



# Public Service Act 2008

Reprinted as in force on 1 July 2008

Reprint No. 1

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This Act is reprinted as at 1 July 2008.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

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## Queensland

# Public Service Act 2008

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# Public Service Act 2008

[reprinted as in force on 1 July 2008]

**An Act about the administration of the public service and the management and employment of public service employees, to provide for matters concerning particular agencies in the public sector, and to amend the Acts mentioned in schedule 3 for particular purposes**

## Chapter 1 Introduction

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Public Service Act 2008*.

#### 2 Commencement

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

#### 3 Main purposes of Act and their achievement

(1) The main purposes of this Act are to—

- (a) establish a high performing apolitical public service that is—
  - (i) responsive to Government priorities; and
  - (ii) focused on the delivery of services in a professional and non-partisan way; and

[s 4]

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- (b) promote the effectiveness and efficiency of government entities; and
  - (c) provide for the administration of the public service and the employment and management of public service employees; and
  - (d) provide for the rights and obligations of public service employees; and
  - (e) promote equality of employment opportunity in the public service and in other particular agencies in the public sector.
- (2) To help achieve the main purposes, this Act—
- (a) fixes principles to guide public service management, public service employment and the work performance and personal conduct of public service employees; and
  - (b) establishes a Public Service Commission to—
    - (i) enhance the public service’s human resource management and capability; and
    - (ii) review and improve the overall effectiveness and efficiency of government entities; and
  - (c) establishes a chief executive service and a senior executive service to provide the public service with high performing leaders who will actively promote the purposes and the principles.

#### **4 Dictionary**

The dictionary in schedule 4 defines particular words used in this Act.



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## Part 2                      The 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, called public service employees.

#### 6            **Employment of public service employees**

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

#### 7            **What are *departments***

A *department* is an entity declared under division 2 to be a department of government.

*Note—*

For public services offices, see section 21.

#### 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; or
- (c) an officer of another type.

*Note—*

For the appointment of public service officers, see sections 92, 110 and 119.

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## 9 Public service employees

- (1) 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; or
  - (c) a temporary employee.
- (2) Public service employees are employees for the *Industrial Relations Act 1999*.
- (3) Subsection (2) is subject to sections 215(3) and 218.

*Notes—*

- 1 Section 215(3) excludes the jurisdiction of the IRC for decisions against which a person has appealed to the commission chief executive.
- 2 Section 218 excludes particular matters from the concept of industrial matter.

## 10 Who is a *chief executive*

- (1) A *chief executive*, in relation to a department, is the person who holds appointment under this Act as the chief executive of that department.

*Notes—*

- 1 For public service offices, see sections 22 and 23.
  - 2 Under section 104, the chief executive of a chief executive is the Minister.
- (2) The *chief executive*, of a person who is a public service employee, is the chief executive of the department in which the person holds appointment as a public service employee.
  - (3) Otherwise, a reference to a *chief executive* is a reference to the chief executive of a department.

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**11 Relationship between chief executives and their public service employees**

- (1) The chief executive of a department is, for the State, responsible for the employment of public service employees of that department.
- (2) The public service employees of a department are responsible to that department's chief executive in relation to their employment in that department.

*Note—*

For particular provisions about a chief executive's functions, see chapter 4, part 1, division 3.

**12 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, by directive, be applied to a general or temporary employee.

*Notes—*

- 1 However, for employees of a public service office declared by regulation under section 21, see section 23.
- 2 For the directive-making power, see section 55.

**13 Act does not apply to particular 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 provided for under the *Judicial Remuneration Act 2007*, the *District Court of Queensland Act 1967* or the *Magistrates Act 1991*; or

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- (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**

### **14            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.

### **15            Establishment of departments etc.**

The Governor in Council may, by gazette notice—

- (a) establish a department or another government entity; 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.

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**16 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.

**17 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.

**18 Other powers**

(1) The Governor in Council may, by gazette notice or regulation, prescribe anything necessary or convenient to be prescribed—

- (a) to enable the making of a division 2 gazette notice; or
- (b) for carrying out or giving effect to a division 2 gazette notice; or
- (c) because of the making of a division 2 gazette notice.

(2) The Governor in Council may do anything else the Governor in Council considers necessary or convenient to be done—

- (a) to enable the making of a division 2 gazette notice; or
- (b) to carry out or give effect to a division 2 gazette notice; or
- (c) because of the making of a division 2 gazette notice.

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*Example of action to carry out or give effect to a division 2 gazette notice—*

transferring public service employees from a department to another department

(3) In this section—

***division 2 gazette notice*** means a gazette notice made or to be made under this division.

## **19 Provision for public service employees and amalgamations**

- (1) This section applies if a department (the ***first department***) or a part of the first department is amalgamated with another department or a part of another department.
- (2) 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 decides otherwise.
- (3) This section does not limit or otherwise affect section 18.

## **20 Existence of separate government entities not affected**

- (1) This section applies if another Act establishes a particular government entity as a separate entity or regulates the existence of an entity as a government entity.
- (2) To remove any doubt, it is declared that a gazette notice under this division does not have any effect on the government entity's separate existence.

## **Division 3 Public service offices**

### **21 Public service offices and their heads**

- (1) A ***public service office*** is—

- (a) an entity that schedule 1 states is a public service office;  
or
  - (b) subject to section 23, another designated entity, or part of a designated entity, declared under a regulation to be a public service office.
- (2) The **head** of each public service office is—
- (a) for a public service office stated in schedule 1—the person stated opposite its name; or
  - (b) otherwise—the person declared under a regulation to be the head of the office.
- (3) In this section—
- designated entity** means an entity, or part of an entity, mentioned in section 24(1)(c), (d), (e) or (f) that is not an entity mentioned in section 24(2).

## **22 General provision for application of Acts to public service offices**

- (1) This section applies subject to section 23 and any regulation made under it.
- (2) This Act and other Acts apply to a public service office mentioned in section 21(1)(a) and its public service employees as if—
  - (a) the office were a department; and
  - (b) the head of the office were the department's chief executive.
- (3) Without limiting subsection (2), the head of the public service office has, for the office's public service employees, all of a chief executive's functions and powers.
- (4) This section does not affect—

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- (a) the provisions about accountable officers under the *Financial Administration and Audit Act 1977*, sections 34 and 35B; or
- (b) the meaning of *department* under section 4A of that Act.

### **23 Application of Act to public service offices declared under a regulation**

- (1) This section applies only to a public service office declared under section 21(1)(b).
- (2) A provision of a regulation (an *application provision*) may provide—
  - (a) that particular provisions of this Act (the *applied provisions*) are to apply to—
    - (i) the public service office; or
    - (ii) persons, other than public service employees, who are employed in the office; and
  - (b) for the way in which the applied provisions are to apply, including, for example, that they apply with or without change.
- (3) However, an application provision can not reduce an employee's overall employment conditions, unless—
  - (a) the reduction arises out of a change in the employee's employment; and
  - (b) the change was sought by the employee.
- (4) If an application provision is made for the public service office—
  - (a) this Act applies, and only applies, to the following to the extent provided for under the provision—
    - (i) the public service office;
    - (ii) persons, other than public service employees, who are employed in the office; and



- 
- (b) this Act applies as mentioned in paragraph (a) with necessary changes; and
  - (c) the public service office is a public service office only for this Act as provided under this section and not for the purposes of any other Act.
- (5) A regulation may prescribe anything necessary or convenient to be prescribed for an application provision—
- (a) to enable the provision to be made; or
  - (b) to carry out or give effect to the provision; or
  - (c) because of the making of the provision, including the portability of employment rights and entitlements.

## **Division 4                      Government entities**

### **24        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; or
  - (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;

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- (b) a local government owned corporation, or a subsidiary of a local government owned corporation, under the *Local Government Act 1993*, section 592;
- (c) the parliamentary service;
- (d) the Governor's official residence (known as 'Government House') and its associated administrative unit;
- (e) the Executive Council;
- (f) the Legislative Assembly;
- (g) a court of the State of any jurisdiction;
- (h) 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);
- (i) a school council established under the *Education (General Provisions) Act 2006*, university or university college;
- (j) a cooperative under the *Cooperatives Act 1997* for primary producers that is not in receipt of moneys of, or financial assistance from, the State;
- (k) a government owned corporation, unless a regulation declares it to be a government entity;
- (l) another entity, or part of another entity, declared under a regulation not to be a government entity.

## **Part 3                      General public service    principles**

### **25            The management and employment principles**

- (1) Public service management is to be directed towards—

- 
- (a) providing responsive, effective and efficient services to the community and the Government; and
  - (b) maintaining impartiality and integrity in informing, advising and assisting the Government; and
  - (c) promoting collaboration between Government and non-government sectors in providing services to the community; and
  - (d) continuously improving public service administration, performance management and service delivery; and
  - (e) managing public resources efficiently, responsibly and in a fully accountable way; and
  - (f) promoting the Government as an employer of choice; and
  - (g) promoting equality of employment opportunity.
- (2) Public service employment is to be directed towards promoting—
- (a) best practice human resource management; and
  - (b) equitable and flexible working environments in which all public service employees are—
    - (i) treated fairly and reasonably; and
    - (ii) remunerated at rates appropriate to their responsibilities; and
  - (c) a diverse and highly skilled workforce drawing from Government and non-government sectors.
- (3) Subsections (1) and (2) are the *management and employment principles*.

