



Public Service Act 1996

Reprinted as in force on 30 October 2006

Reprint No. 4B

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

Public Service Act 1996

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Public Service Act 1996

[as amended by all amendments that commenced on or before 30 October 2006]

An Act about the administration of the public service and the management and employment of public service employees, and for other purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Service Act 1996*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Main objects

The main objects of this Act are—

- (a) to establish the public service as an apolitical entity responsive to Government needs and competent to provide services in a professional and non-partisan way; and
- (b) to provide for the administration of the public service and the management and employment of public service employees; and
- (c) to provide for the appointment of a public service commissioner and the functions and powers of the commissioner; and
- (d) to promote among public service employees a spirit of service to the community; and
- (e) to provide principles on which departments are to be

administered; and

- (f) to maintain integrity and appropriate standards of conduct for public service employees; and
- (g) to state the rights and obligations of public service employees.

4 Dictionary

The dictionary in schedule 3 defines particular words used in this Act.

Part 2 Queensland Public Service

Division 1 Basic concepts

5 The public service

The Queensland Public Service consists of the persons who are employed under this Act (*public service employees*).

6 Employment of public service employees

Public service employees are employed in departments or public service offices.

7 What are *departments* and *public service offices*

- (1) A *department* is an entity declared under this Act¹ to be a department of government.
- (2) A *public service office* is an entity declared under this Act² to be a public service office.

1 See section 12 for the declaration of departments. See also section 13 (Establishment of departments etc.).

2 See section 17 (Public service offices). See also schedule 1 for a list of public service offices and their heads.

8 Who is a *public service officer*

A person is a *public service officer* if the person is employed under this Act as—

- (a) a chief executive; or
- (b) a senior executive, other than a chief executive; or
- (c) an officer, other than a senior executive.³

9 Who is a *public service employee*

A person is a *public service employee* if the person is employed under this Act as—

- (a) a public service officer; or
- (b) a general employee;⁴ or
- (c) a temporary employee.⁵

10 Application of Act to various types of employees etc.

- (1) This Act mainly applies to public service officers.
- (2) However, some provisions of this Act expressly apply to all public service employees.
- (3) Also, a provision of this Act may expressly apply to, or may be applied to⁶—
 - (a) a general or temporary employee; or
 - (b) an employee of a public sector unit⁷ that is not a department or public service office.

3 See sections 47 (Appointment of chief executives), 60 (Appointment of senior executives) and 67 (Appointment of officers).

4 See section 112 (Employment of general employees).

5 See section 113 (Employment of temporary employees).

6 See sections 22 (Application of Act to certain public sector units etc.) and 114 (Application of Act to general and temporary employees).

7 For the meaning of public sector unit, see section 20.

11 Act does not apply to certain offices and employment

- (1) This Act does not apply to an office if—
 - (a) appointments to the office are made by the Governor alone; or
 - (b) the salary for the office is fixed under the *Judges (Salaries and Allowances) Act 1967*;⁸ or
 - (c) the office is a particular office established by an Act that expressly provides for the appointment of the holder of an office mentioned in paragraph (b); or
 - (d) the office is honorary.
- (2) In addition, this Act does not apply to the employment of a person as associate to a Supreme Court judge, District Court judge or industrial commissioner.
- (3) Subsection (1) does not prevent the holder of an office mentioned in it from having or exercising powers under this Act.

Division 2 Departments of government**12 Declaration of departments**

- (1) The departments of government are the entities declared to be departments of government by the Governor in Council by gazette notice.
- (2) A department of government includes the entities declared to be part of the department by the Governor in Council by gazette notice.

13 Establishment of departments etc.

The Governor in Council may, by gazette notice—

⁸ The *Judges (Salaries and Allowances) Act 1967* provides for the fixing of the salaries of Supreme Court judges, District Court judges, industrial commissioners, Land Court members, magistrates and mining wardens.

- (a) establish a department or another government entity;⁹ or
- (b) amalgamate government entities; or
- (c) add a government entity to a department or another government entity; or
- (d) divide a department or another government entity; or
- (e) name or rename a department or another government entity; or
- (f) abolish a department or another government entity.

14 Declaration of functions of departments etc.

The Governor in Council may, by gazette notice, declare the functions that—

- (a) are to be the functions of a department or another government entity; or
- (b) are included or not included in the functions of a department or another government entity.

15 Giving functions to departments etc.

The Governor in Council may, by gazette notice—

- (a) give a function to a department or another government entity; or
- (b) change or discontinue a function given to a department or another government entity; or
- (c) transfer a function given to a department or another government entity to a different government entity.

16 Other provisions about gazette notice

- (1) The Governor in Council may, by gazette notice or regulation, prescribe anything necessary or convenient to be prescribed—
 - (a) to enable a gazette notice to be made under this division; or

⁹ For the meaning of government entity, see section 21.

- (b) for carrying out or giving effect to a gazette notice made under this division; or
 - (c) because of the making of a gazette notice under this division.
- (2) The Governor in Council may do anything else the Governor in Council considers necessary or convenient to be done—
- (a) to enable a gazette notice to be made under this division; or
 - (b) for carrying out or giving effect to a gazette notice made under this division; or
 - (c) because of the making of a gazette notice under this division.

Example of action for carrying out or giving effect to a gazette notice—

transferring public service employees from a department to another department

- (3) Without limiting subsections (1) and (2), if a department or a part of a department is amalgamated with another department or a part of another department, all public service employees of the first department or the part of the first department become public service employees of the other department or the part of the other department, unless the Governor in Council otherwise decides.
- (4) To remove any doubt, if another Act establishes a particular government entity as a separate entity or regulates the existence of an entity as a government entity, it is declared that a gazette notice under this division can not have any effect on the separate existence of the entity.

Division 3 Public service offices

17 Public service offices

Each entity specified in schedule 1, column 1 is a public service office.

18 Heads of public service offices

The *head* of a public service office is the person specified in schedule 1, column 2 opposite the name of the office.

19 Application of Acts to public service offices

- (1) This Act and other Acts apply to a public service office and its public service employees as if—
 - (a) the office were a department; and
 - (b) the head of the office were the chief executive of the department.
- (2) However, this section has no effect on the provisions—
 - (a) for accountable officers under the *Financial Administration and Audit Act 1977*, sections 34 and 35B;¹⁰ or
 - (b) for the meaning of *department* under the *Financial Administration and Audit Act 1977*, section 4A.¹¹
- (3) Without limiting subsection (1), the head of the public service office has all the functions and powers of the chief executive of a department in relation to the office's public service employees.

Division 4 Public sector units**20 What is a *public sector unit***

An entity is a *public sector unit* if it is—

- (a) a department or part of a department; or
- (b) a public service office or part of a public service office; or
- (c) another government entity declared under a regulation to be a public sector unit.

10 *Financial Administration and Audit Act 1977*, sections 34 (Accountable officers generally) and 35B (Other accountable officers)

11 *Financial Administration and Audit Act 1977*, section 4A (Meaning of *department*)

21 What is a *government entity*

- (1) An entity is a ***government entity*** if it is—
- (a) a department or part of a department; or
 - (b) a public service office or part of a public service office; or
 - (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or
 - (d) a part of an entity mentioned in paragraph (c); or
 - (e) another entity, or part of another entity, declared under a regulation to be a government entity.
 - (f) a registry or other administrative office of a court of the State of any jurisdiction.
- (2) However, each of the following entities is not a ***government entity***—
- (a) a local government or a corporatised corporation;
 - (b) the parliamentary service;
 - (c) the Governor’s official residence (known as ‘Government House’) and its associated administrative unit;
 - (d) the Executive Council;
 - (e) the Legislative Assembly;
 - (f) a court of the State of any jurisdiction;
 - (g) the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);
 - (h) a school council established under the *Education (General Provisions) Act 2006*, university or university college;
 - (i) a primary producer cooperative association or commodity board that is not in receipt of moneys of, or financial assistance from, the Crown;

- (j) another entity, or part of another entity, declared under a regulation not to be a government entity.

22 Application of Act to certain public sector units etc.

- (1) A regulation may apply a provision of this Act to—
 - (a) a government entity declared under a regulation to be a public sector unit;¹² or
 - (b) an employee of a public sector unit who is not a public service employee.
- (2) The provision applies—
 - (a) in the way prescribed under a regulation; and
 - (b) with all necessary changes and any changes prescribed under a regulation.
- (3) A regulation may prescribe anything necessary or convenient to be prescribed—
 - (a) to enable a regulation to be made under subsection (1) or (2); or
 - (b) for carrying out or giving effect to a regulation made under subsection (1) or (2); or
 - (c) because of the making of a regulation under subsection (1) or (2), including the portability of employment rights and entitlements.
- (4) However, a regulation can not reduce an employee's overall employment conditions.
- (5) Subsection (4) does not apply to a reduction arising out of a change in the person's employment sought by the person.

12 For the declaration of entities, see section 20(c).

Part 3**Principles of public service management and employment****23 Principles of public service management**

Public service management is to be directed towards—

- (a) providing responsive, effective and efficient services to the community and Government; and
- (b) continuously improving performance in delivering services with a client focus; and
- (c) implementing Government policies and priorities responsively and responsibly; and
- (d) maintaining impartiality and integrity in informing, advising and assisting the Government; and
- (e) continuously improving public service administration and management; and
- (f) adopting and maintaining systems and processes that are practical, and without excessive formality or likelihood of delay, and can be adapted quickly to changing demands; and
- (g) acknowledging the importance and value of public service employees through training and ongoing development; and
- (h) managing public resources efficiently, responsibly and in a fully accountable way; and
- (i) maintaining proper standards in creating, keeping and managing public records.

24 Principles of public service employment

Public service employment is to be directed towards—

- (a) basing selection decisions on merit;¹³ and
- (b) treating public service employees fairly and reasonably; and

13 See section 78 (Selection for appointment to be on merit).

- (c) providing equal employment opportunity; and
- (d) giving public service employees a reasonable avenue of redress against unfair or unreasonable administrative decisions; and
- (e) providing public service employees with safe and healthy working conditions; and
- (f) giving public service employees reasonable access to appropriate training and development; and
- (g) remunerating public service employees at rates appropriate to the responsibilities undertaken by public service employees; and
- (h) avoiding nepotism and patronage.

25 Principles of work performance and personal conduct

In recognition that public service employment involves a public trust, a public service employee's work performance and personal conduct must be directed towards—

- (a) achieving excellence in service delivery; and
- (b) ensuring the effective, efficient, economical and appropriate use of public resources; and
- (c) giving effect to Government policies and priorities; and
- (d) providing sound and impartial advice to the Government; and
- (e) improving all aspects of the employee's work performance; and
- (f) carrying out duties impartially and with integrity; and
- (g) observing all laws relevant to the employment; and
- (h) ensuring that the employee's personal conduct does not reflect adversely on the reputation of the public service.

26 Additional principle of senior executive service employment

Employment in the senior executive service is to be directed towards ensuring that senior executives—

- (a) develop a public service wide perspective; and
- (b) continue their executive development; and
- (c) develop their skills through their deployment within and outside the public service.

Part 4 Administration of the public service

Division 1 Premier's supervision

27 Premier's role in relation to public service

- (1) The Premier has the following functions—
 - (a) to promote the overall effectiveness, efficiency and economy of the public service;
 - (b) to assess the effectiveness, efficiency, economy and appropriateness of management in the public service, and in particular departments or parts of departments;
 - (c) to advise departmental Ministers about steps that should be taken to improve public service effectiveness, efficiency and economy.
- (2) Subsection (1) does not limit the functions the Premier has apart from this section, or require the Premier to carry out any particular action.

