

Serial 146  
Public Sector Employment and Management Amendment Bill 2011  
Dr Burns

A Bill for an Act to amend the *Public Sector Employment and Management Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT  
AMENDMENT ACT 2011

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Act No. [ ] of 2011

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Table of provisions

<b>Part 1</b>	<b>Preliminary matters</b>	
1	Short title .....	1
2	Commencement .....	1
<b>Part 2</b>	<b>Amendment of Public Sector Employment and Management Act</b>	
3	Act amended .....	1
4	Section 2A inserted .....	2
	2A Objects of Act	
5	Section 3 amended.....	2
6	Section 5 inserted.....	6
	5 Application of Criminal Code	
7	Part 1A inserted.....	7
	Part 1A General principles relating to Public Sector	
	5A Public sector principles	
	5B Administration management principle	
	5C Human resource management principle	
	5D Merit principle	
	5E Equality of employment opportunity principle	
	5F Performance and conduct principle	
8	Section 11 replaced.....	11
	11 Delegation by Commissioner	
9	Section 13 amended.....	11
10	Section 15 replaced.....	12
	15 Commissioner's investigatory powers	
	15A Relationship with Public Interest Disclosure Act	
11	Section 17 replaced.....	13
	17 Employee records	
12	Section 18 amended.....	14
13	Section 19 replaced.....	15
	19 Agency to have Chief Executive Officer	
	19A Appointment of Chief Executive Officers	
14	Section 20 amended.....	16

15	Section 21 amended.....	16
16	Sections 23 and 24 replaced .....	17
	23 Chief Executive Officer responsible to appropriate minister	
	24 Functions of Chief Executive Officers	
17	Section 27 replaced.....	19
	27 Delegation by Chief Executive Officers	
18	Section 28 amended.....	19
19	Section 29 amended.....	21
20	Section 30 amended.....	22
21	Section 32 amended.....	24
22	Section 33 amended.....	26
23	Section 34 amended.....	27
24	Section 34A inserted .....	29
	34A Casual employment	
25	Section 36 inserted.....	29
	36 Transfer and change to duties generally	
26	Section 38 amended.....	30
27	Sections 38A and 38B inserted .....	32
	38A Multiple employment arrangements	
	38B Special measures to address inequality of opportunity	
28	Sections 39 and 40 replaced .....	33
	39 Chief Executive Officers may make secondment arrangements	
29	Section 41 replaced.....	33
	41 Declaration of ongoing employee to be potentially surplus to requirements	
30	Part 7 replaced .....	34
	Part 7 Employee performance and inability	
	44 Inability or unsatisfactory performance	
	45 Medical examination and report	
	46 Remedial action	
	47 Employee may be suspended pending decision	
	48 Retirement on the grounds of invalidity	
31	Sections 49A to 49E inserted .....	40
	49A Chief Executive Officer may take disciplinary action	
	49B Medical examination and report	
	49C Disciplinary action	
	49D Taking of disciplinary action if employee changes Agency	
	49E Employee may be suspended pending decision	
32	Section 50 amended.....	45
33	Sections 51 and 52 repealed .....	46
34	Section 54 replaced.....	46
	54 Abandonment of employment	
35	Part 9 heading replaced .....	47
	Part 9 Review of grievances and appeals	
	Division 1 Grievances	
36	Sections 55 to 58 repealed.....	47

37	Section 59 amended.....	47
38	Part 9, Division 2 inserted.....	49
	Division 2                      Appeals	
	59A      Appeals about inability, performance and disciplinary decisions	
	59B      Appeals about promotions	
	59C      Commissioner to convene appeal board	
	59D      Appeal board may decline to deal with certain appeals	
	59E      Determination of appeal	
	59F      Conduct of appeal	
39	Section 64 amended.....	53
40	Section 64A amended .....	54
41	Section 65 replaced.....	55
	65      Regulations	
42	Part 11 inserted .....	55
	Part 11                      Transitional matters for Public Sector Employment and Management Amendment Act 2011	
	67      Definitions	
	68      Commissioner's investigatory powers	
	69      Chief Executive Officers	
	70      Acting Chief Executive Officers	
	71      Delegations	
	72      Categorisation of employment	
	73      Determinations under old section 34	
	74      Secondment	
	75      Inability or performance matters	
	76      Retirement on the grounds of invalidity	
	77      Discipline	
	78      Appeals	
	79      By-laws	
	80      Regulations	
43	Act further amended .....	60
 <b>Part 3                      Repeals and consequential amendments</b>		
<b>Division 1                      Repeals</b>		
44	Acts repealed.....	60
 <b>Division 2                      Consequential amendments of other Acts</b>		
45	Other Acts amended.....	60
 <b>Schedule 1                      Public Sector Employment and    Management Act further amended</b>		
 <b>Schedule 2                      Other Acts amended</b>		



# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2011

An Act to amend the *Public Sector Employment and Management Act*, and for related purposes

[Assented to [ ] 2011]  
[Second reading [ ] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Public Sector Employment and Management Amendment Act 2011*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Public Sector Employment and Management Act

### 3 Act amended

This Part amends the *Public Sector Employment and Management Act*.

---

**4 Section 2A inserted**

After section 2

*insert*

**2A Objects of Act**

- (1) The objects of this Act are as follows:
- (a) to provide for an apolitical Public Sector that is efficient and effective in serving the government, the Legislative Assembly and the people of the Northern Territory;
  - (b) to provide for the administration of the Public Sector and the employment and management of employees;
  - (c) to provide for the obligations and rights of employees;
  - (d) to promote fairness and equality of employment opportunity in the Public Sector.
- (2) To help achieve the objects, this Act:
- (a) provides principles to guide:
    - (i) administration and management of the Public Sector; and
    - (ii) human resource management in the Public Sector; and
    - (iii) performance and personal conduct of individuals in the Public Sector; and
  - (b) provides for there to be a Commissioner for Public Employment to oversee the management of the Public Sector; and
  - (c) provides for there to be a Chief Executive Officer for each Agency to manage, and provide strategic leadership of, the Agency.

**5 Section 3 amended**

- (1) Section 3(1)

*omit*

, unless the contrary intention appears

- (2) Section 3(1), definitions ***Agency, Appeal Board, award, breach of discipline, Chief Executive Officer, Commissioner, fixed period, Minister, permanent employee, repealed Act*** and ***this Act***

*omit*

- (3) Section 3(1)

*insert (in alphabetical order)*

***administration management principle***, see section 5B.

***Agency*** means a unit of government administration, office or statutory corporation:

- (a) nominated in an Administrative Arrangement Order as an Agency for this Act; or
- (b) declared by another Act to be an Agency for this Act.

***appeal board*** means a board convened under section 59C for an appeal.

***award*** means an award, determination, decision, order or enterprise agreement (however described) in force under an Act, or a law of the Commonwealth, that provides for the determination of conditions of employment of a person.

***breach of discipline***, see section 49.

***casual employee*** means an employee employed as mentioned in section 29(3)(c).

***Chief Executive Officer***, see section 19.

***Commissioner*** means:

- (a) unless paragraph (b) applies – the person holding or occupying the office of Commissioner for Public Employment mentioned in section 8; or
- (b) for an employee in the Department of the Legislative Assembly – the Speaker.

***disciplinary action*** means action under section 49C(1)(b) or (c).

***equality of employment opportunity principle***, see section 5E.

***fixed period employee*** means an employee employed as mentioned in section 29(3)(b), including an employee employed under an Executive Contract of Employment.

***health practitioner*** means:

- (a) a medical practitioner; or
- (b) any other person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student); or
- (c) a health practitioner who has a right of practice under the *Health Practitioners Act*.

***human resource management principle***, see section 5C.

***inability or performance grounds***, see section 44(1).

***merit principle***, see section 5D.

***ongoing employee*** means an employee employed as mentioned in section 29(3)(a).

***performance and conduct principle***, see section 5F.

***public sector principles*** means the principles mentioned in section 5A(1).

***relevant Chief Executive Officer***, in Part 9, Division 2, means the Chief Executive Officer who made the decision the subject of the appeal.

