

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, September 2020*



Queensland

**No.
A BILL for**

An Act to amend the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020, the Industrial Relations Act 2016, the Public Interest Disclosure Act 2010, the Public Service Act 2008 and the Work Health and Safety Act 2011 for particular purposes



Queensland

Public Service and Other Legislation Amendment Bill 2020

Contents

		Page
Part 1	Preliminary	
1	Short title	8
Part 1A	Amendment of Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020	
1A	Act amended	8
1B	Amendment of s 110A (Insertion of new s 30CA)	8
Part 2	Amendment of Industrial Relations Act 2016	
2	Act amended	9
3	Amendment of s 9 (What is an industrial matter)	9
4	Replacement of s 425 (Limitations on jurisdiction)	9
	425 Limitations on jurisdiction	9
5	Amendment of s 447 (Commission's functions)	9
6	Replacement of s 449 (Limitations on jurisdiction)	10
	449 Limitations on jurisdiction	10
7	Amendment of s 529 (Representation of parties generally)	10
8	Amendment of s 530 (Legal representation)	10
9	Insertion of new s 530A	10
	530A Representation—public service appeals	11
10	Amendment of s 551 (Rules)	11
11	Insertion of new ss 562A and 562B	11
	562A Commission may decide not to hear particular public service appeals	11
	562B Public service appeal to commission is by way of review	12
	562C Public service appeals—decision on appeal	13
12	Amendment of s 564 (Time limit for appeal)	14
13	Amendment of s 567 (Nature of appeal)	14

Contents

14	Amendment of sch 5 (Dictionary)	14
Part 3	Amendment of Public Interest Disclosure Act 2010	
15	Act amended	15
16	Amendment of s 47 (Relocation of public service employee) . . .	15
Part 4	Amendment of Public Service Act 2008	
17	Act amended	16
18	Amendment of s 9 (Public service employees)	16
19	Amendment of s 12 (Application of Act to various types of employees etc.)	16
20	Amendment of s 25 (The management and employment principles)	16
21	Insertion of new s 25A	17
	25A Positive performance management principles	17
22	Amendment of s 26 (Work performance and personal conduct principles)	18
23	Omission of ss 40 and 41	18
24	Insertion of new ch 3, pt 1A	18
	Part 1A Special commissioner	
	42A Functions	18
	42B Appointment of special commissioner	19
	42C Preservation of rights	19
	42D Special commissioner subject to direction of commission chief executive	20
25	Amendment of s 55 (Directives to apply Act to general and temporary employees)	20
26	Amendment of s 62 (Delegation)	20
27	Omission of ch 3, pt 5 (IRC members)	21
28	Insertion of new s 88IA	21
	88IA Commission may conduct review of procedural aspect of department's handling of current work performance matters	21
29	Insertion of new ch 3, pt 7	23
	Part 7 Administrative inquiries	
	88O Minister may ask for administrative inquiry	23
	88P Powers for conducting administrative inquiry	24
	88Q Report on administrative inquiry	25
30	Amendment of s 98 (Responsibilities)	26
31	Replacement of s 100 (Extent of chief executive's autonomy) . .	27

	100	Extent of chief executive's autonomy	27
32		Amendment of s 127 (Requirement about citizenship etc.)	27
33		Amendment of s 130 (Request for reappointment)	28
34		Omission of s 131 (Dealing with request)	29
35		Amendment of s 132 (Continuity of service)	29
36		Replacement of s 137 (Suspension other than as disciplinary action)	29
	137	Suspension	29
	137A	Commission chief executive must make directive about procedure for suspension	31
37		Replacement of ch 5, pt 5 (General and temporary employees) .	32
	Part 5	General, fixed term temporary and casual employees	
	147	Employment of general employees	33
	148	Employment of fixed term temporary employees	33
	148A	Employment of casual employees	35
	149	Fixed term temporary employees and casual employees may ask for review of status after 1 year of continuous employment	35
	149A	Decision on review of status	36
	149B	Review of status after 2 years continuous employment	38
	149C	Appointing public service employee acting in position at higher classification level	40
38		Insertion of new s 186C	43
	186C	Requirement to apply positive performance management principles before taking disciplinary action for performance	43
39		Amendment of s 187 (Grounds for discipline)	43
40		Omission of s 189 (Suspension of public service employee liable to discipline)	44
41		Amendment of s 190 (Procedure for disciplinary action)	44
42		Omission of s 191 (Effect of suspension from duty)	44
43		Amendment of s 192 (Additional procedures for suspension or termination)	44
44		Insertion of new s 192A	45
	192A	Commission chief executive must make directives about disciplinary action and investigating grounds for discipline and grievances	45
45		Amendment of s 193 (Appeals)	46
46		Amendment of s 194 (Decisions against which appeals may be made)	46

Contents

47	Amendment of s 195 (Decisions against which appeals can not be made)	47
48	Amendment of s 196 (Who may appeal)	48
49	Replacement of ch 7, pt 1, divs 1A to 3	48
	Division 2 Appeals	
	197 Appeal to IRC	48
50	Omission of ch 7, pt 1, div 4, hdg (Miscellaneous provisions)	49
51	Amendment of s 211 (Attendance at an appeal is part of an employee's duties)	49
52	Amendment of s 213 (Entitlement of non-public service employees)	49
53	Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)	49
54	Amendment of s 214B (Commission chief executive must make directive for this part)	49
55	Omission of ch 7, pt 2 (Alternate jurisdiction)	50
56	Amendment of s 218A (Commission chief executive must make directive about dealing with complaints by officers and employees)	50
57	Omission of ss 218B and 218C	50
58	Insertion of new ch 9, pt 14	50
	Part 14 Transitional and validation provisions for Public Service and Other Legislation Amendment Act 2020	
	292 References to temporary employees	51
	293 Application of s 149 for existing temporary or casual employees	51
	294 Continuation of previous section 149 for particular temporary employees	53
	294A Application of s 149B for existing temporary and casual employees	53
	295 Application of s 149C for public service employees acting at higher classification levels	55
	296 Application of s 187 for existing disciplinary processes	56
	297 Appeals not started before commencement	57
	298 Appeals started before commencement	57
	299 Continuation of IRC members for particular appeals	58
	300 Application of directive under s 214B to commission	58
	301 Validation of particular acts or omissions of WHS prosecutor	58
58A	Amendment of sch 1 (Public service offices and their heads)	59
59	Amendment of sch 4 (Dictionary)	59

2020

A Bill

for

An Act to amend the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*, the *Industrial Relations Act 2016*, the *Public Interest Disclosure Act 2010*, the *Public Service Act 2008* and the *Work Health and Safety Act 2011* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Service and Other Legislation Amendment Act 2020*.