## 26 Work performance and personal conduct principles

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

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- (a) achieving excellence in service delivery; and
- (b) ensuring the effective, efficient and appropriate use of public resources; and
- (c) giving effect to Government policies and priorities; and
- (d) collaborating with other departments with a focus on public service-wide priorities as well as department-specific priorities; and
- (e) providing sound and impartial advice to the Government; and
- (f) improving all aspects of the employee's work performance; and
- (g) carrying out duties impartially and with integrity; and
- (h) observing all laws relevant to the employment; and
- (i) ensuring the employee's personal conduct does not reflect adversely on the reputation of the public service; and
- (j) observing the ethics principles for public officials under the *Public Sector Ethics Act 1994*, section 4; and
- (k) complying with codes of conduct, as required under the *Public Sector Ethics Act 1994*, section 18.

## Part 4                      The merit principle

### 27      The merit principle

- (1) The selection, under this Act, of an eligible person for an appointment or secondment as a public service employee must be based on merit alone (the *merit principle*).
- (2) The merit principle applies subject to chapter 5, part 2, division 2.

*Editor's note—*

chapter 5, part 2, division 2 (Reappointment of particular election candidates)

(3) In this section—

*appointment* does not include a transfer.

## **28 Merit criteria**

In applying the merit principle to a person, the following must be taken into account—

- (a) the extent to which the person 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 the person carried out any previous employment or occupational duties; and
  - (ii) the extent to which the person has potential for development.

## **29 Directives about applying the merit principle**

- (1) A directive of the commission chief executive may provide for how selection, under the merit principle, for a stated type of appointment or secondment must be carried out.
- (2) A selection for an appointment or secondment must comply with any relevant directive under subsection (1).

## Chapter 2      Equality of employment opportunity

### 30      General EEO obligation

- (1) Each of the following entities (a *relevant EEO agency*) must act to promote EEO for employment matters that concern it—
  - (a) a government entity;
  - (b) the police service;
  - (c) an entity that another Act provides is a relevant EEO agency;
  - (d) an entity prescribed under a regulation.
- (2) Without limiting subsection (1), each relevant EEO agency must act to—
  - (a) enable members of the EEO target groups to do the following as effectively as people who are not members of those groups—
    - (i) compete for recruitment, selection, promotion and transfer;
    - (ii) pursue careers; and
  - (b) eliminate unlawful discrimination about employment matters by the agency or its employees against members of the EEO target groups.
- (3) To remove any doubt, it is declared that this section, does not require the taking of action incompatible with the merit principle.
- (4) In this section—

*EEO target groups* means all of the following groups—

  - (a) people of the Aboriginal race of Australia or people who are descendants of the indigenous inhabitants of the Torres Strait Islands;

- 
- (b) people who have migrated to Australia and whose first language is a language other than English, and the children of those people;
  - (c) people with a physical, sensory, intellectual or psychiatric disability, whether the disability presently exists or previously existed but no longer exists;
  - (d) women, irrespective of age;
  - (e) a group of people prescribed under a regulation.

***employees*** means individuals appointed or engaged—

- (a) under a contract of service, whether on a full-time, part-time, permanent, casual or temporary basis; or
- (b) under a statutory appointment.

***employment matters*** means—

- (a) recruitment procedure, and selection criteria, for appointment or engagement of people as employees; or
- (b) promotion, transfer or redeployment of employees; or
- (c) training and staff development for employees; or
- (d) terms and conditions of service and separation of employees; or
- (e) any other matter relating to the employment of employees.

***unlawful discrimination*** means discrimination that is unlawful under the *Anti-Discrimination Act 1991*.

### **31 Annual EEO reporting requirement**

- (1) Each relevant EEO agency must, for each financial year, give the commission chief executive a report about the outcome of its actions required with section 30 during the financial year.
- (2) The report must be given within 3 months after the end the financial year.
- (3) The report may be included in other documents the relevant EEO agency gives the commission chief executive.

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### **32 Exemption from reporting requirement**

- (1) If a relevant EEO agency asks, the commission chief executive may grant the agency an exemption from the operation of section 31.
- (2) The exemption may be for all financial years or a particular financial year.
- (3) The commission chief executive may cancel all or part of the exemption.
- (4) The exemption or cancellation must be written.

### **33 Commission chief executive may take action if dissatisfied with report**

- (1) This section applies if the commission chief executive is dissatisfied with any matter relating to a report under section 31.
- (2) The commission chief executive may recommend to the relevant EEO agency's chief executive the taking of action to overcome that dissatisfaction.

### **34 Compliance with recommendation**

If a relevant EEO agency is given a recommendation under section 33, its chief executive must—

- (a) ensure the action recommended to be taken; or
- (b) give the Minister administering the Act relevant to the agency and the commission chief executive a notice stating the reasons why the action can not be taken.



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## Chapter 3 Administration

### Part 1 The Minister's role

#### Division 1 General provisions

##### 35 Meaning of *public service office* for pt 1

In this part, *public service office*—

- (a) includes—
  - (i) a department or part of a department; and
  - (ii) the police service; but
- (b) does not include—
  - (i) the integrity commissioner; or
  - (ii) the information commission office; or
  - (iii) the audit office.

##### 36 Minister's role for the public service and public service offices

- (1) The Minister has the following functions—
  - (a) to promote the overall effectiveness and efficiency of the public service;
  - (b) to assess the appropriateness, effectiveness and efficiency of public service management, and in particular, departments or parts of departments;
  - (c) to advise departmental Ministers about steps that should be taken to improve the public service's effectiveness and efficiency;
  - (d) to authorise reviews of activities or functions of public service offices;

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- (e) to refer to the commission for review matters relating to the effectiveness or efficiency of public service offices;
  - (f) to monitor the performance of the commission's functions.
- (2) Subsection (1) does not limit or otherwise affect the Minister's other functions or require the Minister to carry out any particular action.

## **Division 2            Obtaining reports**

### **Subdivision 1        Commission reports**

#### **37        Report on effectiveness and efficiency**

- (1) The Minister may, by signed notice, refer to the commission any matter relating to the effectiveness or efficiency of a public service office for the commission to review and report to the Minister about (a *commission review*).
- (2) The reference may be for a single commission review for 2 or more public service offices.
- (3) Each chief executive or head of a public service office the subject of the reference must give the commission the help it reasonably requires to conduct the review.
- (4) The Minister must table the report in the Legislative Assembly.

*Note—*

For particular provisions about commission reviews, see part 4.

#### **38        Matters that may be included in referral**

To ensure a commission review is conducted appropriately, the Minister may, when referring a matter to the commission, do all or any of the following—

- (a) ask it to consider and advise whether the review is warranted;
- (b) give terms of reference for the review;
- (c) state the entities with whom it must consult for the review;
- (d) state a period within which it must give its report;
- (e) ask it to give a draft report to the Minister, another Minister, a chief executive, public service office head or another stated entity for comment before finalising the review;
- (f) ask it to make recommendations about a stated matter.

## **Subdivision 2      Other reports**

### **39      Chief executive report on management and employment principles**

- (1) The Minister may require the chief executive of a department to give the Minister a report about particular aspects of the department's application of the management and employment principles.
- (2) The report must be given to the Minister within the time the Minister requires.
- (3) To help the Minister to decide whether to require reports under subsection (1), the commission may, of its own initiative, give the Minister advice about the application of the management and employment principles.

### **40      Obtaining report on functions or activities**

- (1) The Minister may, by signed notice, authorise a person (the *authorised person*) to conduct a review (a *management review*) of the functions or activities of a stated public service office.

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*Note—*

For management reviews of the audit office, see however the *Financial Administration and Audit Act 1977*, section 71.

- (2) Before or after giving the authorisation, the Minister may—
  - (a) inform the departmental Minister and the chief executive or the head of the public service office about the management review; 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 management review.
- (3) The authorisation may be for a single management review for 2 or more public service offices.
- (4) The authorised person must give the Minister a report on the review, including any findings or recommendations.
- (5) The Minister may give a copy of the report to the departmental Minister, the chief executive or head and anyone else the Minister considers appropriate.

## **41 Conduct of management reviews**

- (1) A person authorised under section 40 to conduct a management review—
  - (a) must produce the person's authority if asked by someone concerned in the review; and
  - (b) may, for conducting the review, do any or all of the following—
    - (i) enter official premises of the public service office the subject of the review at any reasonable time;
    - (ii) require the production of, examine, copy, or take an extract from, any official document in the possession of the public service office;
    - (iii) interview employees of the public service office;

- (iv) interview anyone else who can provide information relevant to the review.

*Example of another person who can provide information—*

a client of services provided by the public service office

- (2) The chief executive or the head of the public service office and each other person employed in the office must give the authorised person the help the authorised person reasonably requires to conduct the review.
- (3) Without limiting subsection (2), the authorised person may require a person employed in the public service office to answer any question relevant to the review.
- (4) 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.
- (5) In this section—

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

  - (a) under its control or to which it 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 his or her official capacity.

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## **Division 3                      Miscellaneous provision**

### **42            Minister may direct action about surplus public service employees**

- (1) This section applies if the Minister is satisfied more public service employees are employed in a department than it needs for the effective, efficient and appropriate performance of its functions.
- (2) The Minister may direct the department's chief executive to take action in accordance with relevant rulings of the commission chief executive.

## **Part 2                              The Public Service Commission and its role**

### **43            Establishment**

The Public Service Commission is established.

### **44            Commission represents the State**

- (1) The commission represents the State.
- (2) Without limiting subsection (1), the commission has the status, privileges and immunities of the State.

### **45            Commissioners**

The commission consists of the following persons (each a *commissioner*)—

- (a) the commission chief executive;
- (b) each chief executive of the department in which each of the following Acts is administered—

- 
- *Industrial Relations Act 1999*
  - *Parliament of Queensland Act 2001*
  - *Statutory Bodies Financial Arrangements Act 1982*;
- (c) a person appointed by the Governor in Council as the chairperson of the commission;
- (d) at least 3 other persons appointed by the Governor in Council as commissioners.

