

Serial 198
Public Sector
Employment and
Management
(Transition
and Savings)
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA
PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT
(TRANSITION AND SAVINGS) BILL 1992

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A BILL for AN ACT

to make provision for the continuation of departments and other units of the Public Service and of certain offices and appointments to offices in those departments and units, and in certain statutory authorities, on the commencement of the *Public Sector Employment and Management Act 1992*; for the preservation and continuation of rights and obligations of persons who become employees in the Public Sector under that Act; for the continuation of matters in process on the commencement of that Act; and for related purposes

Be it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Public Sector Employment and Management (Transition and Savings) Act 1992*.

2. COMMENCEMENT

This Act shall come into operation on the commencement of the *Public Sector Employment and Management Act 1992*.

3. INCORPORATION

This Act is incorporated and shall be read as one with the *Public Sector Employment and Management Act*.

4. DEFINITION

In this Act -

"commencement date" means the date of commencement of the Principal Act;

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"Principal Act means the *Public Sector Employment and Management Act*.

5. SAVING OF EXISTING DEPARTMENTS AND OTHER UNITS OF ADMINISTRATION

All departments and other units of administration of the Public Service in existence under the repealed Act immediately before the commencement of this Act continue in existence as Agencies under their respective names on that commencement as if they were duly established on that commencement under section 17 of the Principal Act.

6. SAVING OF CERTAIN OFFICES

(1) The person holding office as the Public Service Commissioner under the repealed Act immediately before the commencement of this Act shall, on that commencement, be the Commissioner under the Principal Act, employed on the same terms and conditions as then applying to him or her, as if duly appointed under section 18 of the Principal Act for the remainder of the period of his or her appointment as Public Service Commissioner on those terms and conditions.

(2) The persons holding office immediately before the commencement of this Act as Departmental Heads or Chief Executive Officers of departments and other units of administration referred to in section 5, or as Chief Executive Officers (by whatever name known) of an Agency referred to in Schedule 1 to the Principal Act, shall continue to hold offices as Chief Executive Officers of those departments, units or Agencies under the Principal Act, on the same terms and conditions as then applying to them under the contracts or other arrangements under which they were so employed immediately before that commencement, as if they were duly appointed under section 19 of the Principal Act for the remainder of the period of their appointment on those terms and conditions.

(3) A reference in an Act or instrument of a legislative or administrative character in force immediately before the commencement of this Act to the Public Service Commissioner or an office, or the holder of an office, referred to in this section shall be read and construed as a reference to the Commissioner or the relevant equivalent office or officer, as the case may be, under the Principal Act.

7. EMPLOYMENT TO CONTINUE, &c.

(1) A person who, immediately before the commencement of this Act, was an employee within the meaning of the repealed Act, an officer or employee within the meaning of the *Teaching Service Act* as in force immediately before that commencement, or employed in an Agency specified in Schedule 1 to the Principal Act shall, on and

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from that commencement but subject to the Principal Act, be an employee employed in the relevant Agency (including an Agency as successor to the department or unit of administration or service in which the person was employed) as if appointed under section 30 of the Principal Act to perform his or her duties in that Agency and, in the case of such a person employed on contract, then for the remainder of the period specified in the contract.

(2) Subject to subsection (3), where a person referred to in subsection (1) becomes an employee employed under the Principal Act by virtue of subsection (1), the person shall -

- (a) be paid a salary or wage not less than the salary or wage payable to him or her immediately before the commencement of this Act and be entitled to receive the same allowances, on the same terms and conditions, as those to which he or she was entitled immediately before that commencement;
- (b) retain all rights that, immediately before that commencement, have accrued or are accruing to him or her by virtue of the person being employed under the repealed Act, the *Teaching Service Act* as then in force or the relevant Act referred to in Schedule 1 to the Principal Act;
- (c) if a contributor, immediately before that commencement, to any fund established under the *Superannuation Act*, continue to contribute to that fund; and
- (d) be entitled to receive any leave and any remuneration, pension, gratuity or other payment,

as if the person had continued to be employed under the repealed Act, the *Teaching Service Act* as then in force or that other Act.