Part 1A Amendment of Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

1A Act amended

This part amends the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

Editor's note—

Legislation ultimately amended—

- *Queensland Building and Construction Commission Act 1991*

1B Amendment of s 110A (Insertion of new s 30CA)

Section 110A, inserted section 30CA(3), from ‘or maintenance’ to ‘mentioned in’—

omit, insert—

, maintenance, certification or inspection, including testing, of fire protection equipment mentioned in schedule 2,

Part 2 **Amendment of Industrial Relations Act 2016**

2 Act amended

This part amends the *Industrial Relations Act 2016*.

3 Amendment of s 9 (What is an *industrial matter*)

Section 9(2)—

omit, insert—

(2) However, a matter is not an industrial matter if it is the subject of a proceeding for—

- (a) an indictable offence; or
- (b) a public service appeal.

4 Replacement of s 425 (Limitations on jurisdiction)

Section 425—

omit, insert—

425 Limitations on jurisdiction

The court does not have jurisdiction to hear and decide a matter about which another Act excludes—

- (a) the jurisdiction of the court about the matter; or
- (b) the application of a decision under this Act about the matter.

5 Amendment of s 447 (Commission's functions)

Section 447(1)(n)(i), after 'another Act'—

insert—

[s 6]

, including for public service appeals

6 Replacement of s 449 (Limitations on jurisdiction)

Section 449—

omit, insert—

449 Limitations on jurisdiction

The commission does not have jurisdiction to hear and decide a matter about which another Act excludes—

- (a) the jurisdiction of the commission about the matter; or
- (b) the application of a decision under this Act about the matter.

7 Amendment of s 529 (Representation of parties generally)

Section 529(1), ‘In proceedings’—

omit, insert—

Subject to section 530A(4), in proceedings

8 Amendment of s 530 (Legal representation)

Section 530, before subsection (1)—

insert—

- (1A) This section applies in relation to proceedings other than a proceeding for a public service appeal.

9 Insertion of new s 530A

After section 530—

insert—

530A Representation—public service appeals

- (1) This section applies in relation to a proceeding for a public service appeal.
- (2) A party to the appeal may appear personally or by an agent.
- (3) However, a party may not be represented by a person if—
 - (a) the party has instructed the person to act as the party’s lawyer; and
 - (b) in acting as the party’s lawyer, the person would be subject to the *Legal Profession Act 2007*.
- (4) Also, a party to an appeal about a promotion decision may be represented by an agent only with the leave of the commission.

10 Amendment of s 551 (Rules)

Section 551(3)(a)(iv), after ‘*Anti-Discrimination Act 1991*’—
insert—
, the Public Service Act 2008

11 Insertion of new ss 562A and 562B

After section 562—
insert—

562A Commission may decide not to hear particular public service appeals

- (1) The commission may decide it will only hear an appeal against a decision mentioned in the *Public Service Act 2008*, section 194(1)(a), (d) or (eb) if the commission is satisfied—
 - (a) the appellant has used the procedures required to be used by the employee in

[s 11]

relation to the decision under a directive under that Act, including the individual employee grievances directive; and

- (b) for a fair treatment decision under the *Public Service Act 2008*, section 194(1)(eb)—it would not be unreasonable to require the appellant to comply with the procedures mentioned in paragraph (a).
- (2) The commission may decide it will only hear an appeal against a promotion decision under the *Public Service Act 2008* if the commission is satisfied, by oral or written submissions, that the appellant has an arguable case for the appeal.
 - (3) The commission may decide it will not hear a public service appeal against a decision if—
 - (a) the appellant has made an application to a court or tribunal relating to the decision, whether or not the application has been fully decided; or
 - (b) the commission reasonably believes, after asking the appellant to establish by oral or written submissions that the appellant has an arguable case for the appeal, that the appeal—
 - (i) is frivolous or vexatious; or
 - (ii) is misconceived or lacks substance; or
 - (iii) should not be heard for another compelling reason.

562B Public service appeal to commission is by way of review

- (1) This section applies to a public service appeal made to the commission.
- (2) The commission must decide the appeal by reviewing the decision appealed against.

- (3) The purpose of the appeal is to decide whether the decision appealed against was fair and reasonable.
- (4) For an appeal against a promotion decision or a decision about disciplinary action under the *Public Service Act 2008*, the commission—
 - (a) must decide the appeal having regard to the evidence available to the decision maker when the decision was made; but
 - (b) may allow other evidence to be taken into account if the commission considers it appropriate.

562C Public service appeals—decision on appeal

- (1) In deciding a public service appeal, the commission may—
 - (a) confirm the decision appealed against; or
 - (b) for an appeal against a promotion decision—set the decision aside, and return the matter to the decision maker with a copy of the decision on appeal and any directions permitted under a directive of the commission chief executive under the *Public Service Act 2008* that the commission considers appropriate; or
 - (c) for another appeal—set the decision aside, and substitute another decision or return the matter to the decision maker with a copy of the decision on appeal and any directions considered appropriate.
- (2) In deciding an appeal against a promotion decision, the commission may set the decision aside only if the commission finds that the recruitment or selection process was deficient, having regard to whether the process complied with the *Public Service Act 2008*, a regulation or

[s 12]

a directive of the commission chief executive under that Act.

12 Amendment of s 564 (Time limit for appeal)

Section 564(3), definition *appeal period*, paragraph (c)—
omit, insert—

- (c) if the decision is a promotion decision—the decision is publicly notified under the *Public Service Act 2008*; or
- (d) if, under another Act, the decision is given in another way—the decision is given in the other way.

13 Amendment of s 567 (Nature of appeal)

Section 567(1), after ‘tribunal’—
insert—

, other than a public service appeal to the commission,

14 Amendment of sch 5 (Dictionary)

Schedule 5—
insert—

promotion decision see the *Public Service Act 2008*, section 194(1)(c).

public service appeal means an appeal against a decision under the *Public Service Act 2008*, chapter 7.

Part 3 **Amendment of Public Interest Disclosure Act 2010**

15 **Act amended**

This part amends the *Public Interest Disclosure Act 2010*.