*Note—*

For particular provisions about the commission chief executive and other commissioners, see part 4, division 1.

## **46 Main functions**

- (1) The commission's main functions are to do the following—
- (a) enhance the public service's human resource management and capability;
  - (b) promote the management and employment principles;
  - (c) conduct commission reviews;
  - (d) develop and implement public service-wide workforce management strategies;
  - (e) 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;
  - (f) facilitate the purposes of the chief executive and senior executive services and the position of senior officer;
  - (g) advise the Minister about the need for commission reviews about particular matters;
  - (h) promote a culture of continuous improvement and organisational performance management across all public service offices;

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- (i) provide a best practice advisory role on public service management, organisational performance management and workforce practices.
- (2) In performing its functions, the commission must have regard to the management and employment principles.

## **Part 3**                      **Rulings by the commission chief executive and industrial relations Minister**

### **Division 1**                      **General provisions about rulings**

#### **47**      **Types of ruling**

- (1) Division 2 and particular other provisions of this Act authorise the making of instruments about persons who are, or who wish to become, public service employees or other employees in public service offices.

*Example of another provision—*

chapter 5, part 6 (Assessing suitability of persons to be engaged in particular employment)

- (2) A directive is an instrument of a type mentioned in subsection (1) that the instrument states is a directive.
- (3) A directive binds the persons to whom it applies.
- (4) A guideline is an instrument of a type mentioned in subsection (1) that the instrument states is a guideline.
- (5) A guideline is for the guidance only of the persons to whom it applies.
- (6) A **ruling** is a directive or a guideline.



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## **48 Making of and access to rulings**

- (1) A directive may be made only by gazette notice.
- (2) A guideline may be made in the way the person making it considers appropriate.
- (3) After a person makes a ruling, the person must ensure it is published on the following website as soon as practicable—
  - (a) if the person is the commission chief executive—the commission’s website;
  - (b) if the person is the industrial relations Minister—the website of the department in which the *Industrial Relations Act 1999* is administered.
- (4) A failure to comply with subsection (3) does not invalidate or otherwise affect the ruling.

## **49 General references to a ruling**

A reference to a ruling or a type of ruling, without specifying who made it, is a reference to any ruling, or any ruling of that type.

## **50 Criteria for making a ruling**

In making a ruling, the commission chief executive or the industrial relations Minister must consider any advice given to the other about improving the public service’s effectiveness and efficiency.

*Note—*

For rulings that are to specifically apply to the audit office, see also the *Financial Administration and Audit Act 1977*, section 70.

## **51 Relationship with legislation**

If a ruling is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency.

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## 52 Relationship between directives and industrial instruments

- (1) This section applies if a directive deals with a matter all or part of which is dealt with under an industrial instrument of the IRC.
- (2) A directive of the commission chief executive prevails over an industrial instrument, unless a regulation provides otherwise.

*Note—*

See however, the *Industrial Relations Act 1999*, section 687 (Conflict between industrial instruments etc. and statutory decision).

- (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 under a directive.

## Division 2 General ruling-making powers

### 53 Rulings by commission chief executive

The commission chief executive may make a ruling about—

- (a) a matter relating to any of the commission's or the commission chief executive's functions; or

*Examples of what a ruling by the commission chief executive may be about—*

- recruitment and selection, deployment, training and development of public service employees
- the transfer or redeployment of public service employees surplus to the needs of a department
- overall performance management standards for the public service

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- (b) the overall employment conditions for persons employed or to be employed as—
    - (i) chief executives or senior executives; or
    - (ii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior executive; or
  - (c) other specific matters that, under this Act, the commission chief executive may make a ruling about.

#### **54 Rulings by industrial relations Minister**

- (1) The industrial relations Minister may make rulings about—
  - (a) the remuneration and conditions of employment of non-executive employees; or
  - (b) other matters under this Act that the Minister may make a ruling about.
- (2) However, a ruling under subsection (1)(b) may only be made for non-executive employees.
- (3) In this section—

*non-executive employees* means public service employees other than—

  - (a) chief executives or senior executives; or
  - (b) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior executive.

#### **55 Directives to apply Act to general and temporary employees**

- (1) A directive may apply a provision of this Act to a general employee or temporary employee.
- (2) The provision applies to the employee in the following ways (the directive's *application*)—

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- (a) as if the employee were a public service officer;
  - (b) with necessary changes and any other changes prescribed under a directive of the commission chief executive.
- (3) The directive may prescribe anything necessary or convenient—
- (a) to make the directive or for its application; or
  - (b) to carry out or give effect to the directive or its application; or
  - (c) because of the making of the directive or its application.

## **Part 4                      Particular provisions about the commission and commission reviews**

### **Division 1                Commissioners**

#### **Subdivision 1        Commission chief executive**

##### **56        Appointment**

- (1) The Governor in Council must appoint a person as the chief executive of the commission (the *commission chief executive*).
- (2) A disqualified person can not be appointed.
- (3) The term of the appointment is decided by the Governor in Council.
- (4) However, the term can not be more than 5 years.
- (5) The appointment must be on a full-time basis.

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**57 Basis of employment**

- (1) A person appointed as the commission chief executive must enter into a written contract of employment with the Minister.
- (2) Without limiting subsection (1), the contract may provide—
  - (a) for the commission chief executive to meet performance standards set by the Minister; and
  - (b) for the remuneration to which the person is entitled; and
  - (c) that the appointment and contract of employment may be terminated by the Governor in Council by notice signed by the Minister given to the person at least 1 month before it is to take effect.
- (3) The conditions of the contract are to be approved by the Governor in Council.
- (4) The appointee's conditions of employment are governed by this Act and the contract.

**58 Main functions**

- (1) The commission chief executive is responsible for the performance of the commission's functions.
- (2) The commission chief executive's other main functions are to do the following—
  - (a) approve final reports for commission reviews;
  - (b) make rulings;
  - (c) appoint and second senior executives;
  - (d) facilitate the development of senior executives and senior officers;
  - (e) hear and decide appeals under chapter 7, part 1;
  - (f) perform other duties as directed by the Minister.

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## **59 Duty in performing functions**

The commission chief executive must perform his or her functions independently, impartially, fairly, and in the public interest.

## **60 Acting as commission chief executive**

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

## **61 Preservation of commission chief executive's accrued rights**

- (1) This section applies if a public service officer is appointed as the commission chief executive.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the commission chief executive were a continuation of service as a public service officer.

## **62 Delegation**

- (1) The commission chief executive may delegate his or her functions under this Act to—
  - (a) generally—an appropriately qualified staff member of the commission; or
  - (b) for the hearing and deciding of appeals under chapter 7, part 1—any appropriately qualified person.

- (2) However, the commission chief executive can not delegate the functions of—
  - (a) approving final reports for commission reviews; or
  - (b) making rulings; or
  - (c) appointing or seconding senior executives.

### **63 Resignation**

- (1) The commission chief executive may resign by signed notice given to the Minister.
- (2) However, at least 1 month's notice of resignation must be given.

## **Subdivision 2 Appointed commissioners**

### **64 Appointment**

- (1) This section applies for the appointment of an appointed commissioner.
- (2) A disqualified person can not be appointed.
- (3) The term of the appointment and the conditions of office not provided for under this division are decided by the Governor in Council.
- (4) However, the term can not be more than 5 years.

### **65 Disclosure of interests**

- (1) This section applies if—
  - (a) an appointed commissioner has a direct or indirect interest in a matter being considered, or about to be considered, by the commission at a commission meeting; and

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- (b) the interest could conflict with the proper performance of the commissioner's functions for the matter.
- (2) The commissioner must, as soon as practicable, disclose the interest to the commission chief executive.
- (3) Unless the commission otherwise decides, the commissioner must not participate in the commission's consideration of the matter at the meeting.

## **66 Resignation**

An appointed commissioner may resign by signed notice given to the Minister.

## **Subdivision 3 Miscellaneous provisions**

### **67 Criminal history checks to confirm suitability for appointment**

- (1) To help decide whether a person is suitable for nomination for appointment as the commission chief executive or an appointed commissioner, the Minister may ask the police commissioner for a report about the person's criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The police commissioner must comply with the request.
- (4) However, subsection (3) applies only to information in the police commissioner's possession or to which the commissioner has access.
- (5) If the criminal history of the person includes a conviction recorded against the person, the commissioner's report must be written.
- (6) The Minister must destroy the report as soon as practicable after the decision has been made.



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**68 Additional appointment as deputy chairperson**

- (1) The Governor in Council may appoint an appointed commissioner as the deputy chairperson to act as the chairperson—
  - (a) during a vacancy in the office; or
  - (b) during any period, or during all periods, when the chairperson is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.
- (2) The term of the appointment and the deputy chairperson's conditions of office not provided for under this Act are decided by the Governor in Council.
- (3) However, the term can not be more than 5 years.

**Division 2 Meetings and other business**

**69 Conduct of business**

Subject to this part, the commission may conduct its business, including its meetings, in the way it considers appropriate.

**70 Times and places of meetings**

- (1) Commission meetings are to be held at the times and places the chairperson decides.
- (2) However, the chairperson must call a meeting if asked, in writing, to do so by at least 4 commissioners.
- (3) Also, the chairperson must call a meeting at least once in each quarter.

**71 Quorum**

A quorum for a commission meeting is any 4 commissioners.

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## **72 Meeting deputies for particular commissioners**

- (1) A commissioner who is a chief executive of a department may, by signed notice, appoint an appropriately qualified public service officer as his or her deputy.
- (2) The deputy may, as the commissioner's delegate, attend a commission meeting in the commissioner's absence and exercise the commissioner's powers under this Act at the meeting.
- (3) A deputy attending a commission meeting is to be counted in deciding if there is a quorum for the meeting.