28 Obtaining reports about principles of management and employment

- (1) The Premier may require the chief executive of a department to give the Premier a report about specified aspects of the department's application of the principles of public service management and employment stated in part 3.
- (2) The report must be given to the Premier within the time the Premier requires.

29 Management reviews

- (1) The Premier may authorise a person (the *authorised person*) to conduct a review of functions or activities of a public sector unit.
- (2) Before or after authorising a person to conduct the review, the Premier may—
 - (a) inform the departmental Minister and the chief executive of the public sector unit about the review; and
 - (b) give the chief executive an opportunity to nominate a stated number of employees of the public sector unit to take part in the review.
- (3) The authorised person—
 - (a) must produce the person's authority if asked by someone concerned in the review; and
 - (b) may, for the purpose of conducting the review—
 - (i) enter official premises of the public sector unit at any reasonable time; and
 - (ii) require the production of, examine, copy, or take an extract from, any official document in the possession of the public sector unit; and
 - (iii) interview employees of the public sector unit; and
 - (iv) interview anyone else who can provide information relevant to the review; and
 - (c) must give the Premier a report on the review, including any findings or recommendations.

Example of another person who can provide information—
a client of services provided by the public sector unit
- (4) The chief executive of the public sector unit and every other employee of a public sector unit must give to the authorised person the help the person reasonably requires to conduct the review.
- (5) Without limiting subsection (4), the authorised person may require an employee of a public sector unit to answer any question relevant to the review.
- (6) However, the employee need not answer the question if—

- (a) the employee objects to answering the question because answering it might tend to incriminate the employee of a criminal offence; and
 - (b) the employee would have a claim of privilege against self-incrimination in relation to a criminal offence if the employee were asked the question in a Supreme Court action.
- (7) The Premier may give a copy of the report to the departmental Minister and chief executive, and anyone else the Premier considers appropriate.
- (8) This section does not prevent the Premier from authorising a single review for 2 or more public sector units.
- (9) In this section—
- official document in the possession of the public sector unit* includes an official document—
- (a) under its control or to which it is entitled to access, whether or not created in the public sector unit; and
 - (b) in the possession, or under the control, of an employee of the public sector unit in the employee's official capacity.

30 Regulation of numbers of public service employees

- (1) The Premier may, by gazette notice, fix the maximum number of public service employees (other than senior executives) that may be employed in a department.
- (2) The maximum number fixed must be the number the Premier considers necessary for the effective, efficient, economical and appropriate performance of the department's functions.
- (3) The maximum number must be calculated in the way the Premier directs in the notice.

Example—

The Premier may direct that the maximum number must be calculated on the basis of full-time equivalents.

- (4) The Premier must give a copy of the notice to—
 - (a) the Treasurer; and

- (b) if the Premier or Treasurer is not the departmental Minister—the departmental Minister; and
 - (c) the chief executive of the department.
- (5) The chief executive of the department must ensure that the notice is not contravened.

31 Premier may direct action about surplus public service employees

If the Premier is satisfied that a department employs more public service employees than it needs for the effective, efficient, economical and appropriate performance of its functions, the Premier may direct the chief executive of the department to take action in accordance with rulings of the commissioner.

Division 2 Public service commissioner

32 The commissioner and office

- (1) There is to be a Public Service Commissioner.
- (2) An office called the Office of the Public Service Commissioner is established.
- (3) The office consists of the commissioner and the office's employees.
- (4) The office's employees are to be employed under this Act.

33 Functions of commissioner

The functions of the commissioner are to—

- (a) promote the principles of public service management and employment stated in part 3; and
- (b) promote public service management and workforce practices improvement initiatives; and
- (c) monitor the performance of public sector units, and conduct management reviews required by the Premier; and

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- (d) support departmental initiatives to further enhance client service delivery; and
- (e) provide a best practice advisory role on public service management and workforce practices; and
- (f) ensure that the interests of the Government as public service employer are protected in accordance with the other functions mentioned in this section; and
- (g) consider and decide, overall employment conditions for persons employed as—
 - (i) senior executives and senior officers; or
 - (ii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer; and
- (h) together with the departments responsible for public sector industrial relations and public sector financial policy, consider improvements in the performance of departments through remuneration and conditions of employment; and
- (i) consider and decide issues affecting the recruitment, selection, deployment, training and development of public service employees; and
- (j) provide advice to Ministers and chief executives about public service employee and organisational management; and
- (k) hear and decide appeals under this Act; and
- (l) ensure the transfer or redeployment of public service employees surplus to the needs of departments; and
- (m) establish policies and programs for the management of workforce practices of public service employees; and
- (n) undertake, or participate in, negotiations on issues affecting public service employees in accordance with the other functions mentioned in this section; and
- (o) perform another function given to the commissioner under this or another Act or by the Premier; and
- (p) perform functions incidental to a function under another paragraph of this section.

34 Rulings of industrial relations Minister and commissioner

- (1) The commissioner may issue directives or guidelines only about—
 - (a) a matter relating to a function of the commissioner under section 33; or
 - (b) the overall employment conditions for persons employed as—
 - (i) senior executives or senior officers; or
 - (ii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer; or
 - (c) a matter as required elsewhere in this Act.
- (2) The industrial relations Minister may issue directives and guidelines only about the remuneration and conditions of employment of public service employees other than those mentioned in subsection (1)(b).
- (3) A directive—
 - (a) is to be issued by gazette notice; and
 - (b) is binding on the public service employees, and other employees of public sector units, to whom the directive applies.
- (4) A guideline is for the guidance of the public service employees, and other employees of public sector units, to whom the guideline applies.
- (5) If a directive or guideline is inconsistent with this or another Act or subordinate legislation under either Act, the Act or subordinate legislation prevails over the directive or guideline to the extent of the inconsistency.

35 Commissioner's duty to act independently etc.

The commissioner must perform the commissioner's functions independently, impartially, fairly, and in the public interest.

36 Annual report

- (1) Within 4 months after the end of each financial year, the commissioner must prepare and give to the Premier a report about the performance of the commissioner's functions during the year.
- (2) The Premier must table a copy of the report in the Legislative Assembly within 14 days after receiving it.¹⁴

37 Other reports

- (1) The commissioner may, at any time, give the Premier a report about any issue relevant to the commissioner's functions.
- (2) The Premier may ask the commissioner to provide a report to the Premier about any issue relevant to the commissioner's functions.

38 Commissioner appointed by Governor in Council

The commissioner is to be appointed by the Governor in Council by gazette notice.

39 Basis of employment of commissioner

- (1) A person appointed as commissioner must enter into a written contract of employment with the Premier.
- (2) The conditions of the contract are to be approved by the Governor in Council.
- (3) The person's conditions of employment are governed by this Act and the contract.
- (4) The contract must state—
 - (a) the term, not longer than 5 years, of the person's employment; and
 - (b) that, if the person's employment as commissioner continues to the end of the term, a further contract may be entered into under this section; and

¹⁴ Note the *Parliament of Queensland Act 2001*, section 59 (Tabling of report when Assembly not sitting).

- (c) that the person must meet performance standards (if any) set by the Premier; and
- (d) the remuneration to which the person is entitled; and
- (e) that the person may resign by signed notice of resignation given to the Premier at least 1 month before the notice is to take effect; and
- (f) that the person's appointment and contract of employment may be terminated by the Governor in Council by written notice signed by the Premier and given to the person at least 1 month before it is to take effect.

40 Delegation by commissioner

- (1) The commissioner may delegate the commissioner's powers under part 7¹⁵ to any person.
- (2) The commissioner may delegate other powers of the commissioner to a public service employee.
- (3) However, the commissioner may not delegate the power to issue directives and guidelines.

41 Acting as commissioner

- (1) The Premier may appoint a person to act as commissioner during any period or all periods when—
 - (a) there is a vacancy in the office; or
 - (b) the commissioner is absent from duty or is, for another reason, unable to perform the functions of commissioner.
- (2) It does not matter whether the person appointed is or is not a public service officer.

Part 5 Staffing of public service

Division 1 The senior executive service generally

42 Senior executive service continued

A senior executive service is continued in the public service.

43 Purpose of senior executive service

The senior executive service is continued to promote the effectiveness and efficiency of the public service by attracting, developing and retaining a core of mobile, highly skilled senior executives.

44 Composition of senior executive service

The senior executive service consists of chief executives of departments and other persons employed under this Act as senior executives.

45 Number and classification levels of senior executives

- (1) The maximum number of senior executives to be employed in a department, the classification levels at which they are to be employed, and the designation of their roles must be fixed by the Governor in Council by gazette notice.
- (1A) Before a recommendation is made to the Governor in Council for subsection (1), the commissioner must be consulted about the proposed recommendation.
- (1B) Subsection (1) does not apply to a change in the designation of a role if the commissioner is satisfied that the change does not affect the role.

Example—

a change in the title of the role without affecting the substantive duties of the role

- (2) The chief executive of the department must ensure that the notice is not contravened.

Division 2 Chief executives

46 Departments to have chief executives

Each department is to have a chief executive.

47 Appointment of chief executives

The Governor in Council may, by gazette notice, appoint chief executives.

48 Secondment as chief executive

The Governor in Council may, by gazette notice, second officers as chief executives and revoke secondments at any time.

49 Titles of chief executives

The Governor in Council may, by gazette notice, specify the title of office for the chief executive of a stated department.

50 Statutory officer as chief executive

- (1) The Governor in Council may, by gazette notice, declare that the holder of a stated office established under an Act is the chief executive of a stated department.
- (2) This Act does not apply to the appointment of a person to the stated office.

51 Responsibilities of chief executives

- (1) The chief executive of a department is responsible for—
- (a) defining departmental goals and objectives in accordance with Government policies and priorities; and
 - (b) managing the department in a way that promotes the

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- effective, efficient, economical and appropriate management of public resources; and
- (c) deciding organisational and staffing structures for the department having regard to the need for the department to manage public resources effectively, efficiently, economically and appropriately; and
 - (d) adopting management practices that are responsive to changing Government policies and priorities and allow decisions and action to be taken promptly; and
 - (e) promoting continuing evaluation and improvement of effectiveness, efficiency, economy and appropriateness of departmental management; and
 - (f) implementing policies and practices about access and equity to ensure maximum access by members of the community to Government programs and to appropriate avenues for review; and
 - (g) ensuring maintenance of proper standards in the creation, keeping and management of public records under the chief executive's control.
- (2) Without limiting subsection (1), the chief executive is responsible for the following matters—
- (a) departmental priorities;
 - (b) the number of public service employees employed in the department (*departmental employees*);
 - (c) classification levels at which departmental employees are to be employed;
 - (d) duties of departmental employees, and qualifications required to be held by departmental employees to undertake particular duties;
 - (e) recruitment and selection of persons as departmental employees;
 - (f) deployment, and the location of headquarters, of departmental employees;
 - (g) performance appraisal of departmental employees;
 - (h) training and development, promotion and discipline of departmental employees;

- (i) termination of employment of departmental employees;
 - (j) the times between which departmental employees are to work ordinary hours of work;
 - (k) industrial issues affecting departmental employees (other than issues affecting the public service generally or the public service employees of 2 or more departments);
 - (l) approval and administration of leave arrangements for departmental employees;
 - (m) development of ways to ensure all departmental employees are treated fairly;
 - (n) matters arising out of the chief executive's powers under this Act and other Acts.
- (3) The chief executive's responsibilities (other than the responsibilities mentioned in subsection (2)(b) and (c)) extend to senior executives of the department as well as other public service employees of the department.
- (4) The chief executive's responsibilities under this Act are in addition to the chief executive's responsibilities under any other Act.