16 **Amendment of s 47 (Relocation of public service employee)**

- (1) Section 47(3), from ‘an appeals officer’—
omit, insert—
the industrial relations commission under the
Industrial Relations Act 2016.
- (2) Section 47(4), ‘the *Public Service Act 2008*’—
omit, insert—
subsection (3)
- (3) Section 47(4)(a), after ‘decision’—
insert—
under the *Public Service Act 2008*
- (4) Section 47(5), ‘appeals officer considers’—
omit, insert—
industrial relations commission considers
- (5) Section 47(5), ‘appeals officer may’—
omit, insert—
commission may
- (6) Section 47(6) and (7), ‘appeals officer’—
omit, insert—
industrial relations commission

21 Insertion of new s 25A

After section 25—

insert—

25A Positive performance management principles

- (1) For best practice human resource management and in recognition that public service employees are selected on merit under the merit principle, the management of public service employees must be directed towards the following—
 - (a) pro-actively managing the personal and professional development of public service employees with a view to continuously building expertise within the public service;
 - (b) ensuring regular and constructive communication between public service managers and employees in relation to the matters stated in section 26;
 - (c) recognising the strengths, requirements and circumstances of individual employees and valuing their contributions;
 - (d) recognising performance that meets or exceeds expectations;
 - (e) providing opportunities and support to employees for improving performance;
 - (f) continuously improving performance through the provision of training and development;
 - (g) identifying at the earliest possible stage performance that does not meet expectations;
 - (h) integrating the matters mentioned in paragraphs (a) to (g) into management practices and policies.
- (2) The principles mentioned in subsection (1) are the

[s 22]

positive performance management principles.

- (3) The commission chief executive must make a directive about how the positive performance management principles are to be applied.

22 Amendment of s 26 (Work performance and personal conduct principles)

Section 26(1)(f)—

omit, insert—

- (f) continuous improvement in relation to the employee's work performance, including through training and development; and

23 Omission of ss 40 and 41

Sections 40 and 41—

omit.

24 Insertion of new ch 3, pt 1A

Chapter 3, after part 1—

insert—

Part 1A Special commissioner

42A Functions

The main functions of the special commissioner are to—

- (a) provide advice to the Minister about areas of public administration relating to a main purpose of this Act; and

Examples of areas of public administration for paragraph (a)—

- addressing gender pay equity, promoting a diverse workforce
- (b) promote the effectiveness and efficiency of government entities by facilitating the development and implementation of whole of government policies; and
- (c) conduct administrative inquiries as requested by the Minister under part 7.

42B Appointment of special commissioner

- (1) The Governor in Council may, on the recommendation of the Minister, appoint an appropriately qualified person as the special commissioner.
- (2) A disqualified person can not be appointed.
- (3) The special commissioner is to be—
 - (a) paid the remuneration and allowances decided by the Governor in Council; and
 - (b) appointed on the terms and conditions decided by the Governor in Council; and
 - (c) appointed for a term of not more than 5 years.

42C Preservation of rights

- (1) This section applies if the person appointed as special commissioner is a public service officer.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the special commissioner were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on

[s 25]

resignation as a special commissioner, the person's service as special commissioner is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

42D Special commissioner subject to direction of commission chief executive

The special commissioner is subject to the direction of the commission chief executive, other than in relation to the conduct of an administrative inquiry.

25 Amendment of s 55 (Directives to apply Act to general and temporary employees)

(1) Section 55, heading, 'and temporary'—

omit, insert—

, fixed term temporary and casual

(2) Section 55(1), 'or temporary'—

omit, insert—

, fixed term temporary employee or casual

26 Amendment of s 62 (Delegation)

Section 62(2)—

omit, insert—

(2) The commission chief executive may also delegate the following functions to an appropriately qualified entity—

(a) a function under section 88I;

(b) a function under section 88IA, other than the giving of a report under section 88IA(4)(b) that includes a direction.

27 Omission of ch 3, pt 5 (IRC members)

Chapter 3, part 5—

omit.

28 Insertion of new s 88IA

After section 88I—

insert—

88IA Commission may conduct review of procedural aspect of department's handling of current work performance matters

- (1) This section applies if a procedure under a suspension or discipline directive is being undertaken by a department chief executive in relation to a public service employee for a current work performance matter.
- (2) The employee the subject of the current work performance matter may ask the commission to conduct a review of a procedural aspect of the department's handling of the work performance matter.
- (3) However, the employee may make the request under subsection (2) only if the employee has complied, to the extent possible, with the procedures applying to the employee under a suspension or discipline directive in relation to the work performance matter.
- (4) On receiving the request, the commission may—
 - (a) conduct a review of a procedural aspect of the current work performance matter; and
 - (b) give the chief executive of the department a report about the review that includes any recommendations and directions about how any defects in the procedural aspects are to be rectified.

[s 28]

- (5) The department chief executive must comply with a direction given in a report under subsection (4)(b) to the extent possible, unless—
- (a) before the report is given to the chief executive, a decision is made for the matter the subject of the direction; and
 - (b) the employee has a right to appeal against the decision under chapter 7, part 1.
- (6) A function of the commission under this section must be performed—
- (a) by the commission chief executive; or
 - (b) for the commission chief executive by a staff member of the commission to whom the function is delegated under section 62(1); or
 - (c) if the function is the giving of a report under subsection (4)(b) that does not include a direction by the commission—any other appropriately qualified entity to whom the function of giving the report is delegated under section 62(2).
- (7) In this section—
- current work performance matter*** means—
- (a) a work performance matter being handled by the department at the time the request is made by an employee under subsection (2); but
 - (b) does not include a work performance matter if the personal conduct the subject of the matter would, if proved, constitute corrupt conduct under the *Crime and Corruption Act 2001*, section 15.

procedural aspect, of a current work performance matter, means an aspect of the matter relating to compliance with—

- (a) a procedure under a directive applying to the matter; or
- (b) principles of natural justice.

suspension or discipline directive means a directive made under section 137A or 192A.

29 Insertion of new ch 3, pt 7

Chapter 3—

insert—

Part 7 Administrative inquiries

880 Minister may ask for administrative inquiry

- (1) The Minister may, by signed notice, ask the special commissioner, commission chief executive or another appropriately qualified person to conduct an inquiry (an *administrative inquiry*) into—
 - (a) the functions or activities of 1 or more public service offices, including in relation to—
 - (i) the administration of a particular scheme or program; or
 - (ii) the effectiveness and efficiency of public service office interactions; or
 - (b) an area of existing or proposed government policy; or
 - (c) another other area of public administration relating to a main purpose of this Act.
- (2) However, the Minister can not ask for an administrative inquiry about an individual employee.

[s 29]

- (3) Before making the request, the Minister must—
 - (a) inform the departmental Minister and the chief executive or the head of the public service office about the proposed administrative inquiry; and
 - (b) give the chief executive or the head of the public service office an opportunity to nominate a stated number of employees of the public service office to take part in the administrative inquiry.
- (4) The notice under subsection (1) must state the terms of reference for the administrative inquiry.
- (5) In this section—

public service office see section 35.