***remedial action*** means action under section 46(1)(b) or(c).

- (4) Section 3(1), definition ***appropriate minister***

*omit*

when used in relation to

*insert*

for



- (5) Section 3(1), definition ***employment***  
*omit*  
in relation to  
*insert*  
for
- (6) Section 3(1), definition ***Employment Instructions***  
*omit*  
Employment Instructions issued  
*insert*  
rules made
- (7) Section 3(1), definition ***Executive Contract of Employment***,  
paragraph (a), at the end  
*insert*  
or
- (8) Section 3(1), definition ***Executive Contract of Employment***,  
paragraph (c)  
*omit*  
in relation to  
*insert*  
to perform
- (9) Section 3(1), definition ***Executive Contract of Employment***,  
paragraph (c)  
*omit*  
period,  
*insert*  
period;

(10) Section 3(2)

*omit*

(11) Section 3(3)

*omit*

appointment

*insert*

employment

(12) Section 3(3)

*omit*

such an employee, that law shall be read

*insert*

an employee, the other law applies

(13) Section 3(4)

*omit*

shall be read

*insert*

applies

## **6 Section 5 inserted**

After section 4, in Part 1

*insert*

## **5 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 5*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

---

**7 Part 1A inserted**

After section 5

*insert*

**Part 1A General principles relating to Public Sector****5A Public sector principles**

- (1) The general principles underlying this Act are as follows:
  - (a) the administration management principle;
  - (b) the human resource management principle, including:
    - (i) the merit principle; and
    - (ii) the equality of employment opportunity principle;
  - (c) the performance and conduct principle.
- (2) The public sector principles must be upheld by the following:
  - (a) the Commissioner;
  - (b) Agencies;
  - (c) Chief Executive Officers;
  - (d) employees.

**5B Administration management principle**

The *administration management principle* is that the administration and management of the Public Sector must be directed towards the following:

- (a) providing effective, efficient and appropriate services to the community and the government;
- (b) ensuring the effective, efficient and appropriate use of public resources;
- (c) informing, advising and assisting the government objectively, impartially and with integrity;

- (d) ensuring that in carrying out their functions Agencies:
  - (i) are responsive to the changing needs of the community and the government; and
  - (ii) work cooperatively with each other;
- (e) ensuring the Public Sector is structured and administered so that:
  - (i) responsibilities are clearly defined; and
  - (ii) appropriate levels of accountability are in place; and
  - (iii) excessive formality and delay are minimised; and
  - (iv) innovation is encouraged;
- (f) ensuring proper standards of financial management and accounting are maintained.

#### **5C Human resource management principle**

- (1) The *human resource management principle* is that human resource management in the Public Sector must be directed towards promoting the following:
  - (a) employment based on merit;
  - (b) equality of employment opportunity;
  - (c) working environments in which employees:
    - (i) are treated fairly, reasonably and in a non-discriminatory way; and
    - (ii) are remunerated at rates appropriate to their responsibilities; and
    - (iii) have reasonable access to training and development; and
    - (iv) have reasonable access to redress when adversely affected by improper or unreasonable decisions.
- (2) The human resource management principle incorporates the merit principle and the equality of employment opportunity principle.

**5D Merit principle**

- (1) The *merit principle* is that the employment of a person as an employee, or the promotion or transfer of an employee, under this Act must be based solely on the person's suitability:
  - (a) to perform the relevant duties; and
  - (b) for employment in the relevant workplace; and
  - (c) for employment in the Public Sector.
- (2) A person's suitability is to be determined having regard to the person's:
  - (a) knowledge; and
  - (b) skills; and
  - (c) qualifications and experience; and
  - (d) potential for future development; and
  - (e) diversity value.
- (3) For subsection (2)(e), a person's *diversity value* is to be determined having regard to:
  - (a) whether the person is a member of an equal opportunity target group; and
  - (b) whether it would add value to the workplace where the duties are to be performed to have employees who are members of that group.
- (4) The Commissioner may determine a group of people to be an *equal opportunity target group*.
- (5) In making a decision for subsection (4) the Commissioner must have regard to:
  - (a) the equality of employment opportunity principle; and
  - (b) the nature and extent of inequality in employment in the Public Sector suffered by the group.
- (6) The merit principle applies subject to sections 35(7), 38B(1), 42(2), 46(3) and 49C(3).

**5E Equality of employment opportunity principle**

(1) The *equality of employment opportunity principle* is that human resource management in the Public Sector must be directed towards the following:

- (a) ensuring all persons have equal opportunity to compete for employment, promotion and transfer, and to pursue careers, within the Public Sector;
- (b) eliminating unlawful discrimination from human resource management in the Public Sector;
- (c) promoting diversity among employees reflective of the diversity of persons in the community.

(2) In this section:

*unlawful discrimination* means discrimination that is unlawful under the *Anti-Discrimination Act*.

**5F Performance and conduct principle**

(1) The *performance and conduct principle* is that a public sector officer must do the following:

- (a) carry out the officer's duties as follows:
  - (i) objectively, impartially, professionally and with integrity;
  - (ii) to the best of the officer's ability;
  - (iii) in accordance with the Act and any code of conduct applicable to the officer under section 16(2)(c);
- (b) treat other public sector officers, other persons in the workplace and members of the public fairly, equitably and with proper courtesy and consideration;
- (c) ensure effective, efficient and appropriate use of public resources;
- (d) avoid actual or apparent conflicts of interest between personal or other interests and duties as a public sector officer;
- (e) ensure the officer's personal conduct does not:
  - (i) adversely affect the performance of the officer's duties as a public sector officer; or
  - (ii) bring the Public Sector into disrepute.

- (2) In this section:

*public sector officer* means the Commissioner, a Chief Executive Officer or an employee.

## **8 Section 11 replaced**

Section 11

*repeal, insert*

## **11 Delegation by Commissioner**

- (1) The Commissioner may delegate any of the Commissioner's powers or functions under this Act to any person.
- (2) The Commissioner must not delegate a power or function to an employee in an Agency unless the Commissioner has consulted with the Chief Executive Officer of the Agency.

## **9 Section 13 amended**

- (1) Section 13, after "are"

*insert*

as follows:

- (2) Section 13(b)

*omit, insert*

(b) to promote the upholding of the public sector principles;

- (3) Section 13(c)

*omit*

appointment

*insert*

employment

- (4) Section 13(j)

*omit*

co-ordinate

---

*insert*

coordinate

(5) Section 13(n)

*omit*

and

## **10 Section 15 replaced**

Section 15

*repeal, insert*

## **15 Commissioner's investigatory powers**

- (1) For carrying out functions under this Act, the Commissioner may do one or more of the following:
- (a) at a reasonable time enter and inspect premises occupied by an Agency (other than any part of a premises used as a residence);
  - (b) obtain relevant information from persons as, and in the way, the Commissioner considers appropriate;
  - (c) consult with persons as the Commissioner considers appropriate;
  - (d) make inquiries as the Commissioner considers appropriate.
- (2) Without limiting subsection (1)(b), the Commissioner may require a person to do one or more of the following:
- (a) appear before the Commissioner;
  - (b) give information to the Commissioner, on oath or otherwise;
  - (c) produce information or documents to the Commissioner;
  - (d) verify information or a document by statutory declaration.
- (3) A person appearing before the Commissioner may be represented by a legal practitioner or agent only with the leave of the Commissioner.
- (4) A person must comply with a requirement under subsection (2).

Maximum penalty: 43 penalty units.



- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the person establishes a reasonable excuse.
- (7) Without limiting subsection (6), it is a reasonable excuse if complying with the requirement might tend to incriminate the person.

#### **15A Relationship with Public Interest Disclosure Act**

- (1) If information is given to the Commissioner under section 22(1) of the *Public Interest Disclosure Act*, the Commissioner may deal with it under this Act.
- (2) Subsection (1) does not affect any obligations under the *Public Interest Disclosure Act* relating to confidentiality of information.
- (3) In subsection (1):  
*deal with* includes exercise a power or perform a function under this Act.

#### **11 Section 17 replaced**

Section 17

*repeal, insert*

#### **17 Employee records**

- (1) The Commissioner must keep an employment record for each person who is an employee.
- (2) An employment record:
  - (a) must include the information prescribed by regulation; and
  - (b) may include any other information the Commissioner considers appropriate.
- (3) Subject to the regulations, the Commissioner must keep employment records in the way, and retain them for the period, the Commissioner considers appropriate.
- (4) An employment record is kept for the purpose of managing the person's employment in the Public Sector and may be used and disclosed for that purpose.

- 
- (5) For subsection (4), a person's employment in the Public Sector includes:
- (a) the employment of the person in any Agency; and
  - (b) any periods of employment in the Public Sector, whether occurring consecutively, concurrently or otherwise.

## **12 Section 18 amended**

- (1) Section 18(1)

*omit*

The Commissioner shall, within 3 months after the end of each financial year,

*insert*

Within 3 months after the end of each financial year, the Commissioner must

- (2) Section 18(2)

*omit*

A report under subsection (1) shall refer to:

*insert*

The report must contain information about the following:

- (3) Section 18(2)(a)

*omit, insert*

(a) the extent to which the human resource management principle and performance and conduct principle have been upheld in the Public Sector during the financial year, including:

- (i) measures taken to ensure they are upheld; and
- (ii) any significant failures to uphold them of which the Commissioner is aware;

- (4) Section 18(2)(d)

*omit*

and

---

(5) Section 18(2)(e)

*omit, insert*

(e) any other matters prescribed by regulation.