52 How chief executives must discharge responsibilities

In discharging responsibilities under this Act or another Act, a chief executive must—

- (a) observe the principles of public service management and employment stated in part 3; and
- (b) comply with all relevant laws, industrial determinations, and directives; and
- (c) have regard to all relevant guidelines.

53 Basis of employment for chief executives

- (1) Each person appointed as a chief executive under this Act must enter into a written contract of employment with the Premier.
- (2) The conditions of the contract are to be approved by the

Governor in Council.

- (3) The person's conditions of employment are governed by this Act and the contract.
- (4) The contract must state—
 - (a) the term, not longer than 5 years, of the person's employment; and
 - (b) that, if the person's employment as chief executive continues to the end of the term, a further contract may be entered into under this section; and
 - (c) that the person must meet performance standards (if any) set by the Premier or the relevant departmental Minister; and
 - (d) the remuneration to which the person is entitled; and
 - (e) that the person may resign by signed notice of resignation given to the Premier at least 1 month before the notice is to take effect; and
 - (f) that the person's appointment and contract of employment may be terminated by the Governor in Council by written notice signed by the Premier and given to the person at least 1 month before it is to take effect.

54 Extent of chief executive's autonomy

- (1) The chief executive of a department is subject to the directions of the departmental Minister in managing the department.
- (2) However, the chief executive must act independently, impartially and fairly in making decisions about particular individuals.
- (3) Subsection (1) is subject to another Act—
 - (a) that provides that the chief executive is not subject to the directions of the departmental Minister in relation to particular matters; or

- (b) that otherwise limits the extent to which, or circumstances in which, the chief executive is subject to the directions of the departmental Minister.

55 Declaration of interests

- (1) Within 1 month after appointment,¹⁶ the chief executive of a department must give to the departmental Minister a statement setting out the information required under a directive of the commissioner about the interests of the chief executive.
- (2) If a change of a type prescribed under a directive of the commissioner happens in the interests of the chief executive, the chief executive must give the departmental Minister a revised statement as soon as possible after the relevant facts come to the chief executive's knowledge.

56 Conflicts of interest

- (1) If the chief executive of a department has an interest that conflicts or may conflict with the discharge of the chief executive's responsibilities, the chief executive—
 - (a) must disclose the nature of the interest and conflict to the departmental Minister as soon as practicable after the relevant facts come to the chief executive's knowledge; and
 - (b) must not take action or further action in relation to a matter that is, or may be, affected by the conflict unless authorised by the departmental Minister.
- (2) The departmental Minister for a department may direct the chief executive of the department to resolve a conflict or possible conflict between an interest of the chief executive and the chief executive's responsibilities.

¹⁶ Appointment includes reappointment—see the *Acts Interpretation Act 1954*, section 36, definition *appoint*.

57 Delegation of chief executive powers

- (1) The chief executive of a department may delegate the chief executive's powers under this or another Act to any person.
- (2) A delegation of a power may permit the subdelegation of the power.

58 Acting as chief executive

- (1) The departmental Minister for a department may appoint a person to act as chief executive of the department during any period or all periods when—
 - (a) no-one is employed as chief executive; or
 - (b) the chief executive is absent from duty or is, for another reason, unable to perform the responsibilities of chief executive.¹⁷
- (2) It does not matter whether the person appointed is or is not already a public service officer.

Division 3 Other senior executives**59 Division does not apply to chief executives**

This division does not apply to chief executives.

60 Appointment of senior executives

- (1) The Governor in Council may, by gazette notice, appoint senior executives.
- (2) In this section—
appoint does not include transfer.

¹⁷ The *Acts Interpretation Act 1954*, section 24B contains provisions about acting appointments.

61 Secondment of senior executives

The Governor in Council may, by gazette notice, second senior executives and revoke secondments at any time.

62 Basis of employment for senior executives

- (1) Each person appointed as a senior executive must enter into a written contract of employment with the person's chief executive.
- (2) However, if a senior executive who is employed on tenure is transferred or redeployed, the person may, but is not required to, enter into a contract of employment with the person's chief executive.
- (3) The conditions of a senior executive's contract are to be approved by the commissioner.
- (4) The person's conditions of employment are governed by this Act and the contract.
- (5) The contract of employment must state—
 - (a) the term, not longer than 5 years, of the person's employment; and
 - (b) that, if the person's employment as senior executive continues to the end of the term, a further contract may be entered into under this section; and
 - (c) the person's duties; and
 - (d) that the person must meet performance standards (if any) set by the chief executive; and
 - (e) the person's classification level, and the remuneration to which the person is entitled; and
 - (f) that the person may resign by signed notice of resignation given to the chief executive at least 1 month before the notice is to take effect; and
 - (g) that the person's appointment and contract of employment may be terminated by the chief executive by written notice signed by the chief executive and given to the person at least 1 month before it is to take effect.

Division 4 Senior officers

63 Who is a *senior officer*

- (1) A *senior officer* is an officer (other than a senior executive) declared to be a senior officer under a directive of the commissioner.
- (2) The commissioner may make the declaration only if the commissioner considers that the officer is performing duties that would, if this Act had not been passed, be duties of a position classified as senior executive service level 1.

64 Application of provisions of Act to senior officers

The following provisions of this Act apply to senior officers in the same way as they apply to senior executives—

- section 95(1)(f) (Decisions against which appeals may not be made)
- section 116 (Exclusion of certain matters from review under other Acts).

Division 5 Provisions applying to officers who are not senior executives

65 Division does not apply to senior executives

This division does not apply to senior executives, but does apply to other officers (including senior officers).

66 Number and classification levels of employees

- (1) The number of public service employees to be employed in a department, the classification levels at which they are to be employed, and the designation of their roles must be fixed by the chief executive.
- (2) This section is subject to section 30.¹⁸

18 Section 30 (Regulation of numbers of public service employees)

67 Appointment of officers

- (1) A chief executive may appoint officers in the chief executive's department.
- (2) Notice of an appointment must be published in the gazette if—
 - (a) notice of intention to make an appointment for the relevant duties was published in the gazette; or
 - (b) notice of the appointment is required under this or another Act to be published in the gazette.
- (3) In this section—
appoint does not include transfer.

68 Secondment of officers

- (1) The chief executive of a department may second an officer of the department within the department.
- (2) The chief executive of a department may, with the approval of the chief executive of another department, second an officer of the other department to the first department.
- (3) The chief executive may revoke a secondment under this section at any time.
- (4) Notice of a secondment must be published in the gazette if—
 - (a) notice of intention to make an appointment for the relevant duties was published in the gazette; or
 - (b) notice of the appointment of a person to perform the relevant duties is required under this or another Act to be published in the gazette.

69 Basis of employment—tenure or contract

- (1) Appointment as an officer in a department is on tenure unless—
 - (a) it is decided that the appointment may be on contract for a fixed term; and
 - (b) the chief executive declares it to be available on contract for a fixed term.

- (2) For subsection (1)(a), the decision is to be made by—
 - (a) for a person employed as a public service officer on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer—the commissioner by directive; or
 - (b) for any other officer—the chief executive of the department responsible for administering the *Industrial Relations Act 1999* by gazette notice.

70 Basis of employment for contract employment

- (1) This section applies if the appointment of a person in a department as an officer is to be on contract for a fixed term.
- (2) The person must enter into a written contract of employment with the chief executive of the department.
- (3) However, if the person holds the appointment on tenure immediately before it is to be on contract for a fixed term, the person may, but is not required to, enter into a contract with the person's chief executive in relation to the appointment.
- (4) If a person mentioned in subsection (3) elects to not enter a contract of employment in relation to the appointment, the person continues to hold the appointment on tenure without change in the conditions of the appointment.
- (5) The conditions of employment of a person who enters a contract under this section are governed by this Act, any directive applying to the person, and the contract.
- (6) The person's overall employment conditions under the contract must not, on balance, be less than those that the person would be entitled to if the person were appointed on tenure.
- (7) If there is a dispute between the parties to the contract about the application of subsection (6), the Industrial Relations Commission has the jurisdiction to hear and decide the dispute.

71 Tenure on termination etc. of certain contracts

- (1) This section applies if—

- (a) a person is employed in a department as an officer on contract; and
 - (b) the contract is terminated other than by disciplinary action, or the contract expires and is not renewed or replaced by another contract of employment under this Act; and
 - (c) when the person was first employed under the contract or an earlier continuous contract of employment as an officer, the person was employed as an officer on tenure.
- (1A) However, this section does not apply to a person employed in a department as an officer on a contract for a fixed term that was in existence before 1 December 1996.¹⁹
- (2) The person becomes an officer employed on tenure.
 - (3) The person is to be employed—
 - (a) at the classification level at which the person would have been employed if the person had continued in employment as an officer on tenure; and
 - (b) on the remuneration to which the person would have been entitled if the person had continued in employment as an officer on tenure.

72 Contract terminated on acceptance of tenure

- (1) If an officer who is employed on contract accepts employment as an officer on tenure, the contract is taken to be terminated by agreement of the parties.
- (2) Without limiting subsection (1), the person is not entitled to payment under the contract because of the termination.

73 Appointments on probation

- (1) If a person who is not already an officer is appointed as an officer on tenure, the person's chief executive may decide that the person be appointed on probation for not less than 6 months.

¹⁹ This section commenced on 1 December 1996.

- (2) The person's chief executive may—
 - (a) by signed notice given to the person, terminate the person's employment at any time during the period of probation; or
 - (b) at the end of the period of probation—
 - (i) confirm the appointment; or
 - (ii) extend the period of probation; or
 - (iii) by signed notice given to the person, terminate the person's employment.
- (3) If, within 13 months after the person's appointment, the appointment is not confirmed and the employment is not terminated, the person's appointment is taken to have been confirmed at the end of the 13 months.

Division 6 Provisions applying generally to officers

74 Resignation

- (1) If the conditions of employment of an officer are governed by a contract of employment and the contract deals with resignation, the officer may resign in accordance with the contract.
- (2) Any other officer may resign by signed notice of resignation given to the officer's chief executive—
 - (a) at least 2 weeks before the notice is to take effect; or
 - (b) within a shorter period approved by the chief executive.
- (3) A notice under subsection (2) takes effect in accordance with its terms and without needing the chief executive's acceptance.

75 Requirement about citizenship etc.

- (1) A person is eligible to be an officer only if the person is—
 - (a) an Australian citizen; or

- (b) a person who resides in Australia and has permission or a right to be granted permission, under Commonwealth law, to remain in Australia indefinitely; or
 - (c) a New Zealand citizen who has a special category visa or a right to be granted a special category visa under the *Migration Act 1958* (Cwlth).
- (2) The employing authority may, by written notice signed by the employing authority, terminate the employment of an officer who is ineligible under subsection (1) to be an officer.

76 Basis of employment—full-time or part-time

Appointment as an officer is on the basis of full-time employment, unless the appointment has been declared by the employing authority to be available on a part-time basis.

77 Notification of proposed appointments

- (1) If the employing authority intends to appoint or second someone to perform duties as an officer, the employing authority must advertise the intention as required under a directive.
- (2) This section does not apply to—
- (a) an appointment declared under a directive to be an appointment to which this section does not apply; or
 - (b) the transfer, redeployment or secondment of a person in accordance with another provision of this Act, a provision of another Act or a directive.