## **73 Presiding at meetings**

- (1) The chairperson is to preside at all commission meetings at which the chairperson is personally present.
- (2) If the chairperson is absent from a commission meeting, the deputy chairperson is to preside.
- (3) If the chairperson and the deputy chairperson are absent from a commission meeting, the commissioner chosen by the commissioners present is to preside.

## **74 Conduct of meetings**

- (1) The commission may hold meetings, or allow commissioners to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.
- (2) A person who takes part in a commission meeting under subsection (1) is taken to be present at the meeting.

## **75 Decisions outside meetings**

A decision of the commission, other than a decision at a commission meeting, is validly made if—

- (a) the decision is made with the written agreement of at least 4 commissioners; and
- (b) notice of the proposed decision is given under procedures approved by the commission.

## **76 Minutes and record of decisions**

The commission must keep—

- (a) minutes of its meetings; and
- (b) a record of any decisions under section 65(3) or 75.

## **Division 3 Staff and agents**

### **77 Staff members of the commission**

- (1) The commission chief executive may—
  - (a) employ the persons he or she considers necessary to perform the commission's functions; and
  - (b) arrange with the chief executive of a department or the head of a public service office for the services of its public service employees to be made available to the commission.
- (2) Persons employed or made available under subsection (1) are *staff members* of the commission.

### **78 Staff subject to direction by commission chief executive**

Staff members of the commission are subject to the direction of the commission chief executive relating to the performance of the commission's functions.

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## **79 Agents**

- (1) To meet temporary circumstances, the commission chief executive may engage suitably qualified persons to provide the commission with services, information or advice.
- (2) The engagement of the persons is on the terms and conditions decided by the commission chief executive, and not under this Act.

## **Division 4 Commission reviews and reports**

### **Subdivision 1 Conduct and scope**

#### **80 Minister to be kept informed of conduct of review**

The commission chief executive must keep the Minister informed of the general conduct of each commission review.

#### **81 Minister may obtain information from commission**

- (1) If the Minister asks the commission for particular information concerning a matter relating to a commission review, the commission must—
  - (a) comply with the request; and
  - (b) give the help the Minister needs to consider the information.
- (2) Information provided to the Minister under subsection (1) is confidential.

#### **82 Disclosures to commission for review**

A person may disclose a document or information to the commission or a commission official for the purpose of a commission review.

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## **Subdivision 2      Reports**

### **83      Affected agencies to be given a draft report**

- (1) This section applies if a particular public service office is the subject of a commission review.
- (2) The commission must—
  - (a) prepare a draft report for the review; and
  - (b) give a copy of the draft report to the public service office; and
  - (c) give the public service office a reasonable opportunity to respond to the draft report; and
  - (d) have regard to any response before preparing a final report for the review and giving it to the Minister.
- (3) In its response, the public service office may ask the commission to include a particular statement in the commission's final report.

### **84      Content**

A final report for a commission review must be approved by the commission chief executive and include—

- (a) a consideration of relevant viewpoints and options to address the issues covered by the report; and
- (b) the commission's recommendations relating to the issues; and
- (c) details of the consultation undertaken in the course of the review; and
- (d) any statement the commission is asked to include under section 83(3).

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## **85 Procedure for reporting sensitive information**

- (1) This section applies if the commission considers that, apart from this section, information that would be included in a draft report or final report for a commission review is sensitive information.
- (2) The commission need not include the information in the report.
- (3) If the report is a final report, the commission may include the information in a separate document given to the Minister.
- (4) In this section—

*sensitive information* means information—

- (a) that would be contrary to the public interest to disclose;  
or

*Examples of when disclosing information may be contrary to the public interest—*

- 1 The disclosure would have a serious adverse effect on someone's commercial interests.
  - 2 The disclosure would reveal trade secrets.
  - 3 The disclosure would cause damage to the relations between the Government of the State and another Government.
- (b) for which, in any judicial proceeding, the State would have a basis for claiming that disclosure should not be permitted.

## **Division 5 Miscellaneous provisions**

### **86 How commission's functions may be performed**

- (1) The commission may make enquiries, gather information and otherwise engage in activities necessary to perform its functions.
- (2) In performing its functions, the commission—
  - (a) need not act in a formal way; and

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- (b) may inform itself in the way it considers appropriate; and
  - (c) may consult with anyone it considers appropriate; and
  - (d) may receive written or oral submissions and other information.
- (3) However, for a commission review, the functions must be performed consistently with the terms of the Minister's referral for the review.

## **87 Confidentiality relating to commission reviews**

- (1) This section applies to a person who—
- (a) is or has been a commission official; and
  - (b) in that capacity acquired protected information or has or had access to, or custody of, a document containing protected information.
- (2) The person must not—
- (a) make a record of protected information; or
  - (b) whether directly or indirectly, divulge or communicate protected information; or
  - (c) use protected information to benefit any person.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used—
- (a) to the extent necessary to perform the person's functions under or relating to this Act; or
  - (b) with the consent of the entity to which the information relates; or
  - (c) as required or permitted by law.
- (4) In this section—

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*protected information* means information not publicly available obtained for a commission review.

## **88 Protection of commission officials from liability**

- (1) A commission official is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

# **Chapter 4 Chief executives, senior executives and senior officers**

## **Part 1 Chief executives**

### **Division 1 The chief executive service**

#### **89 Establishment**

- (1) A chief executive service is established in the public service.
- (2) The service consists of chief executives appointed under division 2.

#### **90 Purpose and its achievement**

- (1) The purpose of the chief executive service is to promote—
  - (a) the public service's effectiveness and efficiency; and



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- (b) collaboration between departments with a focus on public service-wide priorities as well as department-specific priorities; and
  - (c) performance management in the public service; and
  - (d) the delivery of services by the public service in accordance with Government priorities.
- (2) The purpose is to be achieved by attracting, developing and retaining in the public service a core of mobile, highly skilled chief executives.

## **91 Chief executive service standards**

- (1) The Minister may make standards about the way the Minister expects the chief executive service to operate.
- (2) Without limiting subsection (1), the standards may provide for competencies expected of, and ethical standards for, chief executives.
- (3) The Minister must publish the standards in the way the Minister considers appropriate.
- (4) The standards do not limit or otherwise affect the obligations that a chief executive has under the *Public Sector Ethics Act 1994*.

## **Division 2 Appointments**

### **92 Appointment of chief executives generally**

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

### **93 Appointment to particular departments**

- (1) Each department is to have a chief executive.

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- (2) The Minister may, by signed notice, appoint a chief executive to be the chief executive of any department.
- (3) Public notice of the appointment must be published in the gazette or in another way the Minister considers appropriate.

#### **94 Acting as chief executive**

- (1) The departmental Minister for a department may appoint a person to act as its chief executive 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.
- (2) It does not matter whether the appointee is or is not already a public service officer.

#### **95 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 an appointment to the stated office.

#### **96 Contractual 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 Minister.
- (2) The appointee's conditions of employment are governed by this Act, any relevant directives by the commission chief executive and the contract.

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## **97 Term of appointment**

- (1) The term of a chief executive's appointment can not be more than 5 years.
- (2) A chief executive may resign by signed notice of resignation given to the Minister at least 1 month before the notice is to take effect.
- (3) An appointment and contract of employment as a chief executive may be terminated by the Governor in Council by notice signed by the Minister given to the appointee at least 1 month before it is to take effect.

## **Division 3 Functions**

### **98 Responsibilities**

- (1) A chief executive is responsible for all of the following matters in relation to the chief executive's department—
  - (a) establishing and implementing goals and objectives in accordance with Government policies and priorities;
  - (b) managing the department in a way that promotes the effective, efficient and appropriate management of public resources;
  - (c) the following for departmental employees—
    - (i) their numbers;
    - (ii) classification levels;
    - (iii) designation of roles;
  - (d) adopting management practices that are responsive to Government policies and priorities;
  - (e) promoting continual evaluation and improvement of the appropriateness, effectiveness and efficiency of departmental management;

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- (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;
- (g) ensuring compliance with the equality of employment opportunity obligations under chapter 2;
- (h) ensuring maintenance of proper standards in the creation, keeping and management of public records.

*Examples of chief executive responsibilities for departmental employees—*

- recruitment and selection
  - performance appraisal, training and development
  - discipline and termination of employment
  - working conditions and industrial issues
  - ensuring fair treatment
- (2) The chief executive's responsibilities under this Act are in addition to the chief executive's responsibilities under another Act.

*Note—*

The following are not subject to direction by a chief executive—

- the information commissioner and staff of the information commissioner office (See the *Freedom of Information Act 1992*, sections 101E and 101W)
  - the auditor-general, deputy auditor-general and staff of the audit office (See the *Financial Administration and Audit Act 1977*, sections 49, 62 and 65)
- (3) In this section—

***departmental employees*** means public service employees employed in the chief executive's department.

***designation***, of a role, includes the title of the role and its organisational location within a department.

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## **99 How responsibilities must be discharged**

- (1) In discharging responsibilities under an Act, a chief executive must—
  - (a) observe the management and employment principles; and
  - (b) comply with all relevant laws, industrial instruments and directives; and
  - (c) have regard to all relevant guidelines.
- (2) The discharge of the responsibilities is subject to section 109(3).

*Editor's note—*

section 109 (Senior executive numbers and classification levels)

## **100 Extent of chief executive's autonomy**

- (1) A chief executive is subject to the directions of the departmental Minister in managing the department.
- (2) However, in making decisions about particular individuals, the chief executive—
  - (a) must act independently, impartially and fairly; and
  - (b) is not subject to direction by any Minister.
- (3) Also, subsection (1) is subject to another Act—
  - (a) that provides that the chief executive is not subject to the directions of the departmental Minister about particular matters; or
  - (b) that otherwise limits the extent to which, or circumstances in which, the chief executive is subject to directions of the departmental Minister.