88P Powers for conducting administrative inquiry

- (1) For conducting an administrative inquiry, the special commissioner, commission chief executive or appropriately qualified person may do any of the following—
 - (a) enter official premises of a public service office at a reasonable time;
 - (b) require the production of, examine, copy, or take an extract from, any official document in the possession of the public service office;
 - (c) interview employees of the public service office;
 - (d) interview anyone else who can provide information relevant to the inquiry.
- (2) The chief executive or the head of the public service office and each other person employed in the office must provide the assistance reasonably required by the special commissioner,

commission chief executive or appropriately qualified person for conducting the inquiry.

(3) However, a person need not answer a question asked by, or give information to, the special commissioner, commission chief executive or appropriately qualified person if answering the question or giving the information might tend to incriminate the individual or expose the individual to a penalty.

(4) In this section—

official document, in the possession of a public service office, includes an official document—

(a) under the control of the office, or that the office is entitled to access, whether or not created in the public service office; and

(b) in the possession, or under the control, of a person employed in the public service office in the person's official capacity.

88Q Report on administrative inquiry

(1) As soon as practicable after completing an administrative inquiry, the special commissioner, commission chief executive or appropriately qualified person must give the Minister a report on the inquiry, including any findings or recommendations.

(2) The Minister—

(a) must give a copy of the report to the departmental Minister, the chief executive or head and anyone else the Minister considers appropriate; and

(b) may publish the report in the way the Minister considers appropriate.

(3) However, the Minister must remove any

[s 30]

confidential information or personal information from the report before it is published under subsection (2)(b).

(4) In this section—

confidential information—

- (a) means personal information; but
- (b) does not include information in the public domain unless further disclosure of the information is prohibited by law.

personal information means information or an opinion about an individual—

- (a) if the individual's identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (b) whether or not the information or opinion—
 - (i) is true; or
 - (ii) forms part of a database; or
 - (iii) is recorded in a material form.

30 Amendment of s 98 (Responsibilities)

(1) Section 98(1)—

insert—

- (ca) planning human resources, including ensuring the employment in the department of persons on a fixed term temporary or casual basis occurs only if there is a reason for the basis of employment under this Act;

(2) Section 98(1)(ca) to (h)—

renumber as section 98(1)(d) to (i).

31 Replacement of s 100 (Extent of chief executive's autonomy)

Section 100—

omit, insert—

100 Extent of chief executive's autonomy

- (1) A chief executive is subject to the directions of the departmental Minister in managing the department, other than to the extent—
 - (a) the chief executive is making decisions about particular individuals; or
 - (b) another Act—
 - (i) provides that the chief executive is not subject to the directions of the departmental Minister about particular matters; or
 - (ii) limits the extent to which, or circumstances in which, the chief executive is subject to directions of the departmental Minister.
- (2) In making decisions about particular individuals, the chief executive—
 - (a) is subject to any direction given by the commission in a report about a procedural aspect of a current work performance matter under section 88IA; and
 - (b) must otherwise act independently, impartially and fairly; and
 - (c) is not subject to direction by a Minister.

32 Amendment of s 127 (Requirement about citizenship etc.)

- (1) Section 127(1)(b)—

omit, insert—

[s 33]

(b) resides in Australia and has permission, under a Commonwealth law, to work in Australia.

(2) Section 127—

insert—

(3) If a person's permission to work in Australia ends, the person's employment is taken to have been terminated by the chief executive on the same day.

33 Amendment of s 130 (Request for reappointment)

(1) Section 130, heading—

omit, insert—

130 Right of reappointment

(2) Section 130(2) to (4)—

omit, insert—

(2) The person is entitled to be—

- (a) reappointed to the former office; or
- (b) appointed to another service with the State, whether of the same classification level or a lower classification level as the former office.

(3) However, the reappointment or appointment—

- (a) may only be made if the person resigned within 6 months before the day the period for nomination of candidates in the election ended; and
- (b) must be made within 3 months after the return of the writ for the election.

(4) The re-appointment or appointment may be made despite the person's age.

(5) Despite this Act or another Act, the merit

provisions do not apply for the reappointment or appointment.

(6) In this section—

classification includes rank or grade.

merit provisions means—

(a) generally—chapter 1, part 4; or

(b) if the former officer of the person was as a police officer—the *Police Service Administration Act 1990*, section 5.2.

34 Omission of s 131 (Dealing with request)

Section 131—

omit.

35 Amendment of s 132 (Continuity of service)

Section 132(1), ‘section 131’—

omit, insert—

section 130

36 Replacement of s 137 (Suspension other than as disciplinary action)

Section 137—

omit, insert—

137 Suspension

(1) The chief executive of a department may, by notice, suspend a person from duty if the chief executive reasonably believes—

(a) for a public service officer—the proper and efficient management of the department might be prejudiced if the officer is not suspended; or

[s 36]

- (b) for a public service employee—the employee is liable to discipline under a disciplinary law.
- (2) The notice must state—
 - (a) when the suspension starts and ends; and
 - (b) whether the person is entitled to remuneration for the period of the suspension; and
 - (c) the effect that alternative employment may, under subsection (5), have on any entitlement to remuneration.
- (3) However, before suspending the person, the chief executive must consider all reasonable alternatives, including alternative duties, a temporary transfer or another alternative working arrangement, that are available to the person.
- (4) A public service employee is entitled to normal remuneration during a suspension, unless—
 - (a) the person is suspended under subsection (1)(b); and
 - (b) the chief executive considers it is not appropriate for the employee to be entitled to normal remuneration during the suspension, having regard to the nature of the discipline to which the chief executive believes the person is liable.
- (5) If the person is entitled to normal remuneration during the suspension, any amount earned by the person from alternative employment the person engages in during the period of the suspension must be deducted from person's normal remuneration, unless—
 - (a) the person was engaged in the employment at the time of the suspension; and

- (b) the person, in engaging in the employment, was not contravening—
 - (i) this Act; or
 - (ii) a standard of conduct applying to the person under an approved code of conduct or standard of practice under the *Public Sector Ethics Act 1994*.
- (6) The deduction under subsection (5) must not be more than the amount of the person's normal remuneration during the period of the suspension.
- (7) The continuity of the person's service as a public service employee is taken not to have been broken only because of the suspension.
- (8) The chief executive may cancel the suspension at any time.
- (9) In suspending a public service employee under this section, the chief executive must comply with—
 - (a) the principles of natural justice; and
 - (b) this Act; and
 - (c) the directive made under section 137A.
- (10) However, natural justice is not required if the person is entitled to normal remuneration during the suspension.