78 Selection for appointment to be on merit

- (1) Selection of an eligible person for appointment or secondment as a public service employee must be based on merit alone.
- (2) In deciding the relative merits of applicants, the following matters must be taken into account—
- (a) the extent to which each applicant has abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to the carrying out of the

- duties in question;
- (b) if relevant—
 - (i) the way in which each applicant carried out any previous employment or occupational duties; and
 - (ii) the extent to which each applicant has potential for development.
 - (3) This section does not apply to—
 - (a) an appointment declared under a directive of the commissioner to be an appointment to which this section does not apply; or
 - (b) the transfer, redeployment or secondment of a person in accordance with—
 - (i) another provision of this Act or a provision of another Act; or
 - (ii) a directive of the commissioner.
 - (4) Also, this section does not apply to the appointment on contract of a person who is a senior executive if—
 - (a) the person, immediately before the appointment, was employed on tenure; and
 - (b) the appointment on contract is to perform duties in the same department at a higher classification level; and
 - (c) the duties to be performed at the higher classification level are (in the opinion of the person's chief executive) the same or substantially the same as those performed by the person immediately before the appointment; and
 - (d) the chief executive and the person agree to the appointment.

79 Transfer of officers

- (1) The Governor in Council may, by gazette notice, transfer senior executives.
- (2) The chief executive of a department may transfer an officer of the department within the department.
- (3) The chief executive of a department may, with the approval of

the chief executive of another department, transfer an officer of the other department to the first department.

- (5) The transfer of an officer under this section—
- (a) may involve a change in the location where the officer performs duties; and
 - (b) if the officer is employed on contract—has effect despite anything in the contract.

80 Consequence if transfer refused

- (1) If an officer is transferred under section 79, the transfer has effect unless the officer establishes reasonable grounds for refusing the transfer to the satisfaction of the officer's employing authority.
- (2) If the officer refuses the transfer after failing to establish reasonable grounds for refusing the transfer to the employing authority's satisfaction, the employing authority may terminate the officer's employment by signed notice given to the officer.
- (3) If the officer establishes reasonable grounds to the employing authority's satisfaction—
 - (a) the transfer is cancelled; and
 - (b) the refusal must not be used to prejudice the officer's prospects for future promotion or advancement.

81 Action because of surplus

- (1) This section applies if the chief executive of a department believes that a public service employee is surplus to the department's needs because—
 - (a) the department employs more employees than it needs for the effective, efficient, economical and appropriate performance of its functions; or
 - (b) the duties performed by the employee are no longer required.
- (2) The chief executive must take the action required under a directive.

82 Work performance and interchange arrangements

- (1) The purpose of this section is to enable work performance and interchange arrangements to be made by chief executives.
- (2) The chief executive of a department may enter into, and give effect to, a work performance or interchange arrangement with the chief executive of another department or the appropriate authority of another entity.
- (3) A work performance or interchange arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (4) A work performance arrangement may, for example, provide—
 - (a) for the appointment of, and holding by, a public service employee or another person to any office for the arrangement; and
 - (b) for the authorising of a public service employee or another person to exercise any powers for the arrangement; and
 - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

- (5) In this section—

another jurisdiction means the Commonwealth or another State.

entity includes—

- (a) a government entity; and
- (b) a public entity of another jurisdiction.

interchange arrangement means an arrangement under which—

- (a) a public service employee of a department performs duties in another entity; or
- (b) an employee of an entity performs duties in a department.

public entity, of another jurisdiction, includes—

- (a) a department of government, or part of a department of government, of the other jurisdiction; and
- (b) an entity, or part of an entity, corresponding to a public service office; and
- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under a law of the jurisdiction or under an authorisation of the jurisdiction for a public or other purpose of the jurisdiction; and
- (d) a part of an entity mentioned in paragraph (c).

work performance arrangement means an arrangement under which—

- (a) a public service employee of a department performs work for another entity; or
- (b) an employee of another entity performs work for a department.

83 Declaration of interests

- (1) If a department's chief executive considers it necessary, because of the duties and responsibilities of a public service employee of the department, the chief executive may direct the employee to give, within a stated time or at stated intervals, to the chief executive, or someone nominated by the chief executive, a statement setting out the information required under a directive of the commissioner about the interests of the employee.
- (2) The chief executive may also direct the public service employee to give to the chief executive, or someone nominated by the chief executive, a revised statement if a change of a type prescribed under a directive of the commissioner happens in the interests of the employee.
- (3) The public service employee must give the revised statement to the chief executive or nominated person as soon as possible after the relevant facts come to the employee's knowledge.

84 Conflicts of interest

- (1) If a public service employee (other than a chief executive²⁰) has an interest that conflicts or may conflict with the discharge of the employee's duties, the employee—
 - (a) must disclose the nature of the interest and conflict to the employee's chief executive as soon as practicable after the relevant facts come to the employee's knowledge; and
 - (b) must not take action or further action in relation to a matter that is, or may be, affected by the conflict unless authorised by the chief executive.
- (2) The chief executive of a department may direct a public service employee of the department to resolve a conflict or possible conflict between an interest of the employee and the employee's duties.

85 Mental or physical incapacity

- (1) This section applies to a person who is a public service employee if—
 - (a) the person is absent from duty or the person's employing authority is reasonably satisfied that the person is not performing his or her duties satisfactorily; and
 - (b) the employing authority reasonably suspects that the person's absence or unsatisfactory performance is caused by mental or physical illness or disability.
- (2) The employing authority may—
 - (a) appoint a doctor to examine the person and give the authority a written report on the examination; and
 - (b) require the person to submit to the medical examination.
- (3) If, after considering the report of the medical examination, the employing authority is reasonably satisfied that the person's absence or unsatisfactory performance is caused by mental or physical illness or disability, the employing authority may—

20 Section 56 deals with conflicts of interest of chief executives.

- (a) transfer or redeploy the person; or
 - (b) if it is not reasonably practicable to transfer or redeploy the person—retire the person from the public service.
- (4) Subsection (3) does not limit the action that may be taken in relation to the person.

86 Voluntary retirement

A person who is an officer or general employee may, by signed notice given to the employing authority, elect to retire from the public service if—

- (a) the person has turned 55; or
- (b) the person is permitted to retire under a directive.

Part 6 Disciplinary action

87 Grounds for discipline

- (1) The employing authority may discipline an officer if the authority is reasonably satisfied that the officer has—
- (a) performed the officer's duties carelessly, incompetently or inefficiently; or
 - (b) been guilty of misconduct; or
 - (c) been absent from duty without approved leave and without reasonable excuse; or
 - (d) contravened, without reasonable excuse, a direction given to the officer as an officer by a person with authority to give the direction (whether the authority derives from this Act or otherwise); or
 - (e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the officer's duties; or
 - (f) contravened, without reasonable excuse, a provision of this Act or a code of conduct.

(2) In this section—

code of conduct means a code of conduct—

- (a) approved under the *Public Sector Ethics Act 1994*; or
- (b) prescribed under a directive of the commissioner.

misconduct means—

- (a) disgraceful or improper conduct in an official capacity;
or
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service.

Example of misconduct—

victimising another public service employee in the course of the other employee's employment in the public service

88 Disciplinary action that may be taken

- (1) In disciplining an officer, the employing authority may take the action, or order the action be taken, that the authority considers reasonable in the circumstances.
- (2) However, the employing authority must comply with this Act and any relevant directive of the commissioner.
- (3) The authority may, for example, do any 1 or more of the following—
 - (a) terminate the officer's employment;
 - (b) reduce the officer's classification level and change the officer's duties accordingly;
 - (c) transfer or redeploy the officer to other employment in the public service;
 - (d) forfeit or defer a remuneration increment or increase of the officer;
 - (e) reduce the level of the officer's remuneration;
 - (f) impose a penalty on the officer of not more than the total of 2 of the officer's periodic remuneration payments;
 - (g) direct that a penalty imposed on the officer be deducted from the officer's periodic remuneration payments;

- (h) reprimand the officer.
- (4) An amount directed to be deducted under subsection (3)(g) from any particular periodic remuneration payment of the officer must not be more than half of the amount payable to or for the officer in relation to the payment and must not reduce the amount of salary payable to the officer in relation to the period to less than—
 - (a) for an officer who has no dependant—two-thirds of the guaranteed minimum wage for each week of the period; or
 - (b) for an officer who has a dependant—the guaranteed minimum wage for each week of the period.
- (5) An order under subsection (1) is binding on all persons affected by it.

89 Suspension of officer from duty

- (1) The employing authority may suspend an officer from duty if the authority reasonably believes—
 - (a) the officer is liable to discipline; and
 - (b) the proper and efficient management of the officer's department might be prejudiced if the officer were not suspended.
- (2) The authority may cancel an officer's suspension from duty at any time.

90 Procedure for disciplinary action

- (1) In disciplining or suspending an officer, the employing authority must comply with this Act, any relevant directive of the commissioner, and the principles of natural justice.
- (2) However, natural justice is not required for the suspension of an officer on full remuneration.

91 Additional procedures for suspension or termination

- (1) If the employing authority decides to suspend or terminate the employment of an officer, the authority must give the officer written notice of the suspension or termination.
- (2) The notice must state—
 - (a) for a suspension notice—the suspension period and the day when it takes effect; or
 - (b) for a termination notice—the day when it takes effect.

92 Effect of suspension from duty

- (1) An officer suspended from duty under this part is entitled to full remuneration for the period for which the officer is suspended, unless the employing authority otherwise decides.
- (2) If the officer is suspended without full remuneration, the authority cancels the officer's suspension and the officer resumes duty, then, unless the authority otherwise decides, the officer is entitled to be paid the prescribed remuneration to which the officer would have been entitled apart from the suspension, less any amount earned by the officer from additional employment undertaken during the suspension period.
- (3) In this section—

prescribed remuneration means the remuneration prescribed under a directive.

Part 7 Appeals**93 Appeals to commissioner**

A person may appeal to the commissioner against a decision if—

- (a) an appeal may be made against the decision under section 94; and

- (b) the person is entitled to appeal against the decision under section 96.

94 Decisions against which appeals may be made

- (1) An appeal may be made to the commissioner against the following decisions—
 - (a) a decision to take, or not take, action under a directive;
 - (b) a decision under a disciplinary law to discipline a person (other than by termination of employment), including the action taken in disciplining the person;
 - (c) a decision to promote an officer (a *promotion decision*);
 - (d) a decision about anything else against which another Act allows a person to appeal to the commissioner.
- (2) However, an appeal may not be made against a decision if section 95 applies to the decision.

95 Decisions against which appeals may not be made

- (1) A person can not appeal to the commissioner against any of the following decisions—
 - (a) a decision of the Governor in Council;
 - (b) a decision of a Minister;
 - (c) a decision about superannuation benefits or workers' compensation;
 - (d) a decision about probation;
 - (e) a decision to terminate the employment of an officer who is employed on probation;
 - (f) a decision about the classification level of employment, unless the decision is declared under a directive of the commissioner to be a decision against which an appeal may be made to the commissioner;
 - (g) a decision to promote, transfer, redeploy or second a person to be or as a chief executive, a senior executive or a senior officer;
 - (h) a non-appealable appointment.

- (2) A person can not appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.
- (3) A person can not appeal against a decision to promote an officer if—
 - (a) the officer had been redeployed within 1 year before the promotion; and
 - (b) the promotion is to a classification level that is not higher than the officer's classification level immediately before the redeployment.
- (4) In addition, a person can not appeal against a decision if—
 - (a) the parties to the appeal would include—
 - (i) the commissioner; or
 - (ii) an employee of the office of the public service commissioner; or
 - (b) it is a matter that has been heard by the Industrial Relations Commission.²¹
- (5) In this section—

non-appealable appointment means an appointment—

 - (a) for which the commissioner is satisfied that merit in selection processes is sufficiently protected by ways other than an appeal under this part; and
 - (b) that the commissioner has declared by gazette notice to be an appointment against which an appeal may not be made.