## **Division 4                      Miscellaneous provisions**

### **101      Declaration of interests**

- (1) This section applies to any chief executive on appointment.

*Note—*

Appointment includes reappointment. See the *Acts Interpretation Act 1954*, section 36, definition *appoint*.

- (2) The chief executive must, within 1 month, give the departmental Minister a statement about his or her interests.
- (3) The statement must include the information required under a directive of the commission chief executive.
- (4) Subsections (5) and (6) apply if—
- (a) a change to the chief executive's interests happens after the giving of the statement; and
  - (b) the change is of a type prescribed under a directive of the commission chief executive.
- (5) The chief executive must give the departmental Minister a revised version of the statement.
- (6) The revised version must—
- (a) be given as soon as possible after the relevant facts about the change come to the chief executive's knowledge; and
  - (b) comply with subsection (3).

### **102      Conflicts of interest**

- (1) If a chief executive 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

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the relevant facts come to the chief executive's knowledge; and

- (b) must not take action or further action concerning 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 its chief executive to resolve a conflict or possible conflict between an interest of the chief executive and the chief executive's responsibilities.

### **103 Delegation**

- (1) A chief executive may delegate the chief executive's functions under an Act to any appropriately qualified person.
- (2) A delegation of a function may permit the subdelegation of the function.
- (3) If the function is performed under another Act, the power to delegate or subdelegate is subject to the other Act.

### **104 References in Act to chief executive of a chief executive are to the Minister**

For a chief executive, a reference in this Act to his or her chief executive, or to the chief executive of his or her department, is a reference to the Minister.

## **Part 2 Senior executives**

### **Division 1 The senior executive service**

#### **105 Senior executive service continued**

A senior executive service is continued in the public service.

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## **106 Purposes of service and their achievement**

- (1) The senior executive service is continued to promote the public service's effectiveness and efficiency.
- (2) Employment in the senior executive service is to be directed towards ensuring senior executives—
  - (a) develop a public service-wide perspective; and
  - (b) continue their executive development; and
  - (c) develop their skills through deployment within and outside the public service.
- (3) The purposes under subsections (1) and (2) are to be achieved by attracting, developing and retaining in the public service a core of mobile, highly skilled senior executives.

## **107 Role of commission chief executive**

To help achieve the purposes of the senior executive service, the commission chief executive must make and implement arrangements to facilitate the executive development of senior executives.

## **108 Composition**

The senior executive service consists of persons employed under this Act as senior executives.

## **109 Senior executive numbers and classification levels**

- (1) The Governor in Council may, by gazette notice, fix—
  - (a) the maximum number of senior executives to be employed in a department; and
  - (b) the classification levels at which they are to be employed.



- (2) The commission chief executive must be consulted before a recommendation is made to the Governor in Council for subsection (1).
- (3) The department's chief executive must comply with the notice.

## **Division 2                    Appointment matters**

### **110    Appointment**

- (1) The commission chief executive may, by signed notice, appoint senior executives.
- (2) Public notice of the appointment must be published in the gazette or in another way the commission chief executive considers appropriate.

### **111    Secondments**

- (1) The commission chief executive may, by signed notice, second public service officers as senior executives and cancel the secondments at any time.
- (2) However—
  - (a) before acting under subsection (1), the commission chief executive must take reasonable steps to consult with any relevant chief executive; and
  - (b) if the secondment is to a lower classification, it may be made only with the senior executive's consent.

### **112    Acting senior executives**

- (1) The chief executive of a department may appoint a person to act in the office of a senior executive in the department during any period or all periods when—
  - (a) no-one is employed in the office; or

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- (b) the person holding the office is absent from duty or is, for another reason, unable to perform the responsibilities of the office.
- (2) It does not matter whether the appointee is or is not already a public service officer.

### **113 Contractual basis of employment**

- (1) Each senior executive must enter into a written contract of employment with his or her chief executive.
- (2) In entering into, or fixing the terms of, the contract, the chief executive must comply with any relevant directive.
- (3) The senior executive's conditions of employment are governed by this Act, any relevant directives by the commission chief executive and the contract.

### **114 Term of appointment**

- (1) The term of a senior executive's appointment can not be more than 5 years.
- (2) A senior executive may resign by signed notice of resignation given to his or her chief executive at least 1 month before the notice is to take effect.
- (3) A senior executive's appointment and contract of employment may be terminated by his or her chief executive by signed notice given to the appointee at least 1 month before it is to take effect.

## **Division 3 Transfers and redeployment**

### **115 Transfer of senior executives**

- (1) The commission chief executive may, by signed notice, transfer or redeploy senior executives.
- (2) However—

- (a) before acting under subsection (1), the commission chief executive must take reasonable steps to consult with the senior executive and his or her chief executive; and
  - (b) a redeployment may be made only with the senior executive's consent.
- (3) The transfer or redeployment—
- (a) may involve a change in the location where the senior executive performs duties; and
  - (b) has effect despite anything in the senior executive's contract of employment.

## **Part 3**                      **Purpose of position of senior officers**

### **116 Purpose**

- (1) Senior officer positions are continued to—
- (a) promote the public service's effectiveness and efficiency; and
  - (b) ensure there is a group of highly skilled public service officers who are capable of development as senior executives.
- (2) Employment as a senior officer is to be directed towards—
- (a) developing a public service-wide perspective; and
  - (b) continuance of the officer's professional development.

*Note—*

For other provisions about senior officers, see chapter 5.

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## **117 Role of commission chief executive**

To help achieve the purposes of senior officer positions, the commission chief executive must make and implement arrangements to facilitate the development of senior officers as senior executives.

# **Chapter 5 Staffing generally**

## **Part 1 Preliminary**

### **118 Application of ch 5**

- (1) Subject to subsections (2) and (3), this chapter does not generally apply to chief executives in their capacity as a public service employee or to senior executives.
- (2) The following provisions apply to chief executives—
  - (a) in their capacity as public service employees—
    - part 2, division 2
    - part 7
    - sections 127, 137 and 180 to 184;
  - (b) in their capacity as persons proposed to be appointed as chief executives—part 6.

*Note—*

Under section 104, a reference in this Act to the chief executive of a chief executive, or to the chief executive of his or her department, is a reference to the Minister.

- (3) The following provisions apply to senior executives—
  - part 2, division 2
  - parts 6 and 7

- sections 127, 137 and 180 to 186.
- (4) Subject to subsections (1) to (3), this chapter applies to all public service employees.

*Note—*

A regulation under section 23 may also apply provisions of this Act to other persons employed in a public service office declared by a regulation under section 21.

## Part 2 Appointment matters

### Division 1 General provisions

#### 119 Appointment

- (1) A chief executive may, by signed notice, appoint public service officers in the chief executive's department.
- (2) Public notice of the appointment must be published in the gazette or in another way the commission chief executive considers appropriate if—
- (a) notice of intention to make an appointment for the relevant duties was publicly notified; or
  - (b) notice of the appointment is required under section 128 or another Act to be publicly notified.
- (3) In this section—  
*appoint* does not include transfer.

#### 120 Secondment

- (1) The chief executive of a department (the *first department*) may—

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- (a) second a public service officer of the department within the first department; or
  - (b) with the approval of the chief executive of another department, second a public service officer of the other department to the first department.
- (2) However, if the secondment is to a lower classification level it may be made only with the officer's consent.
- (3) Public notice of the secondment must be published in the gazette or in another way the chief executive of the first department considers appropriate if—
  - (a) notice of intention to make the secondment for the relevant duties was publicly notified; or
  - (b) notice of the secondment of a person to perform the relevant duties is required under an Act to be publicly notified.
- (4) The chief executive of the first department may cancel the secondment at any time.

## **121 Basis of employment—tenure or contract**

- (1) A directive may provide for the circumstances in which a public service officer may be appointed on contract for a fixed term.
- (2) Appointment as a public service officer is on tenure unless—
  - (a) the officer's chief executive decides the appointment may be on contract for a fixed term; and
  - (b) the chief executive declares the officer's position to be available on contract for a fixed term.
- (3) In making the decision the chief executive must comply with any relevant directive.

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## **122 Basis of employment for contract employment**

- (1) This section applies if a public service officer's appointment is to be on contract for a fixed term.
- (2) The officer must enter into a written contract of employment with the officer's chief executive.

*Notes—*

- 1 Equivalent contracts under the repealed *Public Service Act 1996*, section 70 were commonly called 'section 70 contracts'.
  - 2 For the application of this Act to the equivalent contracts, see section 230.
- (3) However, if the officer holds the appointment on tenure immediately before it is to be on contract for a fixed term, the officer may, but is not required to, enter into a contract with the officer's chief executive relating to the appointment.
  - (4) If subsection (3) applies and the officer elects to not enter a contract of employment relating to the appointment, the officer continues to hold the appointment on tenure without change in the conditions of the appointment.
  - (5) In entering into the contract or fixing the terms of the contract, the chief executive must comply with any relevant directive.
  - (6) Also, the officer's overall employment conditions under the contract must not, on balance, be less than those that the officer would be entitled to if the officer were appointed on tenure.
  - (7) If there is a dispute between the parties to the contract about the application of subsection (6), the IRC may hear and decide the dispute.
  - (8) The conditions of the officer's employment are governed by this Act, any relevant directive and the contract.