137A Commission chief executive must make directive about procedure for suspension

- (1) The commission chief executive must make a directive about procedures relating to suspension from duty under section 137.
- (2) The directive must make provision for the following—

[s 37]

- (a) the periodic review by departmental officers or the commission chief executive of suspensions being considered or undertaken by a department's chief executive, including the period within which reviews must be conducted to ensure the timely resolution of suspension matters;
 - (b) how natural justice requirements may be met in relation to decisions about suspensions including requirements about providing reasons for decisions about suspensions;
 - (c) the circumstances in which a chief executive may, under section 137(4), decide a public service employee is not entitled to normal remuneration during a suspension of the employee.
- (3) The directive may make provision for the circumstances, and the way, in which a person may be reimbursed for any remuneration the person does not receive during the person's suspension after a determination is made about whether or not the employee is liable for discipline.

37 Replacement of ch 5, pt 5 (General and temporary employees)

Chapter 5, part 5—

omit, insert—

Part 5

**General, fixed term
temporary and casual
employees**

147 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 a public service officer.
- (2) The employment may be—
 - (a) on tenure or a temporary basis for a fixed term and full-time or part-time; or
 - (b) on a casual basis.
- (3) A person employed under this section does not, only because of the employment, become a public service officer.
- (4) Subsections (1) and (2) are subject to a directive about general employees.

148 Employment of fixed term temporary employees

- (1) A chief executive may employ a person (a *fixed term temporary employee*) for a fixed term to perform work of a type ordinarily performed by a public service officer, other than a chief executive or senior executive officer, if employment of a person on tenure is not viable or appropriate, having regard to human resource planning carried out by the chief executive under section 98(1)(d).
- (2) Without limiting subsection (1), employment of a person on tenure may not be viable or appropriate if the employment is for any of the following purposes—
 - (a) to fill a temporary vacancy arising because a person is absent for a known period;
Examples of absences for a known period—
 - approved leave (including parental leave), a
 - secondment

[s 37]

- (b) to perform work for a particular project or purpose that has a known end date;

Examples—

employment for a set period as part of a training program or placement program

- (c) to fill a position for which funding is unlikely or unknown;

Examples—

employment relating to performing work for which funding is subject to change or is not expected to be renewed

- (d) to fill a short-term vacancy before a person is appointed on tenure;

- (e) to perform work necessary to meet an unexpected short-term increase in workload.

Example—

an unexpected increase in workload for disaster management and recovery

- (3) Also, without limiting subsection (1), employment on tenure may be viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (2) on a frequent or regular basis.

Example—

an ongoing requirement to backfill multiple absences because of approved leave (including parental leave) or secondments

- (4) The employment may be full-time or part-time.
- (5) A person employed under this section does not, only because of the employment, become a public service officer.
- (6) The commission chief executive may make a directive about employing fixed term temporary employees under this section.

148A Employment of casual employees

- (1) A chief executive may employ a person on a casual basis to perform work of a type ordinarily performed by a public service officer, other than a chief executive or senior executive, if employment of a person on tenure or as a fixed term temporary employee is not viable or appropriate.
- (2) A person employed under this section does not, only because of the employment, become a public service officer.
- (3) The commission chief executive must make a directive about the employment of casual employees employed under this section or section 147, including the circumstances in which employment of a person on tenure or as a fixed term temporary employee is not viable or appropriate.

149 Fixed term temporary employees and casual employees may ask for review of status after 1 year of continuous employment

- (1) This section applies to a person who is a fixed term temporary employee or casual employee, if the person has been continuously employed in the same department for 1 year or more.
- (2) However, this section does not apply to a non-industrial instrument employee.
- (3) The person may ask the department's chief executive to decide whether to—
 - (a) continue the person's employment according to the terms of the person's existing employment; or
 - (b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.

[s 37]

- (4) A person can not make more than 1 request under subsection (3) in a 12-month period.
- (4A) For working out how long the person has been continuously employed in the department—
 - (a) all periods of authorised leave are to be included; and
 - (b) the person is to be regarded as continuously employed even if there are periods during which the person is not employed in the department, if the periods of non-employment in the department total 6 weeks or less in the year occurring immediately before the time when the duration of the person’s continuous employment is being worked out.
- (5) In this section—
fixed term temporary employee includes a general employee employed under section 147 on a temporary basis for a fixed term.

149A Decision on review of status

- (1) The department’s chief executive must decide a request made under section 149 within 28 days after receiving it.
- (2) The department’s chief executive may offer to convert the person’s employment under section 149(3)(b) only if—
 - (a) the department’s chief executive considers—
 - (i) there is a continuing need for someone to be employed in the person’s role, or a role that is substantially the same as the person’s role; and

- (ii) the person is eligible for appointment having regard to the merit principle; and
 - (b) any requirements of an industrial instrument are complied with in relation to the decision.
- (3) If the matters in subsection (2) are satisfied, the department's chief executive must decide to offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer, unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the department.
- (4) If the department's chief executive decides not to offer to convert the person's employment under subsection (3), the chief executive must give the person a notice stating—
 - (a) the reasons for the decision; and
 - (b) the total period for which the person has been continuously employed in the department under section 149; and
 - (c) for a fixed term temporary employee—how many times the person's employment as a fixed term temporary employee has been extended.
- (5) If the department's chief executive does not make the decision within the period required under subsection (1), the chief executive is taken to have decided not to offer to convert the person's employment and to continue the person's employment as a fixed term temporary employee or casual employee according to the terms of the employee's existing employment.
- (6) The commission chief executive may make a directive about making a decision under this section.

[s 37]

149B Review of status after 2 years continuous employment

- (1) This section applies in relation to a person who is a fixed term temporary employee or casual employee if the person has been continuously employed in the same department for 2 years or more.
- (2) However, this section does not apply to a non-industrial instrument employee.
- (3) The department's chief executive must decide whether to—
 - (a) continue the person's employment according to the terms of the person's existing employment; or
 - (b) offer to convert the person's employment basis to employment as a general employee on tenure or a public service officer.
- (4) The department's chief executive must make the decision within the required period after—
 - (a) the end of 2 years after the employee has been continuously employed as a fixed term temporary employee or casual employee in the department; and
 - (b) each 1-year period after the end of the period mentioned in paragraph (a) during which the employee is continuously employed as a fixed term temporary employee or casual employee in the department.
- (5) In making the decision—
 - (a) section 149A(2) and (3) applies to the department's chief executive; and
 - (b) the department's chief executive must have regard to the reasons for each decision previously made, or taken to have been

made, under this section or section 149A in relation to the person during the person's period of continuous employment.