96 Who may appeal against decisions

The following persons may appeal against a decision to the commissioner—

²¹ Under section 106 (Jurisdiction of Industrial Relations Commission), the Industrial Relations Commission has jurisdiction to hear and decide a matter mentioned in this subsection.

- (a) for a decision mentioned in section 94(1)(a)²²—an officer aggrieved by the decision if the officer is entitled to appeal under a directive of the commissioner;
- (b) for a decision mentioned in section 94(1)(b)²³—an officer aggrieved by the decision to discipline the officer if the officer is entitled to appeal under a directive of the commissioner;
- (c) for a decision to promote an officer—an officer aggrieved by the decision who is entitled to appeal under a directive of the commissioner;
- (d) for a decision mentioned in section 94(1)(d)²⁴—the person the other Act allows to appeal.

97 Stay of operation of decisions etc.

- (1) The commissioner may stay a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be given on conditions the commissioner considers appropriate; and
 - (b) operates for the period decided by the commissioner; and
 - (c) may be revoked or amended by the commissioner.
- (3) The period of a stay specified by the commissioner must not extend past the time when the commissioner decides the appeal.
- (4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

22 Section 94(1)(a) is about decisions to take, or not take, action under a directive.

23 Section 94(1)(b) is about disciplinary decisions.

24 Section 94(1)(d) is about decisions against which another Act allows a person to appeal.

98 Commissioner may decline to hear certain appeals

- (1) The commissioner may decline to hear an appeal against a decision mentioned in section 94(1)(a) unless the appellant satisfies the commissioner that the appellant has used grievance procedures required to be used under a directive.
- (2) The commissioner may decline to hear an appeal against a promotion decision unless the appellant satisfies the commissioner by oral or written submissions that the appellant has an arguable case for the appeal.
- (3) The commissioner may decline to hear an appeal against any decision if—
 - (a) the appellant has made an application to a court or tribunal in relation to the decision, whether or not the application has been fully decided; or
 - (b) the commissioner reasonably believes the appeal—
 - (i) is frivolous or vexatious; or
 - (ii) is misconceived or lacks substance; or
 - (iii) should not be heard for another compelling reason.
- (4) Before declining to hear an appeal under subsection (3)(b), the commissioner may ask the appellant to establish by oral or written submissions that the appellant has an arguable case for the appeal.

99 Appeal is by way of review

- (1) The commissioner must decide an appeal by reviewing the decision appealed against.
- (2) For an appeal against a decision about a promotion or disciplinary action, the commissioner must decide the appeal on the basis of the evidence available to the decision maker when the decision was made, unless the commissioner allows other evidence to be taken into account.

100 Commissioner's duties on appeal

In hearing and deciding an appeal, the commissioner must—

- (a) observe the principles of natural justice; and

- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

101 Commissioner may decide procedures

- (1) The commissioner—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform himself or herself in the way, and to the extent, the commissioner considers appropriate; and
 - (c) may decide the persons (other than the appellant) who are the parties to the appeal; and
 - (d) may decide the appeal without a hearing if the parties to the appeal agree; and
 - (e) may hear and decide any issue relevant to the appeal; and
 - (f) may decide the procedures to be followed in the appeal, including, for example, whether—
 - (i) the appeal should be heard with other appeals; and
 - (ii) the parties should be heard together or separately; and
 - (iii) the parties should be heard, or evidence or submissions taken, by way of video link or another form of communication.
- (2) However, the commissioner must comply with this part and the procedural rules that may be prescribed under a regulation.

102 Representation of parties

- (1) A party to an appeal may appear personally or by an agent, but may not be represented by a lawyer.
- (2) However, a party to an appeal about a promotion decision may be represented by an agent only with the commissioner's leave.

103 Commissioner's powers on appeal

- (1) In hearing an appeal, the commissioner may—
 - (a) act in the absence of a person who has been given reasonable notice; and
 - (b) receive evidence on oath or affirmation or by statutory declaration; and
 - (c) require a public service employee to attend as a witness to give evidence or produce documents or things; and
 - (d) require a public service employee attending as a witness to make an oath or affirmation.
- (2) The commissioner may administer an oath or affirmation to a person appearing as a witness.

104 Decision on appeal

- (1) In deciding an appeal, the commissioner may—
 - (a) confirm the decision appealed against; or
 - (b) for an appeal against a promotion decision—set the decision aside, and return the issue to the decision maker with a copy of the commissioner's decision and any directions permitted under a directive of the commissioner that the commissioner considers appropriate; or
 - (c) for another appeal—set the decision aside, and substitute another decision or return the issue to the decision maker with a copy of the commissioner's decision and any directions the commissioner considers appropriate.
- (2) In deciding an appeal against a promotion decision, the commissioner may set the decision aside only if the commissioner finds—
 - (a) that the recruitment or selection process was deficient; or
 - (b) that the appellant demonstrated the highest level of merit overall.

105 Commissioner may reopen decided appeals

The commissioner may reopen an appeal that has been decided if the commissioner is satisfied there are compelling reasons for hearing and deciding it again.

106 Jurisdiction of Industrial Relations Commission

- (1) This section is to be read in conjunction with the *Industrial Relations Act 1999*.
- (2) The Industrial Relations Commission may hear and decide, as an industrial matter, an application by a person aggrieved by a matter mentioned in section 95(4).²⁵
- (3) The Industrial Relations Commission may not hear or decide, as an industrial matter, an application by a person about a decision against which the person has appealed to the commissioner.

107 Protective appeals

- (1) An officer who is promoted in a department and who could have appealed against the promotion of someone else in the department or another department may appeal against the other promotion under a regulation or a directive of the commissioner.
- (2) Subsection (1) applies even though the time within which the officer may appeal against the other promotion has expired.
- (3) However, the commissioner may hear and decide the appeal only if the appeal against the officer's own promotion is allowed.

²⁵ Section 95(4) is about decisions that can not be appealed against because the appeal would involve the commissioner or employees of the office of the public service, or a matter that has been heard by the Industrial Relations Commission.

Part 8 **Removal of statutory office holders who are term appointees**

108 **What is a *statutory office***

- (1) A *statutory office* is an office established under an Act to which a person may only be appointed by the Governor in Council or a Minister.
- (2) It is immaterial whether an appointment may only be made after a recommendation or other process.

109 **Who is a *term appointee***

- (1) A *term appointee* is a person appointed to a statutory office under an Act that provides the appointee holds the office for a term specified under the Act, in the appointment instrument or in another instrument.
- (2) It is immaterial whether the office is held full-time or part-time.
- (3) A person is not a term appointee because of appointment as any of the following—
 - (a) the holder of an office under an Act that provides the holder may or must be removed from office following an address or resolution of the Legislative Assembly;
 - (b) the Director of Public Prosecutions or Deputy Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*;
 - (c) the Electoral Commissioner appointed under the *Electoral Act 1992* or an appointed commissioner within the meaning of that Act;
 - (d) a review commissioner appointed under the *Local Government Act 1993*;
 - (e) the Solicitor-General appointed under the *Solicitor-General Act 1985*;

- (ea) the chairperson of the Crime and Misconduct Commission appointed under the *Crime and Misconduct Act 2001*;
 - (eb) a member of the Mental Health Review Tribunal appointed under the *Mental Health Act 2000*;
 - (f) a member of the panel of misconduct tribunal members appointed under the *Misconduct Tribunals Act 1997*;
 - (g) a member of the police service;
 - (h) an officer of the parliamentary service;
 - (i) the holder of an office declared under a regulation for this section.
- (4) A person appointed to a statutory office is not a term appointee merely because, under an Act, the person stops holding the office on reaching a particular age.

110 Removal of term appointees

- (1) The Governor in Council may remove a term appointee from office at any time.
- (2) The Governor in Council may remove a term appointee from office under subsection (1) despite another Act or the conditions of the term appointee's appointment or contract of employment.
- (3) This section does not stop removal of a term appointee apart from this section.

Example—

It is stated in another Act that a person holding a particular statutory office provided for by the Act may be removed from office for a list of reasons, for example, incompetence and the commission of an indictable offence. A person holding the office is a term appointee under this part. Therefore, a person holding the office may be removed from office not only under the Act mentioned, but also under this section.

111 Re-employment and other entitlements

- (1) This section applies to a person removed from a statutory office under section 110.

- (2) If the person, at the time of appointment to the statutory office or an earlier continuous appointment to the statutory office or another statutory office, was an officer who had been in continuous employment in the capacity of an officer for at least 5 years, the person is entitled to be employed in the way stated in subsection (3).
- (3) The person is entitled to be employed as an officer—
 - (a) at the classification level at which the person would have been employed if the person had continued in employment as an officer; and
 - (b) on the remuneration to which the person would have been entitled if the person had continued in employment as an officer; and
 - (c) for duties appropriate to the person's classification level and qualifications.
- (4) The commissioner has the function of identifying appropriate employment in which the person may be employed.
- (5) The commissioner may direct a department's chief executive to employ the person, if the employment is in the chief executive's department.
- (6) If the person is employed according to the person's entitlements under this section, the person is not entitled to compensation for being removed from the statutory office.
- (7) Subsection (6) applies despite the conditions of the person's appointment or contract of employment as a term appointee.
- (8) Apart from subsection (6), this part does not affect the person's right to claim compensation or other entitlements under the conditions of the person's appointment or contract of employment applying when the appointment or employment ends.
- (9) The person may only claim under the conditions of the person's appointment or contract of employment compensation and other entitlements as if the person's appointment or employment had been terminated as permitted under the conditions or as if the person's term of office had ended.

Part 9

General and temporary employees

112 Employment of general employees

- (1) A chief executive may employ a person as a general employee to perform work of a type not ordinarily performed by an officer.
- (2) The employment may be—
 - (a) on tenure, or on a temporary basis and full-time or part-time; or
 - (b) on a casual basis.
- (3) A person employed under this section does not, by the employment, become an officer.
- (4) Subsections (1) and (2) are subject to a directive that may be made about the employment of persons as general employees.

113 Employment of temporary employees

- (1) To meet temporary circumstances, a chief executive may employ a person as a temporary employee to perform work of a type ordinarily performed by an officer other than a senior executive.
- (2) The employment may be—
 - (a) on a temporary basis and full-time or part-time; or
 - (b) on a casual basis.
- (3) A person employed under this section does not, by the employment, become an officer.
- (4) Subsections (1) and (2) are subject to a directive that may be made about the employment of persons as temporary employees.

114 Application of Act to general and temporary employees

- (1) A directive may apply a provision of this Act to a general or temporary employee.

- (2) The provision applies to the employee—
 - (a) as if the employee were an officer; and
 - (b) with all necessary changes and any changes prescribed under a directive of the commissioner.
- (3) A directive may prescribe anything necessary or convenient to be prescribed—
 - (a) to enable a directive to be made under subsection (1) or (2); or
 - (b) for carrying out or giving effect to a directive under subsection (1) or (2); or
 - (c) because of the making of a directive under subsection (1) or (2).

Part 9A Criminal history reports if engaged to perform relevant duties

114A Definitions for pt 9A

In this part—

criminal history see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

criminal history report means a report given under section 114D to a chief executive by the commissioner of the police service about the criminal history of a person.

engage, a person, includes any of the following—

- (a) appoint, employ, promote, redeploy or second the person within or to a department;
- (b) allow the person to participate in a work performance arrangement or an interchange arrangement, within the

meaning of section 82,²⁶ in a department;

- (c) start training the person in a department as an apprentice or trainee, within the meaning of the *Vocational Educational, Training and Employment Act 2000*, chapter 1, part 2.²⁷

relevant duties means the particular duties in a department in relation to which the chief executive of the department decides, under section 114C(1), it may be necessary to have regard to the criminal history of anyone engaged to perform those duties to ensure the person so engaged is suitable to perform them.

