employment in, or resignation from, the Public Sector of a former employee, **employee** includes a former employee.

## **Part 10                    Miscellaneous**

### **60                    By-laws**

The Commissioner may make By-laws, not inconsistent with this Act or an award, relating to matters:

- (a) required or permitted by this Act or an award to be prescribed by the by-law; or
- (b) necessary or convenient to be prescribed by by-laws for carrying out or giving effect to this Act,

and, in particular, may make by-laws relating to:

- (c) leave;
- (d) entitlement to and payment of allowances;
- (e) recruitment and transfer expenses;
- (f) conditions applying to employees transferred to the Public Service or a statutory corporation under the Acts repealed by section 66;
- (g) conditions applying to employees in remote localities;
- (h) leave and other fares; and
- (j) other terms and conditions of employment.

### **61                    Work outside employment**

- (1) An employee shall not engage in paid employment outside his or her duties as an employee except with the approval of his or her Chief Executive Officer.
- (2) A Chief Executive Officer shall not give an approval for the purposes of subsection (1) unless satisfied that the paid employment will not interfere with the performance by the employee of his or her duties.

- (3) In this section, ***paid employment*** means employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward.

## **62 Work on public holidays**

A Chief Executive Officer may require the whole or part of his or her Agency to be kept open for the whole or part of a day observed in the Territory as a holiday under the *Public Holidays Act* and may require the attendance and services of an employee in the Agency on that day.

## **63 Performance of duties of statutory office holder in absence**

- (1) In this section ***statutory office holder*** means an employee on whom a function is imposed or power conferred by another Act by virtue of the employee holding an office under the other Act and to which office he or she was appointed by virtue of being an employee.
- (2) Where a statutory office holder is or is expected to be absent or unable to perform a function or exercise a power of his or her office, the Chief Executive Officer of the statutory office holder may, in writing, direct an employee employed in his or her Agency to perform the function or exercise the power during the absence or inability of the statutory office holder and, subject to that other Act, on being so directed, the employee may do so in the same manner and to the same extent as the statutory office holder.
- (3) The validity of an act done by an employee under this section shall not be questioned in any proceedings on a ground arising from the fact that the occasion for so acting had not arisen or had ceased.

## **64 Public Sector Consultative Council**

- (1) The Regulations may make provision for the establishment of a Public Sector Consultative Council.
- (2) The Public Sector Consultative Council:
- (a) shall be representative of:
    - (i) the Commissioner;
    - (ii) Agencies; and
    - (iii) organisations of employees (being organisations within the meaning of the *Workplace Relations Act 1996* of the Commonwealth);

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- (b) shall be constituted in the prescribed manner;
  - (c) shall have the prescribed functions with respect to matters of general interest in relation to the Public Sector which are referred to it as prescribed; and
  - (d) shall carry out its functions in the prescribed manner.

#### **64A Protection from legal proceedings**

- (1) No civil or criminal proceedings lie against a person:
  - (a) who is conducting or has conducted an investigation under section 45(1) or 51(1); or
  - (b) who is an employee or former employee,  
in relation to a report prepared in good faith by the person for the purposes of this Act or in the course of his or her employment about:
    - (c) the work that has been, is being or is to be performed by an employee;
    - (d) the work that was performed by a former employee; or
    - (e) the conduct of an employee or former employee.
- (2) In subsection (1):

**employee** includes the Commissioner and a Chief Executive Officer.

**former employee** includes a former Commissioner and a former Chief Executive Officer.

#### **65 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,and, in particular:
  - (c) prescribing principles to be observed in public administration and management, human resource management, and conduct;

- (d) relating to the employment of employees on their completion of an appointment for a fixed period referred to in section 34; and
  - (e) prescribing procedures to be followed in or in relation to appeals under this Act.
- (2) The Regulations may prescribe penalties, not exceeding \$2,000, for a failure to comply with or contravention of a regulation or a provision of this Act and, in addition, may prescribe a penalty, not exceeding \$200, for each day during which the failure or contravention continues.

## **66 Repeal**

The Acts specified in Schedule 2 are repealed.

**Schedule 1 Chief Executive Officers of particular Agencies**

section 3

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Office	Name
Police Civil Employment Unit	Commissioner of Police
Ombudsman's Office	Ombudsman
Auditor-General's Office	Auditor-General

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**Schedule 2 Acts repealed**

section 66

<i>Public Service Ordinance 1976</i>	No. 62, 1976
<i>Public Service Ordinance (No. 2) 1976</i>	No. 63, 1976
<i>Public Service Ordinance 1977</i>	No. 11, 1977
<i>Public Service Ordinance (No. 2) 1977</i>	No. 37, 1977
<i>Public Service Ordinance (No. 3) 1977</i>	No. 42, 1977
<i>Public Service Ordinance (No. 4) 1977</i>	No. 55, 1977
<i>Public Service Ordinance 1978</i>	No. 32, 1978
<i>Public Service Act (No. 2) 1978</i>	No. 15, 1979
<i>Public Service Act 1979</i>	No. 97, 1979
<i>Public Service Act (No. 2) 1979</i>	No. 102, 1979
<i>Public Service Act 1980</i>	No. 47, 1980
<i>Public Service Amendment Act 1980</i>	No. 15, 1981
<i>Public Service Amendment Act 1982</i>	No. 35, 1982
<i>Public Service Amendment Act 1983</i>	No. 41, 1983
<i>Public Service and Statutory Authorities Amendment Act 1985</i>	No. 28, 1985
<i>Public Service Amendment Act 1985</i>	No. 43, 1985
<i>Public Service Amendment Act 1987</i>	No. 23, 1987
<i>Public Employment (Modification of Terms and Conditions of Employment) Act 1987</i>	No. 32, 1987
<i>Public Service Amendment Act 1991</i>	No. 14, 1991
<i>Teaching Service Act 1981</i>	No. 41, 1981
<i>Teaching Service Amendment Act 1981</i>	No. 82, 1981
<i>Teaching Service Amendment Act 1982</i>	No. 29, 1982