- (6) If the department's chief executive decides not to offer to convert the person's employment under subsection (3), the chief executive must give the employee a notice stating—
- (a) the reasons for the decision; and
 - (b) the total period for which the person has been continuously employed in the department; and
 - (c) for a fixed term temporary employee—how many times the person's employment as a fixed term temporary employee or casual employee has been extended; and
 - (d) each decision previously made, or taken to have been made, under this section or section 149A in relation to the person during the person's period of continuous employment.
- (7) If the department's chief executive does not make the decision within the required period, the chief executive is taken to have decided not to offer to convert the person's employment and to continue the person's employment as a fixed term temporary employee or casual employee according to the terms of the employee's existing employment.
- (7A) For working out how long the person has been continuously employed in the department—
- (a) all periods of authorised leave are to be included; and
 - (b) the person is to be regarded as continuously employed even if there are periods during which the person is not employed in the department, if the periods of

[s 37]

non-employment in the department total 12 weeks or less in the 2 years occurring immediately before the time when the duration of the person's continuous employment is being worked out.

(8) The commission chief executive must make a directive about making a decision under this section.

(8A) The directive must provide for—

(a) the matters a department's chief executive must consider in deciding the hours of work to be offered in converting a person's employment under subsection (3)(b); and

(b) the circumstances in which a person may appeal against the decision about the hours of work offered in converting the person's employment.

(9) In this section—

fixed term temporary employee includes a general employee employed under section 147 on a temporary basis for a fixed term.

required period, for making a decision under subsection (3), means—

(a) the period stated in an industrial instrument within which the decision must be made; or

(b) if paragraph (a) does not apply—28 days after the end of the period mentioned in subsection (4)(a) or (b).

149C Appointing public service employee acting in position at higher classification level

(1) This section applies in relation to a public service employee if the employee—

- (a) is seconded to, under section 120(1)(a), or is acting at, a higher classification level in the department in which the employee holds an appointment or is employed; and
 - (b) has been seconded to or acting at the higher classification level for a continuous period of at least 1 year; and
 - (c) is eligible for appointment to the position at the higher classification level having regard to the merit principle.
- (2) However, this section does not apply to the following public services employees—
- (a) a casual employee;
 - (b) a non-industrial instrument employee;
 - (c) an employee who is seconded to or acting in a position that is ordinarily held by a non-industrial instrument employee.
- (3) The employee may ask the department's chief executive to appoint the employee to the position at the higher classification level as a general employee on tenure or a public service officer, after—
- (a) the end of 1 year of being seconded to or acting at the higher classification level; and
 - (b) each 1-year period after the end of the period mentioned in paragraph (a).
- (4) The department's chief executive must decide the request within the required period.
- (4A) In making the decision, the department's chief executive must have regard to—
- (a) the genuine operational requirements of the department; and
 - (b) the reasons for each decision previously made, or taken to have been made, under

[s 37]

this section in relation to the person during the person's continuous period of employment at the higher classification level.

- (5) If the department's chief executive decides to refuse the request, the chief executive must give the employee a notice stating—
 - (a) reasons for the decision; and
 - (b) the total continuous period for which the person has been acting at the higher classification level in the department; and
 - (c) how many times the person's engagement at the higher classification level has been extended; and
 - (d) each decision previously made, or taken to have been made, under this section in relation to the person during the person's continuous period of employment at the higher classification level.
- (6) If the department's chief executive does not make the decision within the required period, the chief executive is taken to have refused the request.
- (7) The commission chief executive must make a directive about appointing an employee to a position at a higher classification level under this section.
- (8) In this section—

continuous period, in relation to an employee acting at a higher classification level, has the meaning given for the employee under a directive made under subsection (7).

required period, for making a decision under subsection (4), means—
 - (a) the period stated in an industrial instrument within which the decision must be made; or

- (b) if paragraph (a) does not apply—28 days after the request is made.

38 Insertion of new s 186C

After section 186B—

insert—

186C Requirement to apply positive performance management principles before taking disciplinary action for performance

A public service employee's chief executive must not take disciplinary action against a public service employee for a matter relating to the employee's performance until the chief executive has complied with a directive under section 25A(3) about applying the positive performance management principles in relation to the matter.

39 Amendment of s 187 (Grounds for discipline)

- (1) Section 187(1)(a)—

omit, insert—

- (a) engaged in repeated unsatisfactory performance or serious under performance of the employee's duties, including, for example, by performing duties carelessly, incompetently or inefficiently; or

- (2) Section 187(1)(f)—

omit, insert—

- (f) contravened, without reasonable excuse, a provision of this Act; or
- (g) contravened, without reasonable excuse, a relevant standard of conduct in a way that is sufficiently serious to warrant disciplinary action.

[s 40]

(3) Section 187(4)—

insert—

relevant standard of conduct, for a public service employee, means—

- (a) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
- (b) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*.

40 Omission of s 189 (Suspension of public service employee liable to discipline)

Section 189—

omit.

41 Amendment of s 190 (Procedure for disciplinary action)

(1) Section 190(1), ‘or suspending a public service employee’—

omit.

(2) Section 190(2)—

omit.

42 Omission of s 191 (Effect of suspension from duty)

Section 191—

omit.

43 Amendment of s 192 (Additional procedures for suspension or termination)

(1) Section 192, heading and subsection (1), ‘suspension or’—

omit.

- (2) Section 192(1), ‘suspend or’—

omit.

- (3) Section 192(2)—

omit, insert—

- (2) The notice must state the day the termination takes effect.

44 Insertion of new s 192A

After section 192—

insert—

192A Commission chief executive must make directives about disciplinary action and investigating grounds for discipline and grievances

- (1) The commission chief executive must make a directive about each of the following matters—
- (a) managing disciplinary action under this chapter;
 - (b) procedures for investigating the substance of a grievance or allegation relating to a public service employee’s work performance or personal conduct.
- (2) A directive under subsection (1) must make provision for—
- (a) the periodic review by departmental officers or the commission chief executive of disciplinary action being considered or undertaken by a department’s chief executive, including the period within which reviews must be conducted to ensure the timely resolution of disciplinary matters; and

[s 45]

- (b) how natural justice requirements may be met in relation to taking disciplinary action including requirements about providing reasons for decisions about taking disciplinary action; and
- (c) the circumstances in which a contravention of a relevant standard of conduct under section 187(1)(g) is likely to be considered sufficiently serious to warrant disciplinary action.

45 **Amendment of s 193 (Appeals)**

Section 193, note—

omit.