(6) Section 18(4)

*omit, insert*

- (4) The Minister must table a copy of a report under subsection (1) or (3) in the Legislative Assembly within 6 sitting days after the Minister receives the report.

**13 Section 19 replaced**

Section 19

*repeal, insert*

**19 Agency to have Chief Executive Officer**

- (1) Each Agency has a Chief Executive Officer.
- (2) Subject to subsections (3) and (4), the **Chief Executive Officer** of an Agency is the person holding or occupying the office of Chief Executive Officer of the Agency under section 19A.
- (3) For an Agency listed in Schedule 1, the **Chief Executive Officer** is the person holding or occupying the office mentioned in Schedule 1 for the Agency.
- (4) If another Act declares the holder of a particular office to be the chief executive officer of an Agency for this Act, the **Chief Executive Officer** of the Agency is the person holding or occupying that office.
- (5) A person may be the Chief Executive Officer of more than one Agency.

**19A Appointment of Chief Executive Officers**

- (1) The Chief Minister may appoint a person to be the Chief Executive Officer of an Agency, other than an Agency mentioned in section 19(3) or (4).
- (2) Notice of the appointment must be published in the *Gazette* as soon as practicable after it is made.

---

**14 Section 20 amended**

(1) Section 20

*omit*

section 19

*insert*

section 19A

(2) Section 20

*omit*

appropriate minister

*insert*

Chief Minister

**15 Section 21 amended**

(1) Before section 21(1)

*insert*

(1A) This section applies to a Chief Executive Officer appointed under section 19A.

(2) Section 21(2)

*omit*

shall

*insert*

must

(3) Section 21(3)

*omit, insert*

(3) A person appointed under subsection (1) holds office on the terms and conditions (including as to remuneration) determined by the Commissioner.

(3A) The appropriate minister may terminate an appointment under subsection (1) at any time.

- (4) Section 21(4) and (5)

*omit*

as a Chief

*insert*

as Chief

- (5) Section 21(4)

*omit*

shall be deemed to have been varied for the duration of the period of his or her

*insert*

is varied for the duration of the

## **16 Sections 23 and 24 replaced**

Sections 23 and 24

*repeal, insert*

### **23 Chief Executive Officer responsible to appropriate minister**

The Chief Executive Officer of an Agency is responsible to the appropriate minister for the performance of the Chief Executive Officer's functions under this Act.

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

- (1) The functions of the Chief Executive Officer of an Agency are to manage, and provide strategic leadership of, the Agency.
- (2) The Chief Executive Officer must exercise those functions in a way that:
  - (a) is responsive to government policies and priorities; and
  - (b) upholds the public sector principles; and
  - (c) complies with all applicable:
    - (i) laws (including the Employment Instructions); and
    - (ii) determinations and directions of the Commissioner; and

(iii) decisions of an appeal board.

(3) As part of performing those functions, the Chief Executive Officer is responsible for the following:

- (a) directing the employees employed in the Agency;
- (b) ensuring the Agency attains any objectives set by the appropriate minister;
- (c) devising organisational structures and arrangements for the Agency;
- (d) assigning designations to employees in the Agency and varying those designations in accordance with:
  - (i) award requirements; and
  - (ii) designation systems, standards and procedures determined by the Commissioner or, if no systems, standards or procedures have been determined, with the approval of the Commissioner;

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

- (e) assigning duties to be performed by each employee in the Agency;
- (f) devising and implementing employee performance management and development systems for the Agency;
- (g) assisting employees in the Agency to undertake relevant training, education and development programs;
- (h) devising and implementing financial and management plans for the Agency and monitoring the Agency's financial and administrative performance;
- (i) devising and implementing record keeping and information management systems for the Agency;
- (j) devising and implementing programs to ensure that employees have equal employment opportunities in accordance with the human resource management principle;
- (k) ensuring the application in the Agency of appropriate occupational health and safety standards and programs.

- (4) A Chief Executive Officer also has any other functions conferred under this or any other Act.

## **17 Section 27 replaced**

Section 27

*repeal, insert*

## **27 Delegation by Chief Executive Officers**

- (1) The Chief Executive Officer of an Agency may, in writing, delegate any of the Chief Executive Officer's powers or functions under this Act to one or more of the following:
- (a) an employee in the Agency;
  - (b) the holder of an office under an Act administered by the Agency;
  - (c) the Chief Executive Officer of another Agency;
  - (d) an employee in another Agency;
  - (e) the holder of an office under an Act administered by another Agency;
  - (f) if the Chief Executive Officer is the Commissioner of Police – a police officer;
  - (g) the Commissioner.
- (2) The Chief Executive Officer cannot make a delegation under subsection (1)(c), (d) or (e) without the consent of the Chief Executive Officer of the other Agency.

## **18 Section 28 amended**

- (1) Section 28(1)

*omit*

all words from "a Chief" to "her Agency"

*insert*

the Chief Executive Officer of an Agency must present a report to the appropriate minister on the operations of the Agency

## (2) Section 28(2)

*omit*

all words from "To the extent" to "about:"

*insert*

The report must contain information about the following:

## (3) Section 28(2)(f)

*omit, insert*

(f) the extent to which the public sector principles have been upheld in the Agency during the financial year, including:

(i) measures taken to ensure they are upheld; and

(ii) any significant failures to uphold them of which the Chief Executive Officer is aware;

## (4) Section 28(2)(g)

*omit*

Agency; and

*insert*

Agency;

## (5) Section 28(3)(a) and (b)

*omit*

shall

*insert*

must

## (6) Section 28(3)(b)

*omit*

such

*insert*

any



(7) Section 28(4)

*omit, insert*

- (4) The appropriate minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the minister receives the report, or if it is incorporated with another report under subsection (3), within any longer period allowed for the tabling of the other report.

## **19 Section 29 amended**

(1) Section 29, heading

*omit*

**appoint**

*insert*

**employ**

(2) Section 29(1)

*omit*

may appoint

*insert*

of an Agency may employ

(3) Section 29(1)

*omit*

his or her

*insert*

the

(4) Section 29(2)

*omit*

shall not appoint

*insert*

must not employ

- (5) Section 29(3)  
*omit, insert*
- (3) Employment under subsection (1) may be:
- (a) ongoing – being employment until the employee resigns or the employment is terminated under this Act, other than casual employment; or
  - (b) fixed period – being employment for a period of time specified in the contract of employment, other than casual employment; or
  - (c) casual – being employment to work as and when required from time to time.
- (6) Section 29(5)  
*omit*  
appointment  
*insert*  
employment
- (7) Section 29(5)  
*omit*  
allocated  
*insert*  
appropriated
- (8) Section 29(6)  
*omit*

**20 Section 30 amended**

- (1) Section 30(1)  
*omit*  
appointed (*all references*)

*insert*

employed

- (2) Section 30(1)(a), (4) and (5)

*omit*

shall

*insert*

must

- (3) Section 30(2)

*omit, insert*

- (2) The employment, promotion or transfer of a person must be notified in the way the Commissioner directs, unless the Commissioner directs that notification is not required.

- (4) Section 30(3)

*omit*

appoint

*insert*

employ

- (5) Section 30(5)(a)

*omit*

in accordance with section 55

*insert*

under section 59B

- (6) Section 30(5)(b)(ii)

*omit*

withdrawn,

*insert*

withdrawn;

---

**21 Section 32 amended**

- (1) Section 32, heading

*omit, insert*

**Probation for ongoing employees**

- (2) Section 32(1)

*omit*

the appointment of a person to perform duties in an Agency on a permanent basis shall be

*insert*

an ongoing employee is employed

- (3) Section 32(1)

*omit*

in pursuance of his or her appointment

*insert*

under the employment

- (4) Section 32(2)

*omit*

may appoint a person to perform duties in his or her Agency on a permanent basis

*insert*

of an Agency may employ an ongoing employee

- (5) Section 32(2)(a)

*omit*

appointee merits appointment

*insert*

person merits employment

(6) Section 32(2)(b), (3)(a) and (b) and (5)(a) and (b)

*omit*

appointment

*insert*

employment

(7) Section 32(3) and (6)

*omit*

shall

*insert*

must

(8) Section 32(3)(a) and (5)(a)

*omit*

shall cease

*insert*

ceases

(9) Section 32(3)(a), at the end

*insert*

or

(10) Section 32(3)(c)

*omit*

such period as

*insert*

the period

(11) Section 32(4)

*omit*

the purposes of

## (12) Section 32(7)

*omit, insert*

- (7) If, at the end of an employee's period of probation, the Chief Executive Officer does not take action as mentioned in subsection (3):
- (a) for an employee whose period of probation has not previously been extended – the employee's period of probation is extended for the maximum period for which it could have been extended under subsection (3)(c); or
  - (b) for an employee whose period of probation has already been extended on one or more occasions – the employee's employment is confirmed and the employee ceases to be on probation.
- (8) In determining the period for which an employee has been on probation, the following periods must be disregarded:
- (a) any period during which the employee is on leave without pay;
  - (b) any period during which the employee is suspended (with or without remuneration);
  - (c) if section 38 applies to the employee – the period between his or her resignation and re-employment under that section;
  - (d) if the employee is absent from normal duties for a total of 6 weeks – any subsequent period of absence from normal duties.
- (9) For subsection (8)(d), an employee is ***absent from normal duties*** if the employee:
- (a) is on leave with pay; or
  - (b) is temporarily transferred to perform other duties; or
  - (c) is otherwise not performing the duties he or she was employed to perform but is still receiving his or her normal remuneration and is not suspended.