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Public Sector Employment and Management Act 1993 (Act No. 11, 1993)***

Assent date	19 April 1993
Commenced	1 July 1993 ( <i>Gaz</i> S53, 29 June 1993)

***Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)***

Assent date	9 November 1993
Commenced	9 November 1993

***Public Sector Employment and Management Amendment Act 1993 (Act No. 79, 1993)***

Assent date	1 December 1993
Commenced	1 December 1993

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 <i>Financial Management 1995</i> (Act No. 4, 1995) and <i>Gaz</i> S13, 31 March 1995)

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date	23 June 1995
Commenced	23 June 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)

***Statute Law Revision Act 1998 (Act No. 11, 1998)***

Assent date	30 March 1998
Commenced	30 March 1998

***Public Sector Employment and Management Amendment Act 1998 (Act No. 64, 1998)***

Assent date	22 September 1998
Commenced	7 October 1998 ( <i>Gaz</i> G39, 7 October 1998, p 4)

**Legal Aid Amendment Act 1998 (Act No. 78, 1998)**

Assent date 21 October 1998  
Commenced 1 January 1999 (*Gaz* G45, 18 November 1998, p 4)

**Public Sector Employment and Management Amendment Act 2001 (Act No. 68, 2001)**

Assent date 21 December 2001  
Commenced 21 December 2001

**Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)**

Assent date 7 November 2002  
Commenced 7 November 2002

**Public Sector Employment and Management Amendment Act 2003 (Act No. 50, 2003)**

Assent date 18 September 2003  
Commenced 18 September 2003

**Electoral (Consequential Amendments) Act 2004 (Act No. 12, 2004)**

Assent date 1 March 2004  
Commenced 15 March 2004 (s 2, s 2 *Electoral Act 2004* (Act No. 11, 2004) and *Gaz* S6, 15 March 2004)

**Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)**

Assent date 15 September 2004  
Commenced 27 October 2004 (*Gaz* G43, 27 October 2004, p 3)

**3 GAZETTE NOTICES**

*Gaz* S87, 1 November 1993

**4 SAVINGS AND TRANSITIONAL PROVISIONS**

ss 23 to 27 *Public Sector Employment and Management Amendment Act 1998* (Act No. 64, 1998)  
s 5 *Public Sector Employment and Management Amendment Act 2003* (Act No. 50, 2003)

**5 LIST OF AMENDMENTS**

s 3 amd No. 5, 1995, s 7; No. 11, 1998, s 7; No. 64, 1998, s 4  
s 4 amd No. 59, 2002, s 5; No. 12, 2004, s 5  
s 5 rep No. 5, 1995, s 8  
s 7 sub No. 5, 1995, s 9  
amd No. 14, 1995, s 12  
s 16 amd No. 64, 1998, s 5  
s 27 amd No. 79, 1993, s 3; No. 64, 1998, s 6; No. 68, 2001, s 2  
s 28 amd No. 5, 1995, s 10; No. 64, 1998, s 7  
s 29 amd No. 64, 1998, s 8  
s 30 amd No. 64, 1998, s 9  
s 34 amd No. 64, 1998, s 10  
s 36 amd No. 64, 1998, s 11  
rep No. 50, 2003, s 3  
s 38 amd No. 50, 2003, s 4  
s 40 amd No. 54, 2004, s 7  
s 42 amd No. 79, 1993, s 4  
s 45 amd No. 64, 1998, s 12

## ENDNOTES

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s 46	amd No. 70, 1993, s 8
s 47	amd No. 64, 1998, s 13; No. 54, 2004, s 7
s 49	amd No. 17, 1996, s 6; No. 64, 1998, s 14
s 51	amd No. 64, 1998, s 15
s 52	amd No. 70, 1993, s 8; No. 64, 1998, s 16
s 55	amd No. 79, 1993, s 5; No. 64, 1998, s 17
s 56	amd No. 64, 1998, s 18
s 57	amd No. 64, 1998, s 19
s 58	amd No. 64, 1998, s 20
s 59	amd No. 64, 1998, s 21
s 60	amd No. 70, 1993, s 8
s 64	amd No. 11, 1998, s 7; No. 54, 2004, s 7
s 64A	ins No. 64, 1998, s 22
sch 1	amd <i>Gaz S87</i> sub No. 5, 1995, s 11 amd No. 78, 1998, s 13; No. 68, 2001, s 3