46 **Amendment of s 194 (Decisions against which appeals may be made)**

(1) Section 194(1)—

insert—

- (ba) a decision of the commission chief executive under section 88IA to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter, to the extent the direction affects the employee the subject of the work performance matter;
- (bb) a decision to suspend a public service employee without entitlement to normal remuneration under section 137 (a ***suspension without pay decision***);

(2) Section 194(1)(e) and (ea)—

omit, insert—

- (e) a decision (each a ***conversion decision***)—

- (i) under section 149B not to convert the basis of employment of an employee; or
- (ii) under section 149B to convert the basis of employment of an employee in a circumstance provided for under a directive made under section 149B(8A); or
- (iii) under section 149C not to appoint an employee to a position at a higher classification level, if the employee has been seconded to or acting at the higher classification level for a continuous period of at least 2 years;

47 Amendment of s 195 (Decisions against which appeals can not be made)

(1) Section 195(1)(h)—

omit, insert—

- (h) a decision of the commission chief executive relating to reviewing a procedural aspect of the handling by a department of a work performance matter at the request of an employee under section 88IA, other than to the extent allowed under section 194(1)(ba);
- (i) a decision under section 149 not to convert the employment basis of a fixed term temporary employee or casual employee;
- (j) a decision under section 149C not to appoint an employee to a position at a higher classification level, if the employee has been seconded to or acting at the higher classification level for less than 2 years;
- (k) a non-appealable appointment.

[s 48]

(2) Section 195(3A)(b)—

omit, insert—

(b) made under chapter 6, part 2, other than a finding under section 187 that a disciplinary ground exists for the person; or

(3) Section 195(4) and (4A)—

omit.

48 Amendment of s 196 (Who may appeal)

(1) Section 196—

insert—

(ba) for a decision mentioned in section 194(1)(ba)—the employee the subject of the work performance matter;

(bb) for a suspension without pay decision—the public service employee the subject of the decision;

(2) Section 196(e) and (ea)—

omit, insert—

(e) for a conversion decision—the employee the subject of the decision;

49 Replacement of ch 7, pt 1, divs 1A to 3

Chapter 7, part 1, divisions 1A to 3—

omit, insert—

Division 2 Appeals

197 Appeal to IRC

An appeal under this part is to be heard and decided under the *Industrial Relations Act 2016*,

chapter 11 by the IRC.

50 Omission of ch 7, pt 1, div 4, hdg (Miscellaneous provisions)

Chapter 7, part 1, division 4, heading—

omit.

51 Amendment of s 211 (Attendance at an appeal is part of an employee's duties)

Section 211(b), 'an IRC member'—

omit, insert—

the IRC

52 Amendment of s 213 (Entitlement of non-public service employees)

Section 213(1), 'an IRC member'—

omit, insert—

the IRC

53 Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)

Section 214(1)(a), 'IRC member's'—

omit, insert—

IRC's

54 Amendment of s 214B (Commission chief executive must make directive for this part)

Section 214B(2)(a)(iii) and (3), 'an IRC member'—

omit, insert—

the IRC

[s 55]

55 Omission of ch 7, pt 2 (Alternate jurisdiction)

Chapter 7, part 2—

omit.

56 Amendment of s 218A (Commission chief executive must make directive about dealing with complaints by officers and employees)

(1) Section 218A, heading, ‘complaints by officers and employees’—

omit, insert—

individual employee grievances

(2) Section 218A(1), from ‘a directive’ to ‘complaints made by’—

omit, insert—

a directive (the *individual employee grievances directive*) about how departments must deal with grievances of

(3) Section 218A(2), ‘complaints’—

omit, insert—

grievances

(4) Section 218A(2), ‘complaint’—

omit, insert—

grievance

57 Omission of ss 218B and 218C

Sections 218B and 218C—

omit.

58 Insertion of new ch 9, pt 14

Chapter 9—

insert—

Part 14 Transitional and validation provisions for Public Service and Other Legislation Amendment Act 2020

292 References to temporary employees

On the commencement, if the context permits, a reference in a document—

- (a) to a temporary employee under the Act as in force before the commencement includes a reference to a fixed term temporary employee; and
- (b) to a fixed term temporary employee includes a reference to a temporary employee under the Act as in force before the commencement.

293 Application of s 149 for existing temporary or casual employees

- (1) This section applies if—
 - (a) immediately before the commencement, a person was employed as a relevant employee in a department; and
 - (b) the person—
 - (i) has, on the commencement, been continuously employed as a relevant employee for a period of at least 1 year but not more than 2 years; or
 - (ii) within 3 months after the commencement, would have been continuously employed as a relevant

[s 58]

employee for a period of at least 1 year if the amending Act had not commenced.

- (2) The person may ask the department's chief executive for a decision under section 149(3) within—
 - (a) 3 months after the commencement; or
 - (b) if a longer period for a particular class of employees of which the person is a member is agreed between the department's chief executive and an employee organisation for the class of employee, and approved by the commission chief executive—the longer period.
- (3) For applying section 149 to the person—
 - (a) a reference in section 149 to a fixed term temporary employee is taken to include a reference to the person; and
 - (b) the period for which the person was continuously employed as a relevant employee is to be taken into account for working out the period for which the person has been continuously employed in the department.
- (4) The department's chief executive must decide the request within 28 days after the period mentioned in subsection (2)(a) or (b) ends.
- (5) In this section—

amending Act means the *Public Service and Other Legislation Amendment Act 2020*.

employee organisation see the *Industrial Relations Act 2016*, schedule 5.

relevant employee means a person employed on a temporary or casual basis under section 147 or 148 as in force before the commencement.

294 Continuation of previous section 149 for particular temporary employees

- (1) This section applies if—
 - (a) a temporary employee was, under section 149 as in force immediately before the commencement, entitled to a decision by the chief executive; and
 - (b) on the commencement, the decision has not been made.
- (2) Section 149, as in force immediately before the commencement, continues to apply in relation to the employee.

294A Application of s 149B for existing temporary and casual employees

- (1) This section applies in relation to a person if—
 - (a) immediately before the commencement, the person was an employee employed on a temporary or casual basis in a department under former section 147 or 148; and
 - (b) the day that is the end of 2 years of continuous employment in the department by the person occurs on or after the commencement; and
 - (c) section 293 does not apply to the person, or the person does not ask for a decision under that section.
- (2) Section 149B applies in relation to the person.
- (3) For applying section 149B—
 - (a) a reference in section 149B to a fixed term temporary employee is taken to include a reference to the person; and
 - (b) the period for which the person was continuously employed on a temporary or

[s 58]

- casual basis under former section 147 or 148 is to be taken into account for working out the period for which the person has been continuously employed in the department; and
- (c) if the person is employed on a casual basis, the required period is taken to be the later of—
- (i) 4 months after the commencement; or
 - (ii) if a longer period for a particular class of employees of which the person is a member is agreed between the department's chief executive and an employee organisation for the class of employee, and approved by the commission chief executive—the longer period; or
 - (iii) the required period for the decision about the person under section 149B(9).
- (4) Subsection (5) applies if—
- (a) the person is employed on a casual basis; and
 - (b) before the end of the required period mentioned in subsection (3)(c), the person would have become eligible for a review of the person's employment under former section 149A if the *Public Service and Other Legislation Amendment Act 2020* had not commenced.
- (5) In addition to section 149B as applied under subsections (2) and (3), former section 149A and any directive made under that section continue to apply in relation to the person as if the *Public Service and Other Legislation Amendment Act 2020* had not commenced.