**22 Section 33 amended**

## (1) Section 33, heading

*omit*

**temporary appointment**

*insert*

**fixed period or casual employment**

- (2) Section 33

*omit*

all words from "may, at" to "her Agency"

*insert*

of an Agency may terminate the employment of a fixed period employee or casual employee in the Agency at any time

**23 Section 34 amended**

- (1) Section 34, heading

*omit*

**Temporary and fixed period**

*insert*

**Fixed period**

- (2) Section 34(1)

*omit*

, from time to time,

- (3) Section 34(1)(a) and (b)

*omit*

on an appointment

- (4) Section 34(2)

*omit, insert*

- (2) Duties to which a determination under subsection (1) applies (***fixed period duties***) may, subject to the relevant determination under that subsection and to subsection (6), be performed by:

- (a) the employment of a fixed period employee; or
- (b) the promotion or transfer of an ongoing employee for a fixed period.

- (5) Section 34(3)  
*omit*  
shall  
*insert*  
must
- (6) Section 34(4)  
*omit*  
to and in relation to employment to perform duties referred to in subsection (1)  
*insert*  
in relation to employment to perform fixed period duties
- (7) Section 34(5)  
*omit, insert*  
(5) A person's employment to perform fixed period duties may be renewed in accordance with the terms and conditions determined under subsection (4).
- (8) Section 34(6)  
*omit*  
shall not employ a person to perform duties referred to in subsection (1)  
*insert*  
must not employ a person to perform fixed period duties
- (9) Section 34(7) and (8)  
*omit, insert*  
(7) If an ongoing employee is promoted or transferred under subsection (2)(b) for a period, the employee's terms and conditions of employment are varied during the period to the extent of the determination under subsection (4).



---

**24 Section 34A inserted**

After section 34

*insert*

**34A Casual employment**

- (1) The Commissioner may determine the duties or classes of duties in an Agency or the Public Sector generally that:
  - (a) may be performed on a casual basis; or
  - (b) may only be performed on a casual basis.
- (2) A person cannot be employed as a casual employee to perform duties other than duties to which a determination under subsection (1) applies.
- (3) The Commissioner may determine the terms and conditions to apply to casual employees, 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.
- (4) A Chief Executive Officer must not employ a casual employee unless the Commissioner has made a determination under subsection (3) in relation to the duties the person is to perform.
- (5) If a casual employee is employed under a contract of employment for a specified period of time, the person's contract of employment may be renewed in accordance with the terms and conditions determined under subsection (3).

**25 Section 36 inserted**

After section 35

*insert*

**36 Transfer and change to duties generally**

- (1) The duties assigned to an employee as mentioned in section 24(3)(e) may be varied without the consent of the employee.
- (2) The transfer of an employee under this Act may be made without the consent of the employee.

- 
- (3) However, a transfer of an employee that would result in a reduction in the employee's designation cannot be made unless the employee consents to the reduction.
- (4) Subsection (3) applies subject to sections 46(3) and 49C(3).

**26 Section 38 amended**

- (1) Section 38, heading  
*omit*
- Re-appointment**  
*insert*
- Re-employment**
- (2) Section 38(1)(a)(i), at the end  
*insert*  
and
- (3) Section 38(1)(a)(ii), after "election"  
*insert*  
for the purposes of which the person resigned
- (4) Section 38(1)(a)(iii), after "elected"  
*insert*  
at that election
- (5) Section 38(1)(b)  
*omit*  
the election closed,  
*insert*  
that election closed;
- (6) Section 38(1)  
*omit*  
shall

*insert*

must

(7) Section 38(1)

*omit*

re-appoint

*insert*

re-employ

(8) Section 38(2)(a)

*omit*

Territory of the Commonwealth

*insert*

Territory

(9) Section 38(2)(b)

*omit*

application,

*insert*

application;

(10) Section 38(2)

*omit*

re-appointment

*insert*

re-employment

(11) Section 38(3)

*omit*

shall be re-appointed

---

*insert*

must be re-employed

(12) Section 38(4)

*omit*

re-appointed under this section shall be deemed

*insert*

re-employed under this section is taken

(13) Section 38(4)

*omit*

all words from "re-appointed and" to "Sector."

*insert*

re-employed and, subject to section 32(8), that period forms part of the person's service in the Public Sector for all purposes other than calculating recreation or sick leave entitlements.

## **27 Sections 38A and 38B inserted**

After section 38, in Part 5

*insert*

### **38A Multiple employment arrangements**

- (1) A person may be employed in the Public Sector under 2 or more separate contracts of employment at the same time.
- (2) If a person is so employed, this Act applies to the person in his or her capacity as an employee under each contract separately.

### **38B Special measures to address inequality of opportunity**

- (1) The merit principle does not prevent the implementation of special measures.
- (2) The Chief Executive Officer of an Agency must not implement special measures in connection with human resource management in the Agency unless the measures have been approved by the Commissioner.

(3) In this section:

***special measures*** means a program, plan or arrangement to which section 57 of the *Anti-Discrimination Act* applies.

*Note for section 38B*

*Section 57 of the Anti-Discrimination Act allows a person in certain circumstances to discriminate against another person in a way that would otherwise be unlawful under that Act if doing so is designed to promote equality of opportunity for a group of people who are disadvantaged.*

## **28 Sections 39 and 40 replaced**

Sections 39 and 40

*repeal, insert*

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

- (1) The Chief Executive Officer of an Agency may enter into a secondment arrangement if the Chief Executive Officer considers it is in the public interest to do so.
- (2) A secondment arrangement may involve:
  - (a) the secondment of an employee in the Agency to perform duties for a person outside the Public Sector; or
  - (b) the secondment of a person employed by a person outside the Public Sector to perform duties in the Agency.
- (3) A secondment arrangement may be for any period not exceeding 3 years.

## **29 Section 41 replaced**

Section 41

*repeal, insert*

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

- (1) If the Chief Executive Officer of an Agency is of the opinion that an ongoing employee is potentially surplus to the requirements of the Agency, the Chief Executive Officer may, by written notice 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 must give a copy of the notice to the Commissioner and any employee organisation prescribed by regulation for the employee.

**30 Part 7 replaced**

Part 7

*repeal, insert*

**Part 7 Employee performance and inability**

**44 Inability or unsatisfactory performance**

- (1) There are *inability or performance grounds* for an employee if the employee:
- (a) is not able to perform the duties he or she is assigned to perform (whether because of physical or mental illness or disability or any other reason); or
  - (b) is not suited to perform, or capable of efficiently performing, those duties; or
  - (c) is not licensed, registered or otherwise qualified for the efficient and satisfactory performance of those duties; or
  - (d) is not performing those duties efficiently or satisfactorily.
- (2) If the Chief Executive Officer of an Agency is satisfied, on reasonable grounds, that there are inability or performance grounds for an employee in the Agency, the Chief Executive Officer may take action in relation to the employee under section 46(1).
- (3) In determining whether there are inability or performance grounds for an employee, the Chief Executive Officer must have regard to:
- (a) the performance and conduct principle; and
  - (b) the employee's performance record under the Agency's employee performance management and development system as mentioned in section 24(3)(f); and
  - (c) any other matter the Chief Executive Officer considers relevant.