(3) Where a term or condition of employment of a person referred to in subsection (1) was, immediately before the commencement of this Act -

- (a) regulated by an award, the term or condition shall continue to be so regulated until another award regulating the term or condition and binding on the Commissioner is made by a competent tribunal; or

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- (b) prescribed in an instrument of a legislative or administrative character then in force, the term or condition shall continue to apply to the employee until a new instrument prescribing the term or condition is made under the Principal Act.

(4) For the purposes of subsection (1), the Department of Education shall be taken to be the relevant Agency in which officers and employees within the meaning of the *Teaching Service Act* are to perform their duties.

8. TRANSFER OF EMPLOYEES TO NEW AGENCIES

For the purposes of the Principal Act, employees within the meaning of the repealed Act, who, immediately before the commencement of this Act were under the direct control of the Commissioner, the Commissioner of Police, the Auditor-General, within the meaning of the *Financial Administration and Audit Act*, the Ombudsman, within the meaning of the *Ombudsman (Northern Territory) Act*, the Director of Public Prosecutions, within the meaning of the *Director of Public Prosecutions Act*, or the Director of Legal Aid, within the meaning of the *Legal Aid Act*, shall, on and from that commencement, but subject to the Principal Act, be employees employed in the relevant Agencies specified in Part 2 of Schedule 1 to the Principal Act, and the persons from time to time holding or acting in the offices specified in that Part of that Schedule, opposite to the name of the relevant Agency shall, be the Chief Executive Officer of those respective Agencies.

9. SAVING OF CONDITIONS OF CERTAIN TRANSFERRED EMPLOYEES

Where immediately before the commencement of this Act the conditions of employment of an employee were the subject of a provision of an Act the effect of which was to ensure that the transfer of persons from one service or authority (whether or not a service or authority of the Territory) to another did not result in conditions applying to them after the transfer being less favourable than those they enjoyed immediately before the transfer, then, notwithstanding the repeals effected by section 70 or the *Public Sector Employment and Management (Consequential Amendments) Act 1992*, that provision, with the necessary changes, shall continue to apply to and in relation to the employee as if it were expressly contained in the Principal Act.

10. EXECUTIVE CONTRACTS OF EMPLOYMENT

For the purposes of section 34(1) of the Principal Act, unless the Commissioner otherwise determines, the duties of a position in a department or unit of administration in the Public Service, in the *Teaching Service* within the meaning of the *Teaching Service Act* as then in

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force or in an Agency referred to in Schedule 1 which, immediately before the commencement of this Act, had ascribed to it a salary equivalent or higher than that then applying to a position known as Executive Officer 1 in the Public Service are duties which may only be performed on an appointment for a fixed term.

11. PREVIOUS ACTIONS, &c., OF EXECUTIVE OFFICERS

All acts, matters and things done or omitted to be done before the commencement of this Act, or done or suffered before that commencement in relation to -

- (a) the Commissioner within the meaning of the Repealed Act;
- (b) the Teaching Service Commissioner within the meaning of the *Teaching Service Act* as then in force; or
- (c) a Chief Executive Officer, within the meaning of the repealed Act (including the Secretary within the meaning of the *Teaching Service Act* as then in force in relation to the Teaching Service and officers and employees of that Service), or such an officer (by whatever name called) under an Act referred to in Schedule 1 to the Principal Act,

shall, on and after that commencement, have the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Commissioner (including as successor in title to the Teaching Service Commissioner) or the equivalent Chief Executive Officer under this Act.

12. CERTAIN PROCEDURES TO BE CONTINUED UNTIL CONCLUSION

All procedures in relation to the filling of a vacancy in the Public Service, the Teaching Service within the meaning of the *Teaching Service Act* as then in force, or in an Agency referred to in Schedule 1, commenced but not finally concluded before the commencement of the Principal Act, shall be concluded as if they had been commenced under the Principal Act and for all purposes shall be deemed to have been commenced under the Principal Act.

13. DISCIPLINARY ACTION TO CONTINUE

(1) Where an employee referred to in section 7(1) was, before the commencement of this Act, the subject of proceedings under Part VIII of the repealed Act or Division 4 of Part III of the *Teaching Service Act* as then in force, the proceedings shall be deemed to have been commenced under Part 8 of the Principal Act in respect of the relevant equivalent breach of discipline.

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(2) Part 8 of the Principal Act applies to and in relation to acts and omissions committed or alleged to have been committed before as well as after the commencement of this Act.