(6) In this section—

employee organisation see the *Industrial Relations Act 2016*, schedule 5.

former section 147 or 148 means section 147 or 148 as in force before the commencement.

former section 149A means section 149A as in force before the commencement.

295 Application of s 149C for public service employees acting at higher classification levels

(1) This section applies if—

(a) immediately before the commencement, a person was seconded to, under section 120(1)(a), or acting at, a higher classification level in a department; and

(b) the person has, on the commencement or within 3 months after the commencement, been seconded to or acting at the higher classification level for a continuous period of at least 1 year.

(2) The person may ask the department's chief executive to appoint the person to a position at a higher classification level under section 149C(3) within—

(a) 3 months after the commencement; or

(b) if a longer period for a particular class of employees of which the person is a member is agreed between the department's chief executive and an employee organisation for the class of employee, and approved by the commission chief executive—the longer period.

(3) For applying section 149C, the period for which the person has been continuously acting at the

[s 58]

higher classification level before the commencement is to be taken into account for working out how long the person has been acting at that level for a continuous period for section 149C(1)(b).

296 Application of s 187 for existing disciplinary processes

- (1) This section applies if—
 - (a) before the commencement, the chief executive had decided to start, or had started, a disciplinary process for a ground under section 187(1)(a) or (f)(ii) or (iii) as in force immediately before the commencement; and
 - (b) on the commencement, the disciplinary process—
 - (i) has not started; or
 - (ii) has started but a disciplinary finding for the ground has not been made.
- (2) If, on the commencement, the circumstances to which the disciplinary process relates constitute a ground for discipline under section 187(1)(a), (f) or (g), the disciplinary process may be started or continued in relation to the employee.
- (3) If, on the commencement, the circumstances to which the disciplinary process relates do not constitute a ground for discipline under section 187(1)(a), (f) or (g), the chief executive must not start or continue the disciplinary process in relation to the employee.
- (4) If subsection (3) applies, the chief executive must ensure any decision relating to the disciplinary process is not recorded in any document kept in relation to the employee or the employee's work

performance.

(5) In this section—

disciplinary process means a step or action for investigating whether or not a disciplinary ground exists in relation to an employee.

297 Appeals not started before commencement

(1) This section applies if—

- (a) before the commencement, a person could have started an appeal against a decision under chapter 7, part 1; and
- (b) on the commencement, the person has not started the appeal; and
- (c) the time within which the appeal notice for the decision must be given and received under section 197 (the *appeal period*) has not ended.

(2) The person may appeal the decision within the appeal period.

(3) Chapter 7, as in force immediately before the commencement, applies in relation to the appeal as if the *Public Service and Other Legislation Amendment Act 2020* had not commenced.

298 Appeals started before commencement

(1) This section applies if—

- (a) before the commencement, an appeal was started under chapter 7, part 1; and
- (b) on the commencement, the appeal has not been decided or withdrawn.

(2) The appeal must be heard and decided under chapter 7 as in force immediately before the commencement, as if the *Public Service and*

Other Legislation Amendment Act 2020 had not commenced.

299 Continuation of IRC members for particular appeals

Despite the commencement of the *Public Service and Other Legislation Amendment Act 2020*, chapter 3, part 5 as in force immediately before the commencement continues to apply for hearing and deciding an appeal mentioned in section 297 or 298.

300 Application of directive under s 214B to commission

In the directive made under section 214B as in force immediately before the commencement, a reference to an IRC member is taken to include a reference to the IRC.

301 Validation of particular acts or omissions of WHS prosecutor

- (1) This section applies to an act or omission of the WHS prosecutor, or a person performing a function or power of the WHS prosecutor under a purported delegation or subdelegation, before the commencement to the extent the act or omission would have been valid if amended schedule 1 were in force at the time of the act or omission.
- (2) The act or omission is taken to be, and to have always been, as valid as it would have been if amended schedule 1 were in force at the time of the act or omission.
- (3) In this section—
amended schedule 1 means schedule 1 as in force on the commencement.

WHS prosecutor see the *Work Health and Safety Act 2011*, schedule 2, section 25.

58A Amendment of sch 1 (Public service offices and their heads)

Schedule 1—

insert—

Office of the WHS Prosecutor
under the *Work Health and Safety Act 2011*

Work Health and Safety Prosecutor

59 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *casual employment decision*, *employee complaints directive*, *IRC member*, *senior appeals officer*, *senior IRC member*, *temporary employee*, *temporary employment decision*—

omit.

(2) Schedule 4—

insert—

administrative inquiry see section 88O(1).

casual employee means—

(a) a person employed under section 147 on a casual basis; or

(b) a person employed under section 148A.

continuously employed, in relation to a person employed in a department for a period, means the person is employed in the department—

(a) continuously as a fixed term temporary employee for the period; or

(b) as a casual employee on a regular and systematic basis during the period; or

63 Amendment of s 120 (Entry to inspect employee records or information held by another person)

Section 120(1), after ‘this Act’—

insert—

or the *Electrical Safety Act 2002*

64 Amendment of s 132 (Consideration of application)

Section 132(a), after ‘this Act’—

insert—

and the purpose of the *Electrical Safety Act 2002*

65 Amendment of s 140 (Determination of application)

Section 140(2)(a), after ‘this Act’—

insert—

and, if relevant, the purpose of the *Electrical Safety Act 2002*

66 Insertion of new pt 16, div 7

Part 16—

insert—

**Division 7 Transitional provision for
Public Service and Other
Legislation Amendment
Act 2020**

**325 Validation of entries in relation to electrical
safety contraventions**

- (1) Subsections (2) and (3) apply to an entry to a workplace by a WHS entry permit holder, made before the commencement purportedly under

[s 66]

section 117, to inquire into an electrical safety contravention.

- (2) The entry is taken to be, and always to have been, as lawful as it would have been had section 117(1) applied in relation to electrical safety contraventions at the time of the entry.
- (3) An exercise of a right under section 118 while at the workplace is taken to be, and always to have been, as lawful as the exercise of the right would have been had section 118(1) applied in relation to electrical safety contraventions at the time of the entry.
- (4) Subsection (5) applies to an entry to a workplace by a WHS entry permit holder, made before the commencement purportedly under section 120, to inspect or make copies of employee records or other documents relevant to an electrical safety contravention.
- (5) The entry is taken to be, and always to have been, as lawful as it would have been had section 120 applied in relation to electrical safety contraventions at the time of the entry.
- (6) In this section—

electrical safety contravention means a suspected contravention of the *Electrical Safety Act 2002* that occurred on or after 1 January 2012.

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