## **123 Tenure on ending of particular employment contracts**

- (1) This section applies if—
  - (a) a public service officer is employed on contract; and

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- (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 officer was first employed under the contract or an earlier continuous contract of employment as a public service officer, the officer was employed as an officer on tenure.
- (2) The officer becomes a public service officer employed on tenure.
- (3) The officer is to be employed—
- (a) at the classification level at which the officer would have been employed if the officer had continued in employment as a public service officer on tenure; and
  - (b) on the remuneration to which the officer would have been entitled if the officer had continued in employment as a public service officer on tenure.

#### **124 Contract terminated on acceptance of tenure**

- (1) If a public service officer who is employed on contract accepts employment as a public service 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.

#### **125 Basis of employment on tenure—full-time or part-time**

Appointment as a public service officer in a department on tenure may be on the basis of full-time or part-time employment, as decided by the officer's chief executive.



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## 126 Appointments on probation

- (1) This section applies if a person who is not already a public service officer is appointed as a public service officer on tenure.
- (2) The officer's chief executive may decide that the officer is appointed on probation for the following period from the appointment (the *probationary period*)—
  - (a) generally—3 months;
  - (b) if the officer and the chief executive agree in writing before employment under the appointment to a longer period—the longer period.
- (3) The longer period can not be more than 13 months.
- (4) The chief executive may—
  - (a) by signed notice given to the officer, terminate the officer's employment at any time during the probationary period; or
  - (b) at the end of the probationary period—
    - (i) confirm the appointment; or
    - (ii) extend the probationary period to no more than 13 months; or
    - (iii) by signed notice given to the officer, terminate the employment.
- (5) The appointment is taken to have been confirmed 13 months after the appointment if it has not already been confirmed and the employment has not been terminated.

## 127 Requirement about citizenship etc.

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

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- (b) resides in Australia and has permission or a right to be granted permission, under Commonwealth law, to remain in Australia indefinitely; or
  - (c) is 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 chief executive may, by signed notice, terminate the employment of an officer who is ineligible under subsection (1) to be a public service officer.

## **128 Notification of proposed appointments**

- (1) If a chief executive intends to appoint or second someone to perform duties as a public service officer, the chief executive 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 a provision of an Act or a directive.

## **Division 2 Reappointment of particular election candidates**

### **129 Definitions for div 2**

In this division—

*service with the State* means employment, in any capacity in—

- (a) the public service; or
- (b) the police service; or
- (c) any other office, position or place under the State.

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*the State* includes a board, commission, commissioner, corporation, instrumentality or other person representing the State.

### **130 Request for reappointment**

- (1) This section applies if—
  - (a) a person held an office of service with the State and the office was permanent (the *former office*); and
  - (b) the person resigned from that office to become a candidate for election as any of the following—
    - (i) a senator or a member of the House of Representatives of the Commonwealth Parliament;
    - (ii) a member of the Legislative Assembly; and
  - (c) the person was a defeated candidate at the election.
- (2) The person may ask to be reappointed to the former office.
- (3) However, the request can not be more than 3 months after the return of the writ for the election.
- (4) The request can only be made by notice to the person who has the power to appoint to the former office.

### **131 Dealing with request**

- (1) A person who has made a request under section 130 may—
  - (a) be reappointed to the person's former office mentioned in that section; or
  - (b) be appointed to any other service with the State, whether of the same classification level or a lower classification level as the former office.
- (2) The reappointment may be made despite the person's age.
- (3) Despite the other provisions of this Act or another Act, the merit provisions do not apply for the reappointment.

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- (4) However, subsection (3) does not prevent matters mentioned in the merit provisions from being considered in making a decision on the request.
- (5) In this section—  
*classification* includes rank or grade.  
*merit provisions* means—
  - (a) generally—chapter 1, part 4; or
  - (b) if the former office of the person was as a police officer—the *Police Service Administration Act 1990*, section 5.2.

### **132 Continuity of service**

- (1) This section applies if a person is appointed or reappointed under section 131.
- (2) The continuity of the person's service with the State is taken not to have been broken by resignation from the person's former office.
- (3) However, the period during which the person's service with the State was interrupted by the resignation can not be taken into account for working out the person's total period of service with the State.

## **Part 3 Transfers and redeployment**

### **133 Chief executive's power to transfer or redeploy**

- (1) The chief executive of a department may transfer or redeploy a public service 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, transfer or

redeploy a public service officer of the other department to the first department.

- (3) Despite subsections (1) and (2), a redeployment may be made only with the officer's consent.
- (4) The transfer or redeployment of a public service 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.

#### **134 Consequence if transfer refused**

- (1) If a public service officer is transferred under section 133, the transfer has effect unless the officer establishes reasonable grounds for refusing the transfer to the satisfaction of the officer's chief executive.
- (2) If the officer refuses the transfer after failing to establish reasonable grounds for the refusal to the chief executive's satisfaction, the chief executive may terminate the officer's employment by signed notice given to the officer.
- (3) If the officer establishes reasonable grounds to the chief executive'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.

## **Part 4                      Termination, suspension and    related matters**

### **Division 1                General provisions**

#### **135      Resignation**

- (1) A public service 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.
- (2) The notice takes effect in accordance with its terms and without needing the chief executive's acceptance.

#### **136      Voluntary retirement**

A public service officer or general employee may, by signed notice given to the officer's or employee's chief executive, elect to retire from the public service if—

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

#### **137      Suspension other than as disciplinary action**

- (1) The chief executive of a department may suspend a public service officer from duty if the chief executive reasonably believes the proper and efficient management of the department might be prejudiced if the officer is not suspended.
- (2) However, before suspending the officer, the chief executive must consider all alternate duties that may be available for the officer to perform.

- (3) The period of the suspension can not be more than the period that the chief executive reasonably believes is necessary to avoid the prejudice.
- (4) During the period of the suspension the officer is entitled to normal remuneration, less any amount earned by the officer from alternative employment that the officer engages in during the period.
- (5) For subsection (4), alternative employment does not include employment if—
  - (a) the employee was engaged in the employment at the time of the suspension; and
  - (b) the officer's engaging in the employment was not in contravention of this Act or an obligation imposed on the officer under a code of conduct—
    - (i) approved under the *Public Sector Ethics Act 1994*; or
    - (ii) prescribed under a directive of the commission chief executive.
- (6) The deduction under subsection (4) must not be more than the amount of the officer's normal remuneration during the period of the suspension.
- (7) The continuity of the officer's service as a public service officer is taken not to have been broken only because of the suspension.
- (8) The chief executive may cancel the suspension at any time.
- (9) This section does not limit or otherwise affect section 189.

### **138 Action because of surplus**

- (1) This section applies if the chief executive of a department believes a public service employee is surplus to the department's needs because—

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- (a) more employees are employed in the department than it needs for the effective, efficient 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.

## **Division 2            Removal of statutory office holders    who are term appointees**

### **Subdivision 1        Preliminary**

#### **139    What is a *statutory office***

- (1) A *statutory office* is an office established under an Act to which a person may be appointed only 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.

#### **140    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 particular term 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 the holder of an office—
  - (a) under an Act that provides the holder may or must be removed from office following an address or resolution of the Legislative Assembly; or



- (b) mentioned in schedule 2; or
  - (c) prescribed under a regulation.
- (4) A person appointed to a statutory office is not a term appointee only because, under an Act, the person stops holding the office on reaching a particular age.

## **Subdivision 2      Removal of term appointees**

### **141      Power to remove**

- (1) The Governor in Council may remove a term appointee from office at any time.
- (2) Subsection (1) applies despite another Act or the conditions of the term appointee's appointment or contract of employment.

### **142      Other removal powers not affected**

This subdivision does not stop removal of a term appointee apart from this subdivision.

*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. The person may be removed from the office not only under the Act mentioned, but also under this subdivision.

## **Subdivision 3      Re-employment and entitlements**

### **143      Application of sdiv 3**

This subdivision applies to a person if—

- (a) under section 141, the person is removed from a statutory office; and

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- (b) at the time of the person's first appointment to the statutory office, or to another statutory office that the person held continuously before being first appointed to the statutory office, the person was a public service officer; and
- (c) at that time, the person had been in continuous employment as a public service officer for at least 5 years.

#### **144 Entitlement to public service employment**

The person is entitled to be employed as a public service officer—

- (a) at the classification level at which the person would have been employed if the person had continued in employment as a public service officer; and
- (b) on the remuneration to which the person would have been entitled if the person had continued in employment as a public service officer; and
- (c) for duties appropriate to the person's classification level and qualifications.

#### **145 Commission chief executive's role**

- (1) The commission chief executive has the function of identifying appropriate public service employment in which the person may be employed.
- (2) The commission chief executive may direct a chief executive to employ the person, if the employment is in the chief executive's department.

#### **146 Compensation**

- (1) If the person is employed as a public service officer according to the person's entitlements under this subdivision, the person

is not entitled to additional compensation for being removed from the statutory office.

- (2) Subsection (1) applies despite the conditions of the person's appointment or contract of employment as a term appointee.
- (3) Apart from subsection (1), this division 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.
- (4) 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 5**                      **General and temporary 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 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, only because of the employment, become a public service officer.
- (4) Subsections (1) and (2) are subject to any relevant directive about general employees.

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## **148 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 a public service officer other than a chief executive or 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, only because of the employment, become a public service officer.
- (4) Subsections (1) and (2) are subject to any relevant directive about temporary employees.

## **149 Review of status of temporary employee**

- (1) This section applies at the end of each 3 year period during which a temporary employee has been continuously employed in a department.
- (2) The department's chief executive must, within the period provided for in a commission chief executive directive, decide whether the person's employment in the department is to—
  - (a) continue as a temporary employee; or
  - (b) be as a general employee on tenure or a public service officer.
- (3) In making the decision, the chief executive must consider any criteria for the decision fixed under a directive by the commission chief executive.
- (4) If the chief executive does not make the decision within the period, the chief executive is taken to have decided that the person's employment in the department is to continue as a temporary employee.