114B Relationship of part with other laws

- (1) This part does not limit any other law under which the criminal history of a person may be obtained, including any other part of this Act.
- (2) Also, this part is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

114C Chief executive may decide to obtain criminal history

- (1) This section applies if the chief executive of a department decides, under a directive issued for this part, that, because of the nature of particular duties to be performed in the department, it may be necessary to have regard to the criminal history of anyone engaged to perform those duties to ensure the person so engaged is suitable to perform them.
- (2) When the chief executive proposes to engage a person to perform the relevant duties, the chief executive may, under a directive issued for this part, ask the person for written consent for the chief executive to obtain the person's criminal history.

²⁶ Section 82 (Work performance and interchange arrangements)

²⁷ *Vocational Education, Training and Employment Act 2000*, chapter 1 (Preliminary), part 2 (Definitions and basic concepts)

- (3) Subsection (2) applies to a person even if the person is a public service employee at the time the chief executive proposes to engage the person to perform the relevant duties.

114D Obtaining criminal history with consent

- (1) If a person gives written consent under section 114C(2) to obtain the person's criminal history, the chief executive may ask the commissioner of the police service for a written report about the person's criminal history.
- (2) Subject to subsection (3), the commissioner of the police service must give the report to the chief executive.
- (3) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner's possession or to which the commissioner has access.

114E Assessment of suitability using criminal history report and subsequent destruction of the report

- (1) In making an assessment about the person's suitability for engagement to perform the relevant duties after obtaining a criminal history report about the person, the chief executive must, under a directive issued for this part, consider the person's criminal history.
- (2) If, after making the assessment mentioned in subsection (1), the person's criminal history report is no longer required to be kept under a directive issued for this part, the chief executive must destroy the report and any other document required by the directive to be destroyed.

114F If person does not consent to obtaining criminal history

If a person does not consent to the chief executive obtaining the person's criminal history, the chief executive is not required to consider, or further consider, the person for engagement to perform the relevant duties.

114G Confidentiality

- (1) This section applies to a person who—
 - (a) is, or has been, a public service employee in a department or a selection panel member; and
 - (b) in that capacity acquired information, or gained access to a document, under this part about someone else's criminal history, including, for example, a criminal history report.
- (2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to the disclosure of information, or giving of access to a document, about a person—
 - (a) to a public service employee in the department or a selection panel member, for the purpose of assessing the person's suitability to be engaged to perform the relevant duties in relation to which the criminal history report about the person was obtained; or
 - (b) with the person's consent; or
 - (c) if the disclosure or giving of access is otherwise required under an Act.
- (4) In this section—

selection panel member means a member of a panel formed to make a recommendation to the chief executive of a department about engaging a person to perform relevant duties in the department.

114H Commissioner may issue a directive or guideline for this part

- (1) For this part, the commissioner may issue directives and guidelines under section 34.²⁸
- (2) Without limiting subsection (1) or section 34, a directive issued for this part must make provision for—

- (a) the circumstances in which a chief executive may decide that it is necessary to obtain the criminal history of a person under section 114D; and
 - (b) a reasonable opportunity to be given to a person to make written representations about a criminal history report obtained about the person before an adverse decision relating to the person is made.
- (3) In this section—

adverse decision, relating to a person, means a decision about the person's suitability for engagement to perform the relevant duties in relation to which a criminal history report was obtained, other than a decision that the person is suitable for engagement to perform the relevant duties.

Part 10 Miscellaneous

115 **Effect of Act on Crown**

- (1) Subject to subsection (3), this Act binds the Crown.
- (2) A person who employs another person under this Act employs the person as the authorised agent of the Crown.
- (3) The right or power of the Crown recognised at common law to dispense with the services of a person employed in the public service is not abrogated or restricted by any provision of this Act.

116 **Exclusion of certain matters from review under other Acts**

- (1) In this section—

excluded matter means—

 - (a) a decision to appoint, or not to appoint, a person under this Act or as a statutory office holder; or
 - (b) the contract of employment of, or the application of this Act or a provision of this Act to, any of the following

persons (an *excluded person*)—

- (i) the commissioner;
 - (ii) a chief executive or other senior executive;
 - (iii) a senior officer;
 - (iv) another officer whose employment is on contract for a fixed term; or
- (c) the removal of a statutory office holder under this Act.
- (2) An excluded matter, or a matter affecting or relating to an excluded matter, other than in relation to dismissal of an officer who is employed on tenure, is not an industrial matter for the *Industrial Relations Act 1999*.
 - (3) However, this section has no effect on the *Industrial Relations Act 1999*, section 276.²⁹
 - (4) Without limiting subsection (2), awards and industrial agreements do not apply to an excluded person.
 - (5) A decision about an excluded matter can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991*.
 - (6) Subsection (5) does not apply to a decision about an officer who is employed on tenure and referred to in subsection (1), definition *excluded matter*, paragraph (a) or (b).

116A Application of Industrial Relations Act to public service employees

- (1) Public service employees are employees for the *Industrial Relations Act 1999*.
- (2) Subsection (1) is subject to sections 106(3) and 116(2).³⁰

²⁹ *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts)

³⁰ Section 106(3) excludes the jurisdiction of the Industrial Relations Commission for decisions against which a person has appealed to the commissioner. Section 116(2) excludes certain matters from the concept of industrial matter.

117 Relationship between directives and awards etc.

- (1) This section applies if a directive deals with a matter that is dealt with, wholly or partly, under an industrial instrument.
- (2) A directive of the commissioner prevails over an industrial instrument, unless a regulation provides otherwise.
- (3) An industrial instrument prevails over a directive of the industrial relations Minister, unless the directive provides otherwise.
- (4) In this section—

directive includes a decision made in the exercise of a discretion given in a directive.

industrial instrument means an award, industrial agreement or a decision of the Industrial Relations Commission.

118 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
 - (a) the operation of the public service, a department or public service office; or
 - (b) the entitlements, responsibilities, functions, powers and liabilities of public service employees; or
 - (c) any matter that is permitted under this Act to be prescribed by the industrial relations Minister or commissioner by directive or guideline.
- (3) To the extent that it permits the making of a regulation for remuneration and conditions of employment, this section is to be administered by the industrial relations Minister.
- (4) A regulation may provide for administration of it by a Minister other than the Premier.

Part 11 **Transitional provisions, repeals and amendments**

Division 1 **Transitional provisions**

121 **Existing chief executives**

- (1) If, immediately before the commencement of this section, a person held appointment as a chief executive, the person is taken to have been appointed under this Act as a chief executive for the remainder of the person's term of appointment.
- (2) If, immediately before the commencement, a person was seconded as chief executive of a department, the secondment continues as if it had been made under this Act.
- (3) The title of a chief executive immediately before the commencement continues to be the title of the chief executive, subject to section 49.³¹
- (4) For section 50,³² the commissioner of the police service is taken to be the chief executive of the Department of Police.
- (5) The contract of employment of a chief executive in force immediately before the commencement is taken to have been made under this Act.
- (6) Within 1 month after the commencement, a chief executive must comply with section 55³³ as if the chief executive had been appointed on the commencement.
- (7) A delegation by a chief executive in force under the *Public Service Management and Employment Act 1988* immediately before the commencement continues in force as if the delegation had been made under this Act.
- (8) An appointment in existence immediately before the commencement for a person to act as a chief executive

31 Section 49 (Titles of chief executives)

32 Section 50 (Statutory officer as chief executive)

33 Section 55 (Declaration of interests)

(whether or not the person was acting under the appointment at that time) continues in force as if the appointment had been made under this Act.

124 Phasing out of SES level 1

- (1) Senior executive service level 1 is to be phased out.
- (2) Subject to subsection (3), after the commencement of this section, a person can not be appointed at senior executive service level 1.
- (3) If, immediately before the commencement, a person was appointed to a position classified as senior executive service level 1 (*SES 1*), the employment continues to be employment as a senior executive, SES 1, until the person ceases to be an officer or to perform duties that would, if this Act had not been passed, be duties at SES 1.
- (4) If, immediately before the commencement, a person was seconded by the Governor in Council to a position classified as SES 1, the employment continues to be employment as a senior executive, SES 1, until the end of the secondment or any continuous extension of it.
- (5) If a person mentioned in subsection (4), while seconded, is promoted as an officer on tenure to perform the same, or substantially the same, duties for which the person was employed on secondment, the person's entitlements must be at least the same as those the person had on the secondment.

125 Existing senior executives other than chief executives

- (1) If, immediately before the commencement of this section, a person held appointment as a senior executive (other than a chief executive), the person is taken to have been appointed under this Act as a senior executive.
- (2) If, immediately before the commencement, a person was seconded as a senior executive (other than a chief executive), the secondment continues as if it had been made under this Act.
- (3) A person mentioned in subsection (1) may, but is not required to, enter into a contract of employment with the person's chief

executive in relation to the person's appointment mentioned in the subsection.

- (4) The employment of a person mentioned in subsection (1) or (2), and the conditions of the employment, are not affected by the phasing out of senior executive service level 1 positions.

126 Existing officers

- (1) A person who was an officer under the *Public Service Management and Employment Act 1988* immediately before the commencement of this section is taken to be an officer appointed under this Act.
- (2) If there is doubt about whether a person was an officer under the *Public Service Management and Employment Act 1988* immediately before the commencement and the person asks a chief executive to make a declaration under this subsection, the chief executive may declare that subsection (1) applies to the person.
- (3) The employment of a person mentioned in subsection (1) (including a person declared under subsection (2) to be a person to whom subsection (1) applies), and the conditions of the employment, are not affected by the discontinuance of public service positions.

129 Existing contracts of employment

- (1) If a person (other than a chief executive) was employed under the *Public Service Management and Employment Act 1988* on a contract of employment immediately before the commencement of this section, the contract of employment is taken to have been made under this Act between the person and the person's chief executive.
- (2) If the person was an officer immediately before the commencement, the employment of the person under this Act is taken to be on contract for a fixed term.

130 Existing general employees

- (1) A person who was engaged under the *Public Service Management and Employment Act 1988*, section 34(1)(a)

immediately before the commencement of this section is taken to be a general employee employed under this Act.

- (2) If there is doubt about whether a person was a person engaged as mentioned in subsection (1) and the person asks a chief executive to make a declaration under this subsection, the chief executive may declare that subsection (1) applies to the person.
- (3) The conditions of the employment of a person mentioned in subsection (1) (including a person declared under subsection (2) to be a person to whom subsection (1) applies) are not affected by the repeal of the *Public Service Management and Employment Act 1988*.

131 Existing temporary employees

- (1) A person who was engaged under the *Public Service Management and Employment Act 1988*, section 34(1)(b) immediately before the commencement of this section is taken to be a temporary employee employed under this Act.
- (2) If there is doubt about whether a person was a person engaged as mentioned in subsection (1) and the person asks a chief executive to make a declaration under this subsection, the chief executive may declare that subsection (1) applies to the person.
- (3) The conditions of the employment of a person mentioned in subsection (1) (including a person declared under subsection (2) to be a person to whom subsection (1) applies) are not affected by the repeal of the *Public Service Management and Employment Act 1988*.

132 Existing standards and determinations

- (1) In this section—

existing instrument means—

 - (a) a standard in force under the *Public Sector Management Commission Act 1990* immediately before the commencement of this section; or

- (b) a determination of the Governor in Council in force under the *Public Service Management and Employment Act 1988* immediately before the commencement.
- (2) An existing instrument remains in force for this Act as if it were a ruling.
- (3) The instrument—
 - (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (b) may be amended or repealed by a ruling issued under this Act.
- (4) Without limiting subsection (3)(a), if the instrument is a standard, the instrument is to be read as if a reference to a public sector employee included a reference to an employee of a public sector unit.