- (4) For determining whether there are reasonable grounds as mentioned in subsection (2), the Chief Executive Officer may, subject to the Employment Instructions, do one or more of the following:
- (a) obtain relevant information from persons as, and in the way, the Chief Executive Officer considers appropriate;
  - (b) consult with persons as the Chief Executive Officer considers appropriate;
  - (c) make inquiries as the Chief Executive Officer considers appropriate;
  - (d) if applicable, obtain a report from a health practitioner under section 45.
- (5) The Chief Executive Officer must not take remedial action in relation to an employee unless satisfied:
- (a) the action is appropriate and reasonable in the circumstances; and
  - (b) the employee:
    - (i) has been given written notice of the proposed action and the grounds for taking it; and
    - (ii) has been given a reasonable opportunity to show why the action should not be taken.
- (6) As soon as practicable after making a decision under subsection (2), the Chief Executive Officer must give written notice of the decision to the employee.
- (7) If the decision is to take remedial action, the notice must:
- (a) give the reasons for the decision; and
  - (b) inform the employee of the employee's right to request a review under section 59 or to appeal under section 59A (as appropriate).
- (8) A decision to take remedial action takes effect on the day the notice is given to the employee or a later day specified in the notice.

**45 Medical examination and report**

- (1) This section applies if the Chief Executive Officer suspects, on reasonable grounds, that inability or performance grounds for an employee are caused or contributed to by a physical or mental illness or disability of the employee.
- (2) The Chief Executive Officer may engage a health practitioner, approved by the Commissioner, to determine whether the employee has a physical or mental illness or disability that may adversely affect the employee's performance of the duties he or she is assigned to perform.
- (3) The employee must submit to examination by the health practitioner as directed by the Chief Executive Officer, and to any subsequent examinations or tests required by the health practitioner.
- (4) The health practitioner must give a written report about the employee to the Chief Executive Officer.
- (5) The report must set out the health practitioner's opinion as to the following:
  - (a) whether the employee has a physical or mental illness or disability that may adversely affect the employee's performance of those duties;
  - (b) if so:
    - (i) the likely direct or indirect effect of the illness or disability on the employee's performance of those duties; and
    - (ii) how long the illness or disability or its effects are likely to last;
  - (c) whether disclosure of the information in the report to the employee by the Chief Executive Officer might be prejudicial to the employee's health or wellbeing.
- (6) Subject to subsection (7), the Chief Executive Officer must give a copy of the report to the employee as soon as practicable after the Chief Executive Officer receives it.
- (7) If the health practitioner's opinion under subsection (5)(c) is that disclosure might be prejudicial to the employee's health or wellbeing, the Chief Executive Officer:
  - (a) must not disclose the information in the report to the employee; but



- (b) if asked by the employee to do so, must give a copy of the report to another health practitioner nominated by the employee.

#### **46 Remedial action**

- (1) If permitted under section 44 to take action in relation to an employee, the Chief Executive Officer may:
  - (a) take no further action; or
  - (b) do one or more of the following:
    - (i) order the employee to undertake training, counselling or other remedial activities the Chief Executive Officer considers appropriate in the circumstances;
    - (ii) reduce the employee's salary within the range applicable for the employee's designation;
    - (iii) under section 35:
      - (A) transfer the employee to perform other duties in the Agency; or
      - (B) transfer, or request the Commissioner to transfer, the employee to perform duties in another Agency; or
  - (c) terminate the employee's employment.
- (2) The employee must comply with an order made under subsection (1)(b)(i) within the period specified in the order.
- (3) The merit principle and section 36(3) do not apply in relation to a transfer under subsection (1)(b)(iii).

*Note for section 46(3)*

*Because section 36(3) does not apply, a transfer may be made under section 46(1)(b)(iii) that results in a reduction in the employee's designation.*

#### **47 Employee may be suspended pending decision**

- (1) This section applies if the Chief Executive Officer of an Agency:
  - (a) suspects there are inability or performance grounds for an employee in the Agency; and
  - (b) has not yet made a decision under section 44(2); and

- (c) is of the opinion that the suspected inability or performance grounds are of such a serious nature that the employee should not continue performing the duties he or she is assigned to perform pending the making of that decision.
- (2) The Chief Executive Officer may suspend the employee:
- (a) for a period or periods not exceeding a total of 6 months; and
  - (b) with or without remuneration.
- (3) The Commissioner may:
- (a) extend the period of the suspension for any further period or periods the Commissioner thinks fit; or
  - (b) if the suspension imposed by the Chief Executive Officer has lapsed or been revoked – resuspend the employee for any further period or periods the Commissioner thinks fit.
- (4) A suspension ceases when any of the following occurs:
- (a) the period of the suspension expires;
  - (b) the Chief Executive Officer makes a decision under section 44(2);
  - (c) the Chief Executive Officer or Commissioner revokes the suspension.
- (5) An employee who is suspended under this section:
- (a) does not accrue any leave for the period of the suspension; but
  - (b) may, during the period of the suspension, take any long service or recreation leave to which the employee was entitled at the time the suspension was imposed.
- (6) If the Chief Executive Officer makes a decision under section 44(2) in relation to an employee suspended under this section:
- (a) the employee must be credited with any leave that would have accrued to the employee for the period of the suspension had the employee not been suspended; and
  - (b) if the suspension was without remuneration for any period – the employee must be paid the remuneration to which the employee would have been entitled for that period had the employee not been suspended; and

- (c) if the employee took leave as mentioned in subsection (5)(b) – the employee must be re-credited with the leave so taken.
- (7) Subsection (6) does not apply if the employee's employment is terminated under section 46(1)(c).

#### **48 Retirement on the grounds of invalidity**

- (1) For this section an employee is *totally and permanently incapacitated* if, because of a physical or mental condition, it is unlikely 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) If the Chief Executive Officer of an Agency is satisfied, on reasonable grounds, an employee in the Agency is totally and permanently incapacitated the Chief Executive Officer may retire the employee on the grounds of invalidity.
- (3) The Chief Executive Officer must not take action under subsection (2) unless the Chief Executive Officer:
- (a) has obtained and considered a medical report under section 45 or 49B; and
  - (b) has complied with section 50 of the *Superannuation Act* if applicable; and
  - (c) has considered any relevant legislation relating to superannuation; and
  - (d) is satisfied the action is appropriate and reasonable in the circumstances; and
  - (e) is satisfied the employee:
    - (i) has been given written notice of the proposed action and the grounds for taking it; and
    - (ii) has been given a reasonable opportunity to show why the action should not be taken.
- (4) This section does not affect the Chief Executive Officer's ability to take action under section 44 in relation to the employee.

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**31 Sections 49A to 49E inserted**

After section 49

*insert*

**49A Chief Executive Officer may take disciplinary action**

- (1) If the Chief Executive Officer of an Agency is satisfied, on reasonable grounds, that an employee in the Agency has committed a breach of discipline, the Chief Executive Officer may take action against the employee under section 49C.
- (2) For determining whether there are reasonable grounds as mentioned in subsection (1), the Chief Executive Officer may, subject to the Employment Instructions, do one or more of the following:
  - (a) obtain relevant information from persons as, and in the way, the Chief Executive Officer considers appropriate;
  - (b) consult with persons as the Chief Executive Officer considers appropriate;
  - (c) make inquiries as the Chief Executive Officer considers appropriate;
  - (d) if applicable, obtain a report from a health practitioner under section 49B.
- (3) The Chief Executive Officer must not take disciplinary action against an employee unless satisfied:
  - (a) the action is appropriate and reasonable in the circumstances; and
  - (b) the employee:
    - (i) has been given written notice of the proposed action and the grounds for taking it; and
    - (ii) has been given a reasonable opportunity to show why the action should not be taken.
- (4) As soon as practicable after making a decision under subsection (1), the Chief Executive Officer must give written notice of the decision to the employee.
- (5) If the decision is to take disciplinary action, the notice must:
  - (a) give the reasons for the decision; and

- (b) inform the employee of the employee's right to request a review under section 59 or to appeal under section 59A (as appropriate).
- (6) A decision to take disciplinary action takes effect on the day the notice is given to the employee or a later day specified in the notice.

#### **49B Medical examination and report**

- (1) This section applies if the Chief Executive Officer suspects, on reasonable grounds, that a breach of discipline was caused, or contributed to, by a physical or mental illness or disability of the employee.
- (2) The Chief Executive Officer may engage a health practitioner, approved by the Commissioner, to determine whether the employee has a physical or mental illness or disability that may adversely affect the employee's performance of the duties he or she is assigned to perform.
- (3) The employee must submit to examination by the health practitioner as directed by the Chief Executive Officer, and to any subsequent examinations or tests required by the health practitioner.
- (4) The health practitioner must give a written report about the employee to the Chief Executive Officer.
- (5) The report must set out the health practitioner's opinion as to the following:
  - (a) whether the employee has a physical or mental illness or disability that may adversely affect the employee's performance of those duties;
  - (b) if so:
    - (i) the likely direct or indirect effect of the illness or disability on the employee's performance of those duties; and
    - (ii) how long the illness or disability or its effects are likely to last;
  - (c) whether disclosure of the information in the report to the employee by the Chief Executive Officer might be prejudicial to the employee's health or wellbeing.
- (6) Subject to subsection (7), the Chief Executive Officer must give a copy of the report to the employee as soon as practicable after the Chief Executive Officer receives it.