14. SUSPENSIONS, RECOMMENDATIONS, &c., RELATING TO DISCIPLINARY ACTIONS

A suspension imposed on or direction given or recommendation made in relation to a person referred to in section 7(1) under Part VIII of the repealed Act or Division 4 of Part III of the *Teaching Service Act* as then in force, shall be deemed to have been imposed on given or made in relation to the person under Part 8 of the Principal Act.

15. APPEALS PENDING

(1) An appeal to the Disciplinary Appeal Board pending under section 57 of the repealed Act or Part IV of the *Teaching Service Act* as then in force, immediately before the commencement of this Act shall be deemed to be pending under section 56 of the Principal Act and may be heard and determined accordingly.

(2) Where such an appeal has been heard in full or in part by the Board before the commencement of this Act and there exists a tape-recording or transcript of the hearing, the Appeal Board may listen to or read the record and, if the appeal had been heard in full, make a decision without any further or other hearing.

16. EMPLOYEES ON PROBATION

An officer or employee appointed on probation under the repealed Act or the *Teaching Service Act* as then in force, shall be deemed to be an employee appointed on probation under the Principal Act.

17. RIGHT TO LEAVE TO CONTINUE

An employee who was granted leave under the repealed Act or the *Teaching Service Act* as then in force, and has not commenced that leave or has not completed that leave before the commencement of this Act shall, after that commencement, continue to be entitled to that leave or the uncompleted portion of that leave, as the case may be.

18. CONTINUATION OF AUTHORITY TO MAKE DEDUCTIONS FROM SALARY

Any deduction from the salary of an employee referred to in section 7(1) that was being made under the repealed Act or the *Teaching Service Act* as then in force immediately before the commencement of this Act shall continue to be made from the salary of that employee after that commencement as if it had been authorised by the employee.

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19. CONTINUATION OF PERMISSION TO UNDERTAKE OUTSIDE WORK

A permission granted by the Commissioner under section 28 of the repealed Act or 58 of the *Teaching Service Act* as then in force, to an employee and not withdrawn before the commencement of this Act, shall be deemed to have been granted under section 60 of the Principal Act by the Chief Executive Officer of the Agency in which that employee is employed.

20. RECOGNITION OF OTHER SERVICE

Where under section 64 of the repealed Act a period of service with a public employer or in the service of the Independent State of Papua New Guinea or in the service of the United Nations was, immediately before the commencement of this Act, to be reckoned as a period of service in the Public Service or as such for particular purposes, that service shall, after the commencement of, but subject to, the Principal Act be reckoned as such service in the Public Sector.

21. CONTINUATION OF APPEALS AGAINST OFFICIAL INSTRUCTIONS AND DIRECTIONS

All appeals made under section 65 of the Repealed Act or section 20 of the *Teaching Service Act* as then in force, and not disposed of under that section before the commencement of this Act shall be taken to be request for a review made to the Commissioner under section 56 of the Principal Act on that commencement and shall be dealt with accordingly.

22. EMPLOYMENT INSTRUCTIONS TO CONTINUE

All lawful instructions and directions to an employee in his or her capacity as an employee or officer then in the Public Service, the *Teaching Service* within the meaning of the *Teaching Service Act* as then in force, or an Agency referred to in Schedule 1 to the Principal Act and in force immediately before the commencement of this Act shall, subject to the Principal Act and until revoked or varied, continue in force and be complied with on and after that commencement.

23. TRANSITIONAL REGULATIONS

(1) For the purposes only of ensuring the proper transfer of persons as employees, conditions of service and the continuity of rights and obligations of employees and of persons employed in the service of statutory authorities referred to in Schedule 1 to the Principal Act who become employees under this Act, the Administrator may make such Regulations as he or she considers necessary or convenient to be made, notwithstanding that, but for this section, he or she may not have the power to make such Regulations.

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(2) The power given by subsection (1) may only be exercised within one year after the commencement of this Act but a regulation made under this section shall remain in force until repealed under the Principal Act.

(3) Regulations made under this section may be made retrospective to the date of commencement of this Act or any date after that commencement and shall have force accordingly.

(4) To the extent that the provisions of the Regulations made under this section are inconsistent with the Principal Act or a provision of an Act specified in the Regulations, the Regulations shall prevail.

(5) In this section "employee" includes the Commissioner and a Chief Executive Officer.