133 Disciplinary action

- (1) If disciplinary action had been started, but not finished, under the *Public Service Management and Employment Act 1988* before the commencement of this section, the action may be finished under that Act as if the Act had not been repealed.
- (2) If, immediately before the commencement, a person was suspended from duty under the *Public Service Management and Employment Act 1988*, section 30, the suspension continues to have effect as if that Act had not been repealed.
- (3) For the purpose of taking disciplinary action, part 6 of this Act³⁴ applies to acts and omissions that happened before the commencement as well as to acts and omissions that happen after the commencement.

135 Application of pt 8

Part 8³⁵ applies to a term appointee holding office at the commencement of this section as well as to a term appointee appointed to office after the commencement.

34 Part 6 (Disciplinary action)

35 Part 8 (Removal of statutory office holders who are term appointees)

136 Existing regulations

- (1) A regulation in force under the *Public Service Management and Employment Act 1988* or the *Public Sector Management Commission Act 1990* immediately before the commencement of this section remains in force for this Act until the commencement of the amendment to section 34(2) under the *Industrial Relations Act 1999*.
- (2) The regulation—
 - (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (b) may be amended or repealed by a regulation under this Act.
- (3) Without limiting subsection (2)(a), if the regulation is a regulation in force under the *Public Sector Management Commission Act 1990*, the regulation is to be read as if a reference to a public sector employee included a reference to an employee of a public sector unit.

137 References to Public Sector Management Commission Act 1990

In an Act or document, a reference to the *Public Sector Management Commission Act 1990* may, if the context permits, be taken as a reference to this Act.

138 References to Public Service Management and Employment Act 1988

In an Act or document, a reference to the *Public Service Management and Employment Act 1988* may, if the context permits, be taken as a reference to this Act.

139 References taken as reference to commissioner

In an Act or document, a reference to any of the following may, if the context permits, be taken as a reference to the commissioner—

- chair of the public sector management commission

- commissioner for public sector equity
- member of the public sector management commission.

140 References to public sector management commission

In an Act or document, a reference to the public sector management commission may, if the context permits, be taken as a reference to the office of the public service commissioner.

141 References to standards

In an Act or document, a reference to a standard under the *Public Sector Management Commission Act 1990* may, if the context permits, be taken as a reference to a ruling of the commissioner under this Act.

142 References to unit of the public sector

In an Act or document, a reference to a unit of the public sector under the *Public Sector Management Commission Act 1990* may, if the context permits, be taken as a reference to a public sector unit under this Act.

143 References to departments

In an Act or document, a reference to a department specified or mentioned in the *Public Service Management and Employment Act 1988*, schedule 1 may, if the context permits, be taken as a reference to an entity that is a department of government under this Act.

144 References to permanent head of department

In an Act or document, a reference to the permanent head of a department may, if the context permits, be taken as a reference to the chief executive of the department.

Division 2 **Transitional provisions for Statute Law (Miscellaneous Provisions) Act 1999**

145 **References to the Office of the Public Service**

In an Act or document, a reference to the Office of the Public Service may, if the context permits, be taken to be a reference to the Office of the Public Service Commissioner.

Division 3 **Transitional provision for the Police Powers and Responsibilities and Other Legislation Amendment Act 2003**

146 **Chief executive may ask for consent to obtain criminal history only if engagement is after the commencement**

The chief executive may not, under section 114C,³⁶ ask a person for the person's written consent to obtain a report of the person's criminal history unless the chief executive proposes to engage the person to perform relevant duties after the commencement of this section.

Division 4 **Transitional provision for Freedom of Information and Other Legislation Amendment Act 2005**

147 **Amendment of regulation by Freedom of Information and Other Legislation Amendment Act 2005 does not affect powers of Governor in Council**

The amendment of the *Public Service Regulation 1997* by the *Freedom of Information and Other Legislation Amendment Act 2005* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

36 Section 114C (Chief executive may decide to obtain criminal history)

Schedule 1 Public service offices and their heads

sections 17 and 18

	column 1 Public service offices	column 2 Heads of offices
1	Anti-Discrimination Commission	Anti-discrimination commissioner
2	Queensland Audit Office	Auditor-general
3	Commission for Children and Young People and Child Guardian	Commissioner for Children and Young People and Child Guardian
4	Electoral Commission of Queensland	Electoral commissioner
5	Office of the Health Quality and Complaints Commission	Chief executive officer
6	Industrial Registry	Industrial registrar
7	Land Tribunal under <i>Aboriginal Land Act 1991</i>	Chairperson of the tribunal
7A	Office of Health Practitioner Registration Boards	Executive officer
8	Land Tribunal under <i>Torres Strait Islander Land Act 1991</i>	Chairperson of the tribunal
8A	Office of the Information Commissioner	Information commissioner
9	Office of the Queensland Parliamentary Counsel	Parliamentary counsel

Schedule 1 (continued)

9A	Office of the Queensland Studies Authority	Director
10	Office of the Public Service Commissioner	Public service commissioner
10A	Mental Health Review Tribunal under the <i>Mental Health Act 2000</i>	President of the tribunal
11	Public Trust Office	Public trustee
12	South-East Queensland Transit Authority	Chief executive of the authority
12A	Workers' Compensation Regulatory Authority	Chief executive officer of the Authority
13	An entity declared by regulation to be a public service office	The person declared under a regulation to be head of the office

Schedule 3 Dictionary

section 4

appoint, a person as an officer, means—

- (a) for a person who is not already an officer—employ the person as an officer; or
- (b) for an officer—promote, transfer or redeploy the officer.

approved leave means leave approved under this or another Act or an industrial determination.

award see the *Industrial Relations Act 1999*, schedule 5, dictionary.

chief executive means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a public service employee—the chief executive of the employee’s department; or
- (c) in any other case—the chief executive of a department.

commissioner means the Public Service Commissioner.

contract for a fixed term means a contract that ends on a stated day, whether or not the contract also provides for its termination by a party giving to the other party a particular period of notice of termination.

corporatised corporation has the meaning given by the *Local Government Act 1993*, section 592.³⁷

criminal history, for part 9A and section 146, see section 114A.

criminal history report, for part 9A, see section 114A.

department see section 7(1).

37 *Local Government Act 1993*, section 592 (Definitions for pt 7)

Schedule 3 (continued)

departmental Minister means—

- (a) in relation to a department or other public sector unit—the Minister administering the public sector unit; or
- (b) in relation to a chief executive—the Minister administering the chief executive’s department; or
- (c) in relation to another public service employee—the Minister administering the employee’s department.

designation, of a role, the duties of which are being undertaken by a public service employee, includes the title of the role and the organisational location of the role within a public sector unit.

disciplinary law means—

- (a) this Act; or
- (b) a disciplinary provision of an award or industrial agreement; or
- (c) a law prescribed under a regulation.

employing authority means—

- (a) for a chief executive—the Premier; or
- (b) for another person—the person’s chief executive.

engage, for part 9A and section 146, see section 114A.

government entity see section 21.

head, of a public service office, see section 18.

higher classification level means a classification level that is a higher classification level under a ruling.

industrial agreement means—

- (a) an industrial agreement under the *Industrial Relations Act 1999*; or
- (b) a certified agreement under the *Industrial Relations Act 1999*.

Schedule 3 (continued)

industrial authority means a commission, court, board, tribunal or other entity having authority under a law of the Commonwealth or this State to exercise powers of conciliation or arbitration for industrial matters or industrial disputes.

industrial determination includes an award, industrial agreement, and determination or rule of an industrial authority.

industrial matter see the *Industrial Relations Act 1999*, section 7.³⁸

industrial relations Minister means the Minister administering the *Industrial Relations Act 1999*.

interest, of a public service employee, means a direct or indirect personal interest, whether pecuniary or non-pecuniary, of—

- (a) the employee; or
- (b) a person who, under a regulation, is related or connected to the employee.

law includes an unwritten law.

lower classification level means a classification level that is a lower classification level under a ruling.

officer (or **officer of the public service**) see *public service officer*.

overall employment conditions means remuneration and conditions of employment.

promote, an officer, means employ the officer at a higher classification level (whether or not on different duties), other than temporarily.

promotion decision see section 94(1)(c).

public sector unit see section 20.

public service means the Queensland Public Service.

38 *Industrial Relations Act 1999*, section 7 (What is an industrial matter)

Schedule 3 (continued)

public service employee—

- (a) in relation to a department—means a public service employee of the department; or
- (b) in any other case—see section 9.

public service office see section 7(2).

public service officer see section 8.

Queensland Public Service see section 5.

redeploy, an officer, means employ the officer, with the officer's consent, at a lower classification level (whether or not on different duties), other than temporarily.

relevant duties, for part 9A and section 146, see section 114A.

remuneration includes salary.

ruling means a directive or guideline.

same classification level means a classification level that is the same classification level under a ruling.

second, an officer, means temporarily employ the officer—

- (a) on different duties at the same classification level; or
- (b) at a higher classification level.

senior executive means an officer who is employed under this Act as a senior executive.

senior officer see section 63.

statutory office see section 108.

temporarily means for a period limited by time, whether or not the time has been fixed.

term appointee see section 109.

transfer, an officer, means employ the officer at the same classification level, on different duties or at a different location, other than temporarily.

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 October 2006. Future amendments of the Public Service Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1996 Act No. 51	1 December 1996	1 December 1996
1A	1997 Act No. 1	27 March 1997	11 April 1997
1B	1997 Act No. 23	22 May 1997	6 June 1997
1C	1997 Act No. 83	1 January 1998	6 January 1998
1D	1997 Act No. 83	2 March 1998	3 March 1998
1E	1999 Act No. 33	1 July 1999	16 July 1999
2	1999 Act No. 33	1 July 1999	6 August 1999
2A	1999 Act No. 57	1 July 1999	7 January 2000
2B	1999 Act No. 57	7 February 2000	15 February 2000
2C	2000 Act No. 60	2 February 2001	9 February 2001
2D	2001 Act No. 69	1 January 2002	15 January 2002
2E	2002 Act No. 1	28 February 2002	8 March 2002

Reprint No.	Amendments included	Effective	Notes
2F	2002 Act No. 1	1 July 2002	R2F withdrawn, see R3
3	—	1 July 2002	
3A	2003 Act No. 19	9 May 2003	
3B	2003 Act No. 27	1 July 2003	
3C	2003 Act No. 92	2 April 2004	
3D	2004 Act No. 13	1 August 2004	
3E	2004 Act No. 53	29 November 2004	
3F	2005 Act No. 28	1 July 2005	R3F withdrawn, see R4
4	—	1 July 2005	
4A	2006 Act No. 25	1 July 2006	
4B	2006 Act No. 39	30 October 2006	

5 List of legislation

Public Service Act 1996 No. 37

date of assent 22 October 1996

ss 1–2 commenced on date of assent

ss 60(2), 61(2)–(4), 146, sch 2, to the following extent—Equal Opportunity in Public Employment Act 1992 amdts 1–2, Motor Vehicles Safety Act 1980 amdt 1, Racing and Betting Act 1980 amdt 1, Rural Lands Protection Act 1985 amdt 1 commenced 21 October 1998 (automatic commencement under AIA s 15DA(2)) (1997 SL No. 203 s 30(2))

sch 2 amdts 1–5 of the Australian Financial Institutions Commission Code never proclaimed into force and om 1997 No. 33 s 128

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

amending legislation—

Public Service Amendment Act 1996 No. 44

date of assent 15 November 1996

commenced on date of assent

Children’s Commissioner and Children’s Services Appeals Tribunals Act 1996 No.