- (7) If the health practitioner's opinion under subsection (5)(c) is that disclosure might be prejudicial to the employee's health or wellbeing, the Chief Executive Officer:
- (a) must not disclose the information in the report to the employee; but
  - (b) if asked by the employee to do so, must give a copy of the report to another health practitioner nominated by the employee.

#### **49C Disciplinary action**

- (1) If permitted under section 49A to take action against an employee, the Chief Executive Officer may:
- (a) take no further action; or
  - (b) do one or more of the following:
    - (i) formally caution the employee;
    - (ii) order the employee to undertake training, counselling or other remedial activities the Chief Executive Officer considers appropriate in the circumstances;
    - (iii) require the employee to forego a benefit or entitlement arising from the employee's employment (other than a benefit or entitlement arising under an Act or award) for a period not exceeding one month;
    - (iv) order the employee to pay a fine of an amount not exceeding the employee's remuneration for 10 days;
    - (v) reduce the employee's salary within the range applicable for the employee's designation;
    - (vi) under section 35:
      - (A) transfer the employee to perform other duties in the Agency; or
      - (B) transfer, or request the Commissioner to transfer, the employee to perform duties in another Agency;
    - (vii) if the employee was suspended without remuneration under section 49E – order all or part of that period of suspension to be taken to be suspension imposed under this section;

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(viii) suspend the employee without remuneration for a period the Chief Executive Officer considers appropriate; or

(c) terminate the employee's employment.

(2) The employee must comply with an order made under subsection (1)(b)(ii) or (iv) within the period specified in the order.

(3) The merit principle and section 36(3) do not apply in relation to a transfer under subsection (1)(b)(vi).

*Note for subsection (3)*

*Because section 36(3) does not apply, a transfer may be made under section 49C(1)(b)(vi) that results in a reduction in the employee's designation.*

(4) An employee who is suspended under subsection (1)(b)(viii) does not accrue any leave for the period of the suspension.

#### **49D Taking of disciplinary action if employee changes Agency**

(1) This section applies if:

(a) the Chief Executive Officer of an Agency (**Agency A**) suspects that an employee committed a breach of discipline while employed in Agency A; and

(b) the Chief Executive Officer has not taken action against the employee under section 49C in relation to the breach; and

(c) the employee is now employed in another Agency (**Agency B**).

(2) The Chief Executive Officer of Agency A:

(a) may exercise the Chief Executive Officer's powers under section 49A in relation to the breach of discipline even though the employee is no longer in Agency A; but

(b) cannot take disciplinary action against the employee.

(3) The Chief Executive Officer of Agency A may request the Chief Executive Officer of Agency B to do either or both of the following:

(a) suspend the employee under section 49E while the suspected breach of discipline is investigated;

(b) take any disciplinary action against the employee that the Chief Executive Officer of Agency A decides should be taken.

- (4) The Chief Executive Officer of Agency B may take any action requested under subsection (3), and must do so if directed by the Commissioner.

**49E Employee may be suspended pending decision**

- (1) This section applies if the Chief Executive Officer of an Agency:
- (a) suspects an employee in the Agency has committed a breach of discipline; and
  - (b) has not yet made a decision under section 49A(1); and
  - (c) is of the opinion that the suspected breach of discipline is of such a serious nature that the employee should not continue performing the duties he or she is assigned to perform pending the making of that decision.
- (2) The Chief Executive Officer may suspend the employee:
- (a) for a period or periods not exceeding a total of 6 months; and
  - (b) with or without remuneration.
- (3) The Commissioner may:
- (a) extend the period of the suspension for any further period or periods the Commissioner thinks fit; or
  - (b) if the suspension imposed by the Chief Executive Officer has lapsed or been revoked – resuspend the employee for any further period or periods the Commissioner thinks fit.
- (4) A suspension ceases when any of the following occurs:
- (a) the period of the suspension expires;
  - (b) the Chief Executive Officer makes a decision under section 49A(1);
  - (c) the Chief Executive Officer or Commissioner revokes the suspension.
- (5) An employee who is suspended under this section:
- (a) does not accrue any leave for the period of the suspension; but
  - (b) may, during the period of the suspension, take any long service or recreation leave to which the employee was entitled at the time the suspension was imposed.



- 
- (6) If the Chief Executive Officer makes a decision under section 49A(1) in relation to an employee suspended under this section:
- (a) the employee must be credited with any leave that would have accrued to the employee for the period of the suspension had the employee not been suspended; and
  - (b) if the suspension was without remuneration for any period – the employee must be paid the remuneration to which the employee would have been entitled for that period had the employee not been suspended; and
  - (c) if the employee took leave as mentioned in subsection (5)(b) – the employee must be re-credited with the leave so taken.
- (7) Subsection (6) does not apply:
- (a) for any period of suspension for which an order is made under section 49C(1)(b)(vii); or
  - (b) if the employee's employment is terminated under section 49C(1)(c).

## **32 Section 50 amended**

- (1) Section 50

*omit*

Notwithstanding

*insert*

- (1) Despite

- (2) Section 50

*omit*

may, after consultation with the Commissioner, dismiss the employee from employment in Public Sector

*insert*

may terminate the employee's employment

- (3) After section 50(1)
- insert*
- (2) As soon as practicable after making a decision under subsection (1), the Chief Executive Officer must give written notice of the decision to the employee.
- (3) The notice must:
- (a) give the reasons for the decision; and
- (b) inform the employee of the employee's right to appeal under section 59A.
- (4) A decision under subsection (1) takes effect on the day the notice is given to the employee or a later day specified in the notice.

### **33 Sections 51 and 52 repealed**

Sections 51 and 52

*repeal*

### **34 Section 54 replaced**

Section 54

*repeal, insert*

### **54 Abandonment of employment**

- (1) The Chief Executive Officer of an Agency may terminate the employment of an employee in the Agency if the employee is absent from duty without permission for at least 10 consecutive working days.
- (2) The Chief Executive Officer must not take action under subsection (1) unless satisfied that:
- (a) the employee:
- (i) has been given written notice of the proposed action and the grounds for taking it; and
- (ii) has been given a reasonable opportunity to show why the action should not be taken; or
- (b) all reasonable steps have been taken to give notice as mentioned in paragraph (a) but without success.

(3) In this section:

*working day*, for an employee, means a day on which the employee is, in accordance with his or her conditions of employment, required to be at work.

**35 Part 9 heading replaced**

Part 9, heading

*repeal, insert*

**Part 9 Review of grievances and appeals**

**Division 1 Grievances**

**36 Sections 55 to 58 repealed**

Sections 55 to 58

*repeal*

**37 Section 59 amended**

(1) After section 59(1)(a)

*insert*

(aa) if aggrieved by a decision of the employee's Chief Executive Officer:

(i) under section 44 to take remedial action of a kind mentioned in section 46(1)(b)(i); or

(ii) under section 49A to take disciplinary action of a kind mentioned in section 49C(1)(b)(i) to (iv);

within 14 days after notice of the decision is given to the employee; or

(2) Section 59(1)(b)

*omit*

aggrieved,

*insert*

aggrieved;

- (3) Section 59(2)  
*omit*  
shall  
*insert*  
must
- (4) Section 59(2)(a) after "subsection (1)(a)"  
*insert*  
or (aa)
- (5) Section 59(2)(b)  
*omit*  
months,  
*insert*  
months;
- (6) Section 59(4)  
*omit*  
Appeal Board has under section 58  
*insert*  
appeal board has under section 59F
- (7) Section 59(5A)  
*omit, insert*
- (5A) The Commissioner may decline to review an action, intended action or decision if satisfied:
- (a) the request for review is frivolous, vexatious or not made in good faith; or
  - (b) alternative proceedings:
    - (i) have been commenced by, or on behalf of, the employee; and

- (ii) have neither:
  - (A) been withdrawn; nor
  - (B) failed for want of jurisdiction.

(8) After section 59(6)

*insert*

(7) In this section:

***alternative proceedings*** means proceedings under another Act or a law of the Commonwealth or of a State or another Territory, for a review of the action, intended action or decision.

### **38 Part 9, Division 2 inserted**

After section 59, in Part 9

*insert*

## **Division 2 Appeals**

### **59A Appeals about inability, performance and disciplinary decisions**

- (1) Each of the following is an ***appealable decision***:
  - (a) a decision by a Chief Executive Officer under section 44(2) to take remedial action of a kind mentioned in section 46(1)(b)(ii) or (iii) or (c);
  - (b) a decision by a Chief Executive Officer under section 49A(1) to take disciplinary action of a kind mentioned in section 49C(1)(b)(v) to (viii) or (c);
  - (c) a decision by a Chief Executive Officer under section 50 to terminate an employee's employment.
- (2) A person about whom an appealable decision is made may appeal against the decision.
- (3) Notice of an appeal under this section must be given to the Commissioner within 14 days after written notice of the decision is given to the person.
- (4) The making of an appeal under this section does not affect the operation or implementation of the decision the subject of the appeal.