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## Part 6                      **Assessing suitability of persons to be engaged in particular employment**

### Division 1                **Preliminary**

#### 150    **Definitions for pt 6**

In this part—

*CCYPCG disqualification order* means a disqualification order made under the *Commission for Children and Young People and Child Guardian Act 2000*, section 126C.

*child-related duties* see section 156.

*CPOPOA disqualification order* means a disqualification order made under the *Child Protection (Offender Prohibition Order) Act 2008*, section 25.

*criminal history report* means a report given under section 154.

*disqualification order* means—

- (a) a CCYPCG disqualification order; or
- (b) a CPOPOA disqualification order.

*engage*, a person, includes—

- (a) appoint, employ, promote, redeploy or second the person within or to a department; and
- (b) allow the person to participate in any of the following in the department—
  - (i) an interchange arrangement within the meaning of section 184;
  - (ii) a work performance arrangement, within the meaning of section 183, in a department; and

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- (c) start training the person in a department as an apprentice or trainee, within the meaning of the *Vocational Education, Training and Employment Act 2000*, chapter 1, part 2.

**investigative information** see the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

**offender prohibition order** see the *Child Protection (Offender Prohibition Order) Act 2008*, schedule.

**part 6 directive** means a ruling that is a directive made for this part.

**police information**, about a person, means the following—

- (a) the person's criminal history within the meaning of the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4;

*Note about the reference to criminal history in paragraph (a)—*

A criminal history under the *Commission for Children and Young People and Child Guardian Act 2000* is not limited to recorded convictions but includes unrecorded convictions and charges.

- (b) investigative information about the person;
- (c) information as to whether the person is or has been—
- (i) a relevant disqualified person; or
  - (ii) the subject of an application for a disqualification order; or
  - (iii) named as the respondent to an application for an offender prohibition order.

**police information report** means a report and other information given under section 160.

**relevant disqualified person** see the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

**relevant duties** see section 151.

*serious offence* see the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

*temporary offender prohibition order* means a temporary order under the *Child Protection (Offender Prohibition Order) Act 2008*.

## Division 2                      Relevant duties

### 151      Application of div 2

- (1) This division applies to duties to be performed in a department if, under a part 6 directive, the department's chief executive decides—
  - (a) that, because of the nature of the particular duties, it may be necessary to have regard to the criminal history of anyone engaged to perform the duties to ensure the person so engaged is suitable to perform them; and
  - (b) the particular duties are not likely to involve child-related duties.
- (2) Duties to which this division applies are *relevant duties*.
- (3) This division is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* but does not limit any other law, or other provision of this Act, under which a person's criminal history may be obtained.

### 152      Chief executive may decide to obtain criminal history

- (1) If the chief executive proposes to engage a person to perform relevant duties, the chief executive may, under a part 6 directive, ask the person for written consent for the chief executive to obtain the person's criminal history.
- (2) Subsection (1) applies 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.

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### **153 Failure to consent to obtaining criminal history**

- (1) This section applies if the person does not consent, or withdraws his or her consent, to the chief executive obtaining the person's criminal history.
- (2) If the person is a public service employee in the department who is engaged in performing relevant duties, the chief executive must ensure the person does not perform relevant duties.
- (3) If the person is not a public service employee in the department who is engaged in performing relevant duties, the chief executive is not required to consider the person for engagement to perform the relevant duties.

### **154 Obtaining criminal history with consent**

- (1) If the person gives written consent to the chief executive obtaining the person's criminal history, the chief executive may ask the police commissioner for a written report about the person's criminal history.
- (2) The request may include the following—
  - (a) the person's name and any other name the chief executive believes the person may use or may have used;
  - (b) the person's date and place of birth, gender and address.
- (3) The police commissioner must give the requested report to the chief executive.

*Note—*

See sections 166 and 167 for when the police commissioner need not give the requested report.

### **155 Assessment of suitability using criminal history report**

After the person's criminal history report is given to the chief executive, the chief executive must, under a part 6 directive, consider the person's criminal history in making an



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assessment about the person's suitability for engagement to perform the relevant duties.

## **Division 3                      Child-related duties**

### **156      Application of div 3**

- (1) This division applies if, under a part 6 directive, the chief executive of a department decides that duties to be performed in the department are likely to involve providing dedicated services or activities if—
  - (a) a child is the primary or significant client or children are the primary or significant client group; or
  - (b) the nature of contact with a child or children, and the context in which that contact happens, creates an unacceptable level of risk for the child or children.
- (2) Duties to which this division applies are *child-related duties*.
- (3) This division applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986* but does not limit any other law, or other provision of this Act, under which information that is police information may be obtained.

### **157      Chief executive must obtain police information in particular circumstances**

- (1) If the chief executive proposes to engage a person in the department to perform child-related duties, the chief executive must, under a part 6 directive, ask the person for written consent for the chief executive to obtain police information about the person.
- (2) Subsection (1) applies even if the person is a public service employee at the time the chief executive proposes to engage the person to perform the child-related duties.
- (3) The chief executive must, under a part 6 directive and at least every 2 years, ask each person in the department employed in

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child-related duties for written consent for the chief executive to obtain police information about the person.

- (4) However, the chief executive need not make a request under subsection (1) or (3) if satisfied that the person is prescribed under a regulation as an exempt person.

### **158 Failure to consent to obtaining police information**

- (1) This section applies if the person does not consent, or withdraws his or her consent, to the chief executive obtaining police information about the person.
- (2) If the person is a public service employee in the department who is engaged in performing child-related duties, the chief executive must ensure the person does not perform child-related duties.
- (3) If the person is not a public service employee in the department who is engaged in performing child-related duties, the chief executive is not required to consider the person for engagement to perform the child-related duties.

### **159 Obtaining police information with consent**

- (1) If the person gives written consent to the chief executive obtaining police information about the person, the chief executive may ask the police commissioner for a written report about the person's police information.
- (2) The request may include the following—
  - (a) the person's name and any other name the chief executive believes the person may use or may have used;
  - (b) the person's date and place of birth, gender and address.

### **160 Information to be given by police commissioner**

- (1) This section applies if a chief executive asks the police commissioner for a written report about a person's police information.

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- (2) The police commissioner must, under this section, give—
- (a) the requested report to the chief executive; and
  - (b) if the chief executive asks for information as mentioned in subsection (5)—the information mentioned in that subsection.

*Note—*

See sections 166 and 167 for when the police commissioner need not give the requested report.

- (3) The police commissioner must give the chief executive the following information about a person who is or has been a relevant disqualified person—
- (a) that the person is or has been a relevant disqualified person;
  - (b) if the person is or has been subject to a disqualification order—the duration and details of the disqualification order;
  - (c) if the person is or has been subject to an offender prohibition order—
    - (i) a brief description of the conduct that gave rise to the order; and
    - (ii) the duration and details of the order, including whether it is or was a temporary offender prohibition order, a final offender prohibition order or a registered corresponding order.
- (4) The police commissioner must give the chief executive the following information about a person who is or has been the subject of an application for a disqualification order or named as the respondent to an application for an offender prohibition order and the order was not made—
- (a) that the person is or has been the subject of an application for a disqualification order or named as the respondent for an application for an offender prohibition order and the order was not made;

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- (b) the reasons why the application was made;
  - (c) the reasons why the order was not made;
  - (d) if the application was for an offender prohibition order and the magistrate or court hearing the application decided not to make a CPOPOA disqualification order for the person—the reasons why the CPOPOA disqualification order was not made.
- (5) If the police information report about the person includes information about a conviction, charge or investigative information, the chief executive may ask the police commissioner for a brief description of the circumstances of the conviction, charge or investigative information.
- (6) The police commissioner need not disclose investigative information about the person to the chief executive under this section if the police commissioner is reasonably satisfied that giving the information may do any of the following—
- (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (c) endanger a person's life or physical safety;
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (7) If the police commissioner gives investigative information about the person to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that—
- (a) the police commissioner has decided that information about the person is investigative information; and
  - (b) investigative information has been given to the chief executive.

(8) In this section—

*final offender prohibition order* means a final order under the *Child Protection (Offender Prohibition Order) Act 2008*.

*registered corresponding order* see the *Child Protection (Offender Prohibition Order) Act 2008*, schedule.

### **161 Decision by police commissioner that information is investigative information**

- (1) This section applies if the police commissioner decides that information about a person is investigative information.
- (2) The person may appeal to a Magistrates Court about the decision.
- (3) However, an appeal under subsection (2) may only be made within 14 days after the person is given notice under section 160(7).
- (4) The chief executive and police commissioner must be given a copy of the notice of appeal.
- (5) A Magistrates Court hearing the appeal is to decide afresh whether information given to the chief executive as investigative information about a person is investigative information.
- (6) A person who is the relevant complainant under the *Commission for Children and Young People and Child Guardian Act 2000*, section 121A must not be asked or called on to give evidence in person before the court.
- (7) Subsection (6) does not prevent documentary evidence being tendered and received in evidence by the court.
- (8) After hearing the appeal, the court may confirm or set aside the decision and the registrar of the court is to give the person notice of the decision.
- (9) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under the *Commission for Children and Young People and Child*

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*Guardian Act 2000*, when the police commissioner made the decision.

- (10) If, on appeal, the court sets aside the police commissioner's decision that information given to the chief executive about a person is investigative information, the chief executive must reassess the person's suitability to be engaged or to continue to be engaged to perform child-related duties.

## **162 Using police information report**

- (1) This section applies after a police information report about the person is given to the chief executive.
- (2) The chief executive must, under a part 6 directive, consider the police information in making an assessment about the person's suitability for engagement, or continued engagement, to perform child-related duties.