51 ss 1–2, 84 sch 1

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 392)

Local Government Legislation Amendment Act 1996 No. 81 pts 1, 4

date of assent 16 December 1996

commenced on date of assent

Workplace Relations Act 1997 No. 1 ss 1–2, 495 sch 4

date of assent 14 February 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 27 March 1997 (1997 SL No. 77)

Local Government Legislation Amendment Act 1997 No. 23 pts 1, 6

date of assent 22 May 1997

commenced on date of assent

Financial Institutions Legislation Amendment Act 1997 No. 33 ss 1–2(1), pt 6

date of assent 18 July 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1997 (1997 SL No. 318)

Misconduct Tribunals Act 1997 No. 59 ss 1–2, 48 sch 1

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 1997 (1997 SL No. 417)

Crime Commission Act 1997 No. 68 ss 1–2, pt 14

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 2 March 1998 (1998 SL No. 16)

Electricity Amendment Act (No. 3) 1997 No. 77 pts 1, 5 (this Act is amended, see amending legislation below)

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions (pt 5) never proclaimed into force and rep 2001 No. 82 s 21

amending legislation—

Electricity and Gas Legislation Amendment Act 1999 No. 82 pts 1–2 (amends 1997 No. 77 above)

date of assent 14 December 1999

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch (amends 1997 No. 77 above)

date of assent 25 October 2000
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3, sch

date of assent 5 December 1997
commenced on date of assent

Education and Other Legislation Amendment Act 1997 No. 83 pts 1, 11

date of assent 5 December 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 1998 (1997 SL No. 464)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999
s 71 commenced 1 December 1996 (see s 14)
remaining provisions commenced on date of assent

Financial Administration Legislation Amendment Act 1999 No. 29 ss 1–2, 50 sch

date of assent 16 June 1999
ss 1–2, 50 commenced on date of assent
remaining provisions commenced 1 July 1999 (1999 SL No. 122 and see 1999 SL No. 119, 1999 SL No. 70 s 2(3))

Industrial Relations Act 1999 No. 33 ss 1–2, ch 20, s 747 sch 3

date of assent 18 June 1999
ss 1–2 commenced on date of assent
s 744 commenced 1 July 1999 (see s 2(1))
remaining provisions commenced 1 July 1999 (1999 SL No. 159)

Health Practitioner Registration Boards (Administration) Act 1999 No. 57 ss 1–2, pt 7

date of assent 18 November 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 7 February 2000 (1999 SL No. 328)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000
ss 1–2, 590 commenced on date of assent (see s 2(1))
remaining provisions commenced 28 February 2002 (2002 SL No. 27)

Commission for Children and Young People Act 2000 No. 60 ss 1–2, 175 sch 3

date of assent 24 November 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 2 February 2001 (2001 SL No. 1)

Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1

date of assent 8 November 2001
ss 1–2 commenced on date of assent
remaining provisions commenced 1 January 2002 (2001 SL No. 221)

Education (Queensland Studies Authority) Act 2002 No. 1 ss 1–2, 90 sch 1

date of assent 28 February 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 154)

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch

date of assent 9 May 2003

commenced on date of assent

Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2(2))

Police Powers and Responsibilities and Other Legislation Amendment Act 2003 No.**92 ss 1, 2(2), pt 11A**

date of assent 3 December 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 2 April 2004 (2004 SL No. 28)

Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), 102 sch 2 pts 2–3

date of assent 24 June 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2004 (2004 SL No. 141)

Statute Law (Miscellaneous Provisions) Act 2004 No. 53

date of assent 29 November 2004

commenced on date of assent

Freedom of Information and Other Legislation Amendment Act 2005 No.**28 ss 1–2(1), ch 2 pt 6**

date of assent 31 May 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2005 (see s 2(1))

Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1),**241(1) sch 3**

date of assent 29 May 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (see s 2(1))

Education (General Provisions) Act 2006 No. 39 ss 1, 2(3), 512(1) sch 1

date of assent 11 August 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 30 October 2006 (2006 SL No. 247)

Prostitution Amendment Act 2006 No. 40 pts 1, 3

date of assent 11 August 2006

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

6 List of annotations

Application of Acts to public service offices

s 19 amd 1999 No. 19 s 3 sch; 1999 No. 29 s 50 sch; 2003 No. 19 s 3 sch

What is a “government entity”

s 21 amd 1997 No. 23 s 68; 1997 No. 83 s 59; 2006 No. 39 s 512(1) sch 1

Application of Act to certain public sector units etc.

s 22 amd 1999 No. 33 s 734

The commissioner and office

s 32 amd 1999 No. 19 s 3 sch

Functions of commissioner

s 33 amd 1999 No. 33 s 735

Rulings of industrial relations Minister and commissioner

s 34 amd 1999 No. 33 s 736

Basis of employment of commissioner

s 39 amd 1999 No. 19 s 3 sch

PART 5—STAFFING OF PUBLIC SERVICE

Number and classification levels of senior executives

s 45 amd 1999 No. 19 s 3 sch

Basis of employment for chief executives

s 53 amd 1999 No. 19 s 3 sch

Appointment of senior executives

s 60 amd 1999 No. 19 s 3 sch

Secondment of senior executives

s 61 amd 1999 No. 19 s 3 sch

Basis of employment for senior executives

s 62 amd 1999 No. 19 s 3 sch

Number and classification levels of employees

s 66 amd 1999 No. 19 s 3 sch

Appointment of officers

s 67 amd 1999 No. 19 s 3 sch

Basis of employment—tenure or contract

s 69 amd 1999 No. 33 s 737

Basis of employment for contract employment

s 70 amd 1999 No. 33 s 738

Tenure on termination etc. of certain contracts

s 71 amd 1999 No. 19 s 3 sch

Division 6—Provisions applying generally to officers

div hdg reloc before s 74 1997 No. 81 s 3 sch

Notification of proposed appointments

s 77 amd 1997 No. 81 s 3 sch

Selection for appointment to be on merit

s 78 amd 1997 No. 81 s 3 sch

Transfer of officers

s 79 amd 1997 No. 81 s 3 sch

Action because of surplus

s 81 amd 1999 No. 33 s 739

Mental or physical incapacity

s 85 amd 1999 No. 33 s 740

Decisions against which appeals may not be made

s 95 amd 1997 No. 81 s 3 sch; 1999 No. 19 s 3 sch

Jurisdiction of Industrial Relations Commission

s 106 amd 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3

Who is a “term appointee”

s 109 amd 1996 No. 81 s 86; 1997 No. 59 s 48 sch 1; 1997 No. 68 s 147; 2000 No. 16 s 590 sch 1 pt 2; 2001 No. 69 s 378 sch 1

Application of Act to general and temporary employees

s 114 amd 1999 No. 33 s 741

PART 9A—CRIMINAL HISTORY REPORTS IF ENGAGED TO PERFORM RELEVANT DUTIES

pt hdg ins 2003 No. 92 s 47B

Definitions for pt 9As 114A ins 2003 No. 92 s 47B
 amd 2004 No. 53 s 2 sch**Relationship of part with other laws**

s 114B ins 2003 No. 92 s 47B

Chief executive may decide to obtain criminal history

s 114C ins 2003 No. 92 s 47B

Obtaining criminal history with consent

s 114D ins 2003 No. 92 s 47B

Assessment of suitability using criminal history report and subsequent destruction of the report

s 114E ins 2003 No. 92 s 47B

If person does not consent to obtaining criminal history

s 114F ins 2003 No. 92 s 47B

Confidentiality

s 114G ins 2003 No. 92 s 47B

Commissioner may issue a directive or guideline for this part

s 114H ins 2003 No. 92 s 47B

Exclusion of certain matters from review under other Acts

s 116 ins 1996 No. 44 s 4
 amd 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3

Application of Industrial Relations Act to public service employees

prov hdg amd 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3
s 116A (prev s 116) renum 1996 No. 44 s 3
 amd 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3

Relationship between directives and awards etc.

s 117 amd 1997 No. 1 s 495 sch 4
 sub 1999 No. 33 s 742

Regulation-making power

s 118 amd 1999 No. 33 s 743

PART 11—TRANSITIONAL PROVISIONS, APPEALS AND AMENDMENTS**Existing departments**

s 119 exp 1 December 1997 (see s 119(2))

Existing units of the public sector

s 120 exp 1 December 1997 (see s 120(3))

Validation of certain chief executive appointments

s 122 om 1999 No. 19 s 3 sch

Existing commissioner

s 123 om 1999 No. 19 s 3 sch

Existing senior executives other than chief executives

s 125 amd 1999 No. 19 s 3 sch

Appointments on probation on initial appointment

s 127 om 1999 No. 19 s 3 sch

Appointments on probation on promotion

s 128 om 1999 No. 19 s 3 sch

Appeals

s 134 om 1999 No. 19 s 3 sch

Existing regulations

s 136 amd 1999 No. 33 s 744

References to public sector management commission

s 140 amd 1999 No. 19 s 3 sch

Division 2—Transitional provisions for Statute Law (Miscellaneous Provisions) Act 1999

div hdg sub 1999 No. 19 s 3 sch

References to the Office of the Public Service

s 145 sub 1999 No. 19 s 3 sch

Division 3—Transitional provision for the Police Powers and Responsibilities and Other Legislation Amendment Act 2003

div hdg ins 2003 No. 92 s 47C

Chief executive may ask for consent to obtain criminal history only if engagement is after the commencement

s 146 prev s 146 om R2 (see RA s 40)
 pres s 146 ins 2003 No. 92 s 47C

Division 4—Transitional provision for Freedom of Information and Other Legislation Amendment Act 2005

div hdg ins 2005 No. 28 s 78

Amendment of regulation by Freedom of Information and Other Legislation Amendment Act 2005 does not affect powers of Governor in Council

s 147 prev s 147 om R2 (see RA s 40)
 pres s 147 ins 2005 No. 28 s 78

SCHEDULE 1—PUBLIC SERVICE OFFICES AND THEIR HEADS

amd 1996 No. 51 s 84 sch 1; 1999 No. 19 s 3 sch; 1999 No. 33 s 745; 1999 No. 57 s 47; 2000 No. 16 s 590 sch 1 pt 2; 2000 No. 60 s 175 sch 3; 2002 No. 1 s 90 sch 1; 2003 No. 27 s 622 sch 5; 2004 No. 13 s 102 sch 2 pts 2–3; 2005 No. 28 s 79; 2006 No. 25 s 241(1) sch 3

SCHEDULE 2—AMENDMENTS

om R1 (see RA s 40)
amd 1997 No. 33 s 128; 1997 No. 81 s 3 sch

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def “**award**” sub 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3
def “**contract for a fixed term**” ins 1999 No. 19 s 3 sch
def “**corporatised corporation**” ins 1997 No. 23 s 69
 amd 2003 No. 19 s 3 sch
def “**criminal history**” ins 2003 No. 92 s 47D
def “**criminal history report**” ins 2003 No. 92 s 47D
def “**designation**” ins 1999 No. 19 s 3 sch
def “**engage**” ins 2003 No. 92 s 47D
def “**industrial agreement**” sub 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3
def “**industrial authority**” sub 1999 No. 19 s 3 sch
def “**industrial matter**” ins 1999 No. 33 s 747 sch 3
def “**industrial relations Minister**” amd 1999 No. 19 s 3 sch; 1999 No. 33 s 747 sch 3
def “**overall employment conditions**” ins 1999 No. 33 s 746
def “**relevant duties**” ins 2003 No. 92 s 47D
def “**reserved matter**” om 1999 No. 33 s 747 sch 3