**59B Appeals about promotions**

- (1) This section applies if:
  - (a) under section 30 a Chief Executive Officer selects an employee (*employee A*) to perform duties; and
  - (b) the selection is a promotion for employee A; and
  - (c) notification of the promotion is required under section 30(2); and
  - (d) either:
    - (i) another employee (*employee B*) also applied to be promoted to perform those duties; or
    - (ii) if a vacancy was advertised under section 30(1)(a), the Commissioner grants an employee who did not apply for selection (*employee B*) leave to appeal.
- (2) Employee B may appeal against the Chief Executive Officer's decision to promote employee A rather than employee B.
- (3) Notice of an appeal under this section must be given to the Commissioner within 14 days after the decision to promote employee A is notified under section 30(2).

**59C Commissioner to convene appeal board**

- (1) The Commissioner must convene an appeal board for an appeal.
- (2) An appeal board must consist of 3 members as follows:
  - (a) a person selected by the Commissioner;
  - (b) a person selected by the relevant Chief Executive Officer;
  - (c) a person selected by the employee organisation prescribed by regulation.
- (3) Selections for subsection (2)(b) and (c) must be made in the way prescribed by regulation.
- (4) If the relevant Chief Executive Officer or employee organisation does not select an appeal board member in the way prescribed, the Commissioner must select a person instead.
- (5) The person mentioned in subsection (2)(a) is the chairperson of the board.

- (6) A member of an appeal board holds office on the terms and conditions determined by the Commissioner.

**59D Appeal board may decline to deal with certain appeals**

- (1) An appeal board may decline to deal with, or to continue dealing with, an appeal if satisfied:
- (a) the appeal is frivolous, vexatious or not made in good faith; or
  - (b) alternative proceedings:
    - (i) have been commenced by, or on behalf of, the appellant; and
    - (ii) have neither:
      - (A) been withdrawn; nor
      - (B) failed for want of jurisdiction.

- (2) In this section:

*alternative proceedings* means proceedings under another Act or a law of the Commonwealth or of a State or another Territory, for a review of the decision the subject of the appeal.

**59E Determination of appeal**

- (1) An appeal board:
- (a) must conduct the appeal as a new hearing of the decision the subject of the appeal; and
  - (b) is not limited to consideration of the information that was available to the Chief Executive Officer who made the decision.
- (2) The appeal board may:
- (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision; or
  - (d) set aside the decision and return the matter to the relevant Chief Executive Officer for reconsideration; or
  - (e) set aside the decision and replace it with the appeal board's decision.

- (3) An appeal board returning a matter under subsection (2)(d) may give to the Chief Executive Officer any directions the board thinks fit as to how the matter is to be dealt with.
- (4) An appeal board's decision under subsection (2)(e) must be one that could have been made by the relevant Chief Executive Officer when he or she made the original decision.
- (5) The appeal board must give written notice of its decision and the reasons for it to the appellant and the relevant Chief Executive Officer.

#### **59F Conduct of appeal**

- (1) Subject to this section, an appeal board may conduct an appeal in the way the appeal board considers appropriate.
- (2) The appeal board must conduct the appeal:
  - (a) as expeditiously as is reasonably practicable; and
  - (b) with as little formality and technicality as is reasonably practicable; and
  - (c) in private, unless all parties agree otherwise; and
  - (d) in accordance with the regulations.
- (3) In conducting the appeal, the appeal board:
  - (a) is not bound by the rules of evidence but must comply with natural justice; and
  - (b) is not required to hold a hearing.
- (4) Without limiting subsection (1), the appeal board may do one or more of the following:
  - (a) obtain relevant information from persons as, and in the way, the appeal board considers appropriate;
  - (b) consult with persons as the appeal board considers appropriate;
  - (c) make inquiries as the appeal board considers appropriate.
- (5) Without limiting subsection (4)(a), the appeal board may require a person to do one or more of the following:
  - (a) appear before the appeal board;



- 
- (b) give information to the appeal board, on oath or otherwise;
  - (c) produce information or documents to the appeal board;
  - (d) verify information or a document by statutory declaration.
- (6) A person appearing before the appeal board may be represented by a legal practitioner or agent only with the leave of the appeal board.
- (7) A person must comply with a requirement under subsection (5).
- Maximum penalty: 43 penalty units.
- (8) An offence against subsection (7) is an offence of strict liability.
- (9) It is a defence to a prosecution for an offence against subsection (7) if the person establishes a reasonable excuse.
- (10) Without limiting subsection (9), it is a reasonable excuse if complying with the requirement might tend to incriminate the person.

### **39 Section 64 amended**

- (1) Section 64(1)
- omit*
- Regulations
- insert*
- regulations
- (2) Section 64(1), after "Council"
- insert*
- (the Council)
- (3) Section 64(2)
- omit, insert*
- (2) The Council must be representative of:
- (a) the Commissioner; and
  - (b) Agencies; and

- 
- (c) organisations (as defined in the *Fair Work (Registered Organisations) Act 2009* (Cth)) representing employees.
- (3) The regulations may:
- (a) provide for matters of general interest in relation to the Public Sector to be referred to the Council; and
- (b) deal with the membership, functions, powers and procedures of the Council.

#### **40 Section 64A amended**

- (1) Section 64A, heading
- omit*
- legal proceedings**
- insert*
- liability – employee reports**
- (2) Section 64A(1)(a)
- omit, insert*
- (a) who conducts an investigation under the Act for the Commissioner or a Chief Executive Officer; or
- (3) Section 64A(1)(b)
- omit*
- employee,
- insert*
- employee;
- (4) Section 64A(1)
- omit*
- the purposes of
- (5) Section 64A(1)(c), at the end
- insert*
- or

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**41 Section 65 replaced**

Section 65

*repeal, insert*

**65 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe a fine for an offence not exceeding 43 penalty units.

**42 Part 11 inserted**

After section 66

*insert*

**Part 11 Transitional matters for Public Sector  
Employment and Management Amendment  
Act 2011****67 Definitions**

In this Part:

**2011 Act** means the *Public Sector Employment and Management Amendment Act 2011*.

**commencement** means the commencement of the 2011 Act.

**continues** means continues on and after commencement.

**current** means in force immediately before commencement.

**new**, for a provision of this Act, means the provision as amended by the 2011 Act.

**old**, for a provision of this Act, means the provision as in force immediately before the commencement.

**68 Commissioner's investigatory powers**

- (1) A current summons under old section 15(1)(b) continues as a requirement under new section 15(2)(a) or (b) according to its terms.
- (2) A current requirement under old section 15(1)(d) continues as a requirement under new section 15(2)(c).

**69 Chief Executive Officers**

A person appointed as the Chief Executive Officer of an Agency under old section 19 and holding that office immediately before commencement, continues to hold that office as if he or she had been appointed under new section 19A.

**70 Acting Chief Executive Officers**

A current determination under old section 21(3)(a) for a Chief Executive Officer continues as a determination under new section 21(3) for that Chief Executive Officer.

**71 Delegations**

A current delegation under old section 27 continues as a delegation under new section 27.

**72 Categorisation of employment**

- (1) The change in the categorisation of employment from permanent and temporary under old section 29(3) to ongoing, fixed period and casual under new section 29(3) does not affect:
  - (a) the employment of any person; or
  - (b) the terms and conditions of employment for any employee; or
  - (c) the rights or entitlements of any employee.
- (2) A person who was employed on a permanent basis under old section 29(3)(a) immediately before commencement, continues as an ongoing employee under new section 29(3)(a).
- (3) A person who was employed on a temporary basis under old section 29(3)(b) immediately before commencement, continues:
  - (a) if the employed was on a casual basis – as a casual employee under new section 29(3)(c); or
  - (b) otherwise – as a fixed period employee under new section 29(3)(b).
- (4) A reference in any document to:
  - (a) a person employed on a permanent basis under old section 29(3)(a) – is taken to be a reference to an ongoing employee; or

- (b) a person employed on a temporary basis under old section 29(3)(b) – is taken to be:
  - (i) for a person employed on a casual basis – a reference to a casual employee; or
  - (ii) otherwise – a reference to a fixed period employee.

### **73 Determinations under old section 34**

A current determination under old section 34 continues:

- (a) if it relates to duties to be performed on a casual basis – as a determination under new section 34A; or
- (b) otherwise – as a determination under new section 34.