## **163 Decision about suitability of person after considering police information report**

- (1) This section applies in relation to a decision of a chief executive of a department about whether a person is suitable for engagement or continued engagement to perform child-related duties in the department.
- (2) Subject to subsection (3), the chief executive must decide the person is suitable if the chief executive—
  - (a) is not aware of any police information about the person; or
  - (b) is not aware of a conviction of the person for any offence but is aware that there is 1 or more of the following about the person—
    - (i) investigative information;
    - (ii) a charge for an offence other than a disqualifying offence;

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- (iii) a charge for a disqualifying offence that has been dealt with other than by a conviction; or
  - (c) is aware of a conviction of the person for an offence other than a serious offence.
- (3) The chief executive must decide the person is suitable for engagement or continued engagement to perform child-related duties under subsection (2)(b) or (c) unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to make that decision.
- (4) If the chief executive is satisfied under subsection (3) that it is an exceptional case, the chief executive must not decide the person is suitable for engagement or continued engagement to perform child-related duties.
- (5) Subject to subsections (2) and (6), the chief executive must decide the person is not suitable for engagement or continued engagement to perform child-related duties if the chief executive is aware the person—
- (a) is a relevant disqualified person, other than only because the person is subject to a temporary offender prohibition order; or
  - (b) is a person, other than a person mentioned in paragraph (a), who has at any time been a relevant disqualified person; or
  - (c) has been convicted of a serious offence.
- (6) The chief executive is required to decide the person is not suitable for engagement or continued engagement to perform child-related duties under subsection (5)(b) or (c) unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of children for the chief executive to make that decision.
- (7) If the chief executive is satisfied under subsection (6) that it is an exceptional case, the chief executive must decide the person is suitable for engagement or continued engagement to perform child-related duties.

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- (8) Decisions under this section by the chief executive must be made under a part 6 directive.

## **164 Decision-making in relation to discretionary matters**

- (1) This section applies if, under a part 6 directive, a chief executive is deciding whether or not, in relation to a person, there is an exceptional case as mentioned in section 163(3) or (6).
- (2) If the chief executive is aware that the person has been convicted of, or charged with, an offence, the chief executive must have regard to the following—
- (a) in relation to the commission, or alleged commission, of an offence by the person—
    - (i) whether it is a conviction or a charge; and
    - (ii) whether the offence is a serious offence and, if it is, whether it is a disqualifying offence; and
    - (iii) when the offence was committed or is alleged to have been committed; and
    - (iv) the nature of the offence; and
    - (v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order, the court's reasons for its decision;
  - (b) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to whether or not the person is suitable for engagement or continued engagement to perform child-related duties.
- (3) If the chief executive is aware of investigative information about the person, the chief executive must have regard to the following—



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- (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
  - (b) anything else relating to the commission of the acts or omissions that the chief executive reasonably considers relevant to the assessment of the person.

**165 Chief executive may enter into arrangements about police information**

- (1) A chief executive may, under a part 6 directive, enter into an arrangement with another chief executive, or an entity prescribed under a regulation, in relation to a matter under this division.
- (2) The chief executive may delegate his or her powers under this division to a person under the arrangement.

**Division 4 Provisions relating to reports under divisions 2 and 3**

**166 Duty of police commissioner relating to requests for criminal history or police information**

The duty imposed on the police commissioner under this part to comply with a request to give the chief executive a written report about a person's criminal history or police information, or otherwise to give information under section 169, applies only to information in the police commissioner's possession or to which the police commissioner has access.

**167 Criminal history or police information no longer required to be obtained**

- (1) This section applies if—
  - (a) a chief executive has, under section 154 or 159, requested the police commissioner to give the chief

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executive a written report about a person's criminal history or police information; and

- (b) the chief executive decides the criminal history or police information is no longer required.
- (2) The chief executive must, by written notice, tell the police commissioner that the requested report is no longer required.
- (3) If the police commissioner is notified as mentioned subsection (2) before the police commissioner has given a report to the chief executive, the police commissioner must not give it to the chief executive.

**168 Police commissioner not to use information given as part of request except for particular circumstances**

- (1) Information given to the police commissioner by a chief executive under section 154(2) or 159(2) about a person must not be accessed, disclosed or used for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.
- (2) However, subsection (1) does not apply to information the police commissioner obtained before the chief executive gave the information to the police commissioner.

**169 Destruction of reports and notices**

- (1) This section applies to any of the following if, under a part 6 directive, it is no longer required to be kept—
  - (a) a criminal history report or police information report about a person after the chief executive who requested the report makes an assessment about the person under division 2 or 3;
  - (b) a notice given to a chief executive under section 170.
- (2) The chief executive must destroy the report, the notice and any other document required by the directive to be destroyed.

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## **Division 5                      Other matters including    notifications, offences and rulings**

### **170      Prosecuting authority to notify chief executive about                  committal, conviction etc.**

- (1) This section applies if the police commissioner or the director of public prosecutions (a *prosecuting authority*) is aware that a person is a public service employee in a department and, after the commencement of this section, any of the following happens to the person—
  - (a) the person is charged with a relevant offence;
  - (b) a disqualification order or offender prohibition order is made against the person;
  - (c) a decision is made, as mentioned in the *Commission for Children and Young People and Child Guardian Act 2000*, section 121A, not to charge the person who is an investigated person under that section;
  - (d) the person is the subject of an application for a disqualification order;
  - (e) the person is named as the respondent to an application for an offender prohibition order.
- (2) If the person is committed by a court for trial for a relevant offence, the prosecuting authority must, within 7 days after the committal, give notice to the department's chief executive of the following—
  - (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the committal;
  - (e) the court to which the person was committed.
- (3) If the person is convicted before a court of a relevant offence, the prosecuting authority must, within 7 days after the

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conviction, give notice to the department's chief executive of the following—

- (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the conviction;
  - (e) the sentence imposed by the court.
- (4) If a disqualification order or offender prohibition order is made against the person, the prosecuting authority must, within 7 days after the order is made, give notice to the department's chief executive of the following—
- (a) the person's name;
  - (b) the court;
  - (c) particulars of the order;
  - (d) the date of the order;
  - (e) the order made by the court.
- (5) If the person is convicted as mentioned in subsection (3), or an order is made as mentioned in subsection (4), and the person has appealed against the conviction or making of the order, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give notice to the department's chief executive of the following—
- (a) the person's name;
  - (b) particulars of the offence or order;
  - (c) the date of the decision or other ending of the appeal;
  - (d) if the appeal was decided—
    - (i) the court in which it was decided; and
    - (ii) particulars of the decision.

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- (6) If the prosecution for the relevant offence ends without the person being convicted of the offence, the prosecuting authority must, within 7 days after the prosecution process ends, give notice to the chief executive about the following—
- (a) the person's name;
  - (b) if relevant, the court in which the prosecution process ended;
  - (c) particulars of the offence;
  - (d) the date the prosecution process ended.
- (7) For subsection (5), the prosecution process ends if—
- (a) an indictment was presented against the person but a nolle prosequi is entered on the indictment or the person is acquitted; or
  - (b) the prosecution process has otherwise ended.
- (8) If the police commissioner gives investigative information about the person to a chief executive under this section, the police commissioner must give notice, in the approved form, to the person that—
- (a) the police commissioner has decided that information about the person is investigative information; and
  - (b) investigative information has been given to the chief executive.
- (9) In this section—
- relevant offence* means—
- (a) an indictable offence; or
  - (b) a disqualifying offence that is not an indictable offence.

## **171 False or misleading statements in consent**

- (1) A person must not give a chief executive a consent as mentioned in section 152 or 157, or another document for this

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part, that the person knows contains information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) It is enough for a complaint for an offence against subsection (1) to state the information was ‘false or misleading’ to the person’s knowledge, without specifying which.

## **172 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 or police information, including, for example, a criminal history report or police information report.
- (2) The person must not disclose the acquired 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 acquired 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 relevant duties or child-related duties in relation to which the information or document were acquired; 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—

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*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 in the department.

**173 Commission chief executive may make rulings for this part**

- (1) The commission chief executive may make rulings for this part.
- (2) Without limiting subsection (1), a directive made 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; and
  - (b) a reasonable opportunity to be given to a person to make written representations about any of the following before an adverse decision relating to the person is made—
    - (i) a criminal history report;
    - (ii) a police information report;
    - (iii) a decision of a chief executive about whether or not there is an exceptional case for section 163; and
  - (c) in relation to child-related duties—a decision-making process that, so far as practicable, is consistent with relevant provisions of the *Commission for Children and Young People and Child Guardian Act 2000*.
- (3) In this section—

*adverse decision*, relating to a person, means a decision about the person's suitability for engagement or continued engagement to perform—

  - (a) 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; or

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- (b) child-related duties, other than a decision that the person is suitable for engagement to perform the child-related duties.

## **Part 7                      Mental or physical incapacity**

### **174      Application of pt 7**

This part applies to a public service employee if—

- (a) the employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing his or her duties satisfactorily; and
- (b) the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

### **175      Chief executive may require medical examination**

The chief executive may—

- (a) appoint a doctor to examine the employee and give the chief executive a written report on the examination; and
- (b) require the employee to submit to the medical examination.

### **176      Employee not to be given sick leave if requirement not complied with**

The employee must not be given sick leave for any period during which the employee fails to comply with the requirement.



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## **177 Medical examination report**

- (1) The report on the medical examination must include the examining doctor's opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance.
- (2) If the doctor considers the employee has an illness or disability mentioned in subsection (1), the report must also include the doctor's opinion as to the following—
  - (a) the likely direct or indirect effect of the illness or disability on the employee's performance;
  - (b) an estimate of how long the illness or disability or its effects are likely to last;
  - (c) whether or not disclosing the information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing.
- (3