

NORTHERN TERRITORY OF AUSTRALIA
PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT
ACT 1998

No. 64 of 1998

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Employment instructions
6. Delegation by Chief Executive Officers
7. Reports by Chief Executive Officers
8. Chief Executive Officers to appoint, promote and transfer
9. Procedure for filling vacancies
10. Temporary and fixed period employment
11. Age retirement
12. Investigation of grounds
13. Suspension or transfer pending explanation or investigation
14. Breaches of discipline
15. Procedure in respect of breaches of discipline
16. Lifting of suspension
17. Promotion appeals
18. Promotions Appeal Boards
19. Inability or disciplinary appeals
20. Procedure, &c., of appeals
21. Review of grievances
22. New section:

"64A. PROTECTION FROM LEGAL PROCEEDINGS"
23. Application: investigation of grounds
24. Application: suspension or transfer pending explanation or investigation
25. Application: procedure in respect of breaches of discipline
26. Application: promotion appeals
27. Application: procedure, &c., of appeals



NORTHERN TERRITORY OF AUSTRALIA

No. 64 of 1998

AN ACT

to amend the *Public Sector Employment
and Management Act*

[Assented to 22 September 1998]

1. SHORT TITLE

This Act may be cited as the *Public Sector Employment and Management Amendment Act 1998*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Public Sector Employment and Management Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended -

- (a) by omitting from paragraph (c) of the definition of "Executive Contract of Employment" in subsection (1) "term" and substituting "period"; and
- (b) by inserting after the definition of "Executive Contract of Employment" in subsection (1) the following:

Public Sector Employment and Management Amendment

"'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;".

5. EMPLOYMENT INSTRUCTIONS

Section 16 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(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."

6. DELEGATION BY CHIEF EXECUTIVE OFFICERS

Section 27 of the Principal Act is amended —

- (a) by omitting from subsection (1)(b) "Agency; or" and substituting "Agency;"; and
- (b) by inserting after subsection (1)(b) the following:

"(ba) if the Chief Executive Officer is the Commissioner of Police — a member of the Police Force; or".

7. REPORTS BY CHIEF EXECUTIVE OFFICERS

Section 28 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(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."

Public Sector Employment and Management Amendment

8. CHIEF EXECUTIVE OFFICERS TO APPOINT, PROMOTE AND TRANSFER

Section 29 of the Principal Act is amended by adding at the end the following:

"(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."

9. PROCEDURE FOR FILLING VACANCIES

Section 30 of the Principal Act is amended -

- (a) by omitting from subsection (1)(b) "an employee" and substituting "a person or employee"; and
- (b) by omitting from subsection (2) "the Gazette by the Chief Executive Officer" and substituting "the manner that the Commissioner directs".

10. TEMPORARY AND FIXED PERIOD EMPLOYMENT

Section 34 of the Principal Act is amended -

- (a) by omitting from subsection (2) "contract" and "term" and substituting "a temporary basis" and "period", respectively;
- (b) by omitting from subsection (5) "contract is" and substituting "appointment is under"; and
- (c) by adding at the end the following:

"(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."

11. AGE RETIREMENT

Section 36 of the Principal Act is amended by omitting from subsection (3) "as if employed on contract" and substituting "on a temporary basis".

12. INVESTIGATION OF GROUNDS

Section 45 of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) On completion of an investigation, the person or persons who carried out the investigation must advise

Public Sector Employment and Management Amendment

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."

13. SUSPENSION OR TRANSFER PENDING EXPLANATION OR INVESTIGATION

Section 47 of the Principal Act is amended —

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

"(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

Public Sector Employment and Management Amendment

decides not to take action under section 46(1);
or

- (d) action is taken under section 46 in respect of the employee."; and
- (b) by inserting in subsection (2) "or further extend" after "extend".

14. BREACHES OF DISCIPLINE

Section 49 of the Principal Act is amended —

- (a) by omitting paragraph (f) and substituting the following:
"(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;"; and
- (b) by omitting from paragraph (p) all the words after "principles".

15. PROCEDURE IN RESPECT OF BREACHES OF DISCIPLINE

Section 51 of the Principal Act is amended —

- (a) by omitting subsection (4) and substituting the following:
"(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.";
- (b) by omitting subsection (6) and substituting the following:
"(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

Public Sector Employment and Management Amendment

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
- (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.";
- (c) by inserting in subsection (7) "or further extend" after "extend"; and
- (d) by inserting after subsection (7) the following:

"(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."

16. LIFTING OF SUSPENSION

Section 52 of the Principal Act is amended -

- (a) by omitting from subsection (1) "section 51(6)" (first occurring) and substituting "section 51"; and

Public Sector Employment and Management Amendment

- (b) by omitting from subsection (1) "suspension under section 51(6) not been imposed" and substituting "employee not been suspended without remuneration".

17. PROMOTION APPEALS

Section 55 of the Principal Act is amended –

- (a) by omitting from subsection (1) "21 days after the notification in the *Gazette*" and substituting "14 days after notification under section 30(2)"; and

- (b) by adding at the end the following:

"(4) If the Appeal Board thinks fit, an appeal may be determined without a hearing being conducted."

18. PROMOTIONS APPEAL BOARDS

Section 56 of the Principal Act is amended –

- (a) by omitting from subsection (2)(b) "an employee" and substituting "a person"; and

- (b) by inserting after subsection (2) the following:

"(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."

19. INABILITY OR DISCIPLINARY APPEALS

Section 57 of the Principal Act is amended –

- (a) by omitting from subsection (2)(b) "an employee" and substituting "a person"; and

- (b) by inserting after subsection (5) the following:

"(5A) A person nominated by the Commissioner holds office on the terms and conditions that the Commissioner thinks fit and specifies in writing."

20. PROCEDURE, &c., OF APPEALS

Section 58 of the Principal Act is amended –

- (a) by omitting from subsection (2) "a hearing *de novo*" and substituting "it thinks fit"; and

Public Sector Employment and Management Amendment

(b) by omitting subsection (15) and substituting the following:

"(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."

21. REVIEW OF GRIEVANCES

Section 59 of the Principal Act is amended —

(a) by omitting from subsection (2) "subsection (3)" and substituting "subsections (3) and (5A)";

(b) by omitting subsection (4) and substituting the following:

"(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."; and

(c) by inserting after subsection (5) the following:

"(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."

22. NEW SECTION

The Principal Act is amended by inserting after section 64 the following:

"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 —

Public Sector Employment and Management Amendment

- (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."

23. APPLICATION: INVESTIGATION OF GROUNDS

Section 45 of the Principal Act as amended by this Act applies in relation to an investigation arranged on or after the date on which section 12 commences.

24. APPLICATION: SUSPENSION OR TRANSFER PENDING EXPLANATION OR INVESTIGATION

Section 47 of the Principal Act as amended by this Act applies in relation to an opinion of the Chief Executive Officer formed on or after the date on which section 13 commences.

25. APPLICATION: PROCEDURE IN RESPECT OF BREACHES OF DISCIPLINE

Section 51 of the Principal Act as amended by this Act applies in relation to a breach of discipline suspected to have been committed on or after the date on which section 15 commences.

26. APPLICATION: PROMOTION APPEALS

Section 55 of the Principal Act as amended by this Act applies in relation to a selection made on or after the date on which section 17 commences.

27. APPLICATION: PROCEDURE, &c., OF APPEALS

Section 58 of the Principal Act as amended by this Act applies in relation to an appeal lodged on or after the date on which section 20 commences.