### **74 Secondment**

A current arrangement under old Part 6, Division 1 continues as a secondment arrangement under new section 39.

### **75 Inability or performance matters**

- (1) This section applies if:
  - (a) notice was given to an employee under old section 44 before commencement; and
  - (b) as at commencement the Chief Executive Officer had done neither of the following:
    - (i) taken action under old section 46 or 48;
    - (ii) decided not to take action under that section.
- (2) This section also applies if:
  - (a) a Chief Executive Officer gave a direction to an employee under old section 48 before commencement; and
  - (b) as at commencement the Chief Executive Officer had not taken action under old section 48(4) or (5).
- (3) Old Part 7 continues to apply in relation to the employee as if the 2011 Act had not commenced, subject to subsections (4) and (5).
- (4) If the employee is suspended under old section 47, new section 47(3) and (5)(b) apply as if the employee were suspended under new section 47.

- (5) The Chief Executive Officer may, under old section 46 take action of the kind described in new section 46(1)(b)(i) as well as, or instead of, action of the kind described in old section 46(1)(a) and (b).
- (6) The continued application of old Part 7 under subsection (3) ceases when the Chief Executive Officer:
  - (a) takes action under old section 46 or 48; or
  - (b) decides not to take action under either of those sections.
- (7) A decision of the Chief Executive Officer under old Part 7 as applied by subsection (3) is subject to review or appeal under new Part 9 as if it were a decision under new section 44.

## **76 Retirement on the grounds of invalidity**

A reference in new section 48(3)(a) to a medical report, includes a reference to the results of an examination under old section 45, 48 or 51.

## **77 Discipline**

- (1) This section applies if:
  - (a) an investigation about an employee was initiated under old section 51(1) before commencement; and
  - (b) as at commencement the Chief Executive Officer had not made a decision under old section 51(10).
- (2) Old Part 8 continues to apply in relation to the employee as if the 2011 Act had not commenced, subject to subsections (3), (4) and (5).
- (3) If the employee is suspended under old section 51(6), new section 49E(3) and (5)(b) apply as if the employee were suspended under new section 49E.
- (4) The Chief Executive Officer may, under old section 51(1) take action of the kind described in new section 49C(1)(b)(ii) as well as, or instead of, action of the kind described in old section 51(10)(a).
- (5) The continued application of old Part 8 under subsection (2) ceases when the Chief Executive Officer makes a decision under old section 51(10)).

- (6) A decision of the Chief Executive Officer under old Part 8 as applied by subsection (2) is subject to review or appeal under new Part 9 as if it were a decision under new section 49A.

## **78 Appeals**

- (1) Subsection (2) applies if:
- (a) an appeal was lodged under old section 55 or 57 before commencement; and
  - (b) as at commencement the appeal had not been withdrawn or determined.
- (2) The appeal must be heard and determined in accordance with old Part 9 as if the 2011 Act had not commenced.
- (3) Subsection (4) applies if:
- (a) a person had, before commencement, a right under old section 55 to appeal against a promotion; but
  - (b) as at commencement the person had not exercised or waived that right.
- (4) The person may appeal under new section 59B against the promotion decision as if it were a decision to which that section applies.
- (5) Subsection (6) applies if:
- (a) a person had, before commencement, a right under old section 57 to appeal against a decision under old section 46(1), 50 or 51(10)(a); but
  - (b) as at commencement the person had not exercised or waived that right.
- (6) The person may request a review under new section 59(1)(aa) or appeal under new section 59B, as appropriate, as if the decision were a decision under new section 44, 49A or 50 as the case may be.

## **79 By-laws**

All current by-laws under old section 60 continue as by-laws under new section 60.

**80            Regulations**

All current regulations under old section 65 continue as regulations under new section 65.

**43            Act further amended**

Schedule 1 has effect.

**Part 3            Repeals and consequential amendments**

**Division 1        Repeals**

**44            Acts repealed**

The following Acts are repealed:

- (a) *Public Sector Employment (Interim Arrangements) Act* (Act No. 31, 1992);
- (b) *Public Sector Employment and Management (Transition and Savings) Act* (Act No. 12, 1993).

**Division 2        Consequential amendments of other Acts**

**45            Other Acts amended**

Schedule 2 amends the Acts mentioned in it.



## Schedule 1 Public Sector Employment and Management Act further amended

section 43

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 4(1) and (2)	to or	
section 4(2)(a), at the end		or
section 4(3)(b)	section 3(1)),	section 3(1));
section 4(3)	such a law, this Act shall be read	the other law, this Act applies
section 6(a), (b) and (c), at the end		and
section 7(2)	all words from "(other" to " <i>Savings) Act</i> )"	
sections 8(1) and (2) and 10(2)	shall	must
section 10(3)(b)	such an	the
section 10(4)	shall be deemed to have been varied for the duration of the period of his or her	is varied for the duration of the
section 12, heading	<b>deemed</b>	<b>taken</b>
section 12	shall be deemed	is taken
section 14(2)	by instrument	
section 16(1)	notice in the <i>Gazette</i>	<i>Gazette</i> notice
section 16(2), after "may"		do one or more of the following
section 16(2)(b)	and/or	
section 16(3)	to or	

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section 22, heading	<b>Minister</b>	<b>minister</b>
section 22(1), after "Officer"		of the Agency
section 22(2)	shall	must
section 22(2)(a)	appointment	employment
section 22(2)(a), at the end		or
section 22(2)(c)	a Chief	the Chief
section 25	A Chief Executive Officer his or her Agency	The Chief Executive Officer of an Agency the Agency
section 26	A Chief Executive Officer his or her	The Chief Executive Officer of an Agency the
Part 5, heading	<b>Appointment</b>	<b>Employment</b>
section 31, heading	<b>appointment, &amp;c.</b>	<b>employment etc.</b>
section 31	A person shall not be appointed or an employee promoted or transferred	A Chief Executive Officer must not employ a person or promote or transfer an employee
section 35(1)	his or her such	the those
section 35(2)	Agency may  Agency, transfer an employee employed in the first mentioned Agency  the second-mentioned Agency  such	Agency ( <b>Agency A</b> ) may  Agency ( <b>Agency B</b> ), transfer an employee in Agency A  Agency B  those
section 35(3)	such	those

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section 35(4)	referred to in this section may be permanent	under this section may be ongoing
section 35(5)	whole subsection	
section 35(6)	as referred to in this section shall	under this section must
section 35(7)	to or in relation to a power referred to in	in relation to the exercise of a power under
section 37(2)	Regulations	regulations
section 42(1)	Without derogating from his or her powers under section 41, a permanent	A  an ongoing
section 42(2)	to or in relation to	in relation to the exercise of
section 43(1)	a permanent	an ongoing
section 43(2)	all words from "may:" to "fit."	may: (a) do either or both of the following: (i) 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; (ii) give any other Chief Executive Officer directions

		relating to the transfer of the employee under section 35; or
		(b) direct the Chief Executive Officer to terminate the employment of the employee in the Public Sector on such conditions as the Commissioner thinks fit.
section 49, after "who"		does any of the following commits a <b><i>breach of discipline</i></b>
section 49(a)	whole paragraph	(a) fails to uphold the performance and conduct principle or otherwise contravenes this Act;
section 49(e)	discharge	performance
section 49(k)	appointment	employment
section 49(n)	caution; or	caution.
section 49(p)	whole paragraph	
section 49	commits a breach of discipline.	
section 60	all words from "The Commissioner" to "laws relating to:"	(1) The Commissioner may make by-laws under this Act.  (2) The by-laws may deal with one or more of the following:
section 60(2)(h)	fares; and	fares;
section 61(1)	shall	must

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section 61(2)	shall not give an approval for the purposes of subsection (1) unless satisfied that	must not give approval unless satisfied
section 61(3)	section, <i>paid</i>	section: <i>paid</i>
section 63(1)	section <i>statutory</i>	section: <i>statutory</i>
section 63(3)	shall not	cannot
Schedule 1	section 3	section 19(3)
Schedule 1, column 1, header	Office	<b>Agency</b>
Schedule 1, column 2, header	Name	<b>Office the holder of which is the Chief Executive Officer</b>

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**Schedule 2 Other Acts amended**

section 45

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<b><i>Education Act</i></b>		
section 51(2)	Administrator shall section 19	Chief Minister must section 19A
<b><i>Mental Health and Related Services Act</i></b>		
section 100(11)(b)	commence proceedings against the person	take appropriate action
<b><i>Northern Territory Aboriginal Sacred Sites Act</i></b>		
section 15(2)	Public Service Commissioner,	Commissioner for Public Employment,
<b><i>Power and Water Corporation Act</i></b>		
section 6(6)	Sections 19 and 20, 21, 22, 23, 24(b)	Sections 19A, 22, 23, 24(3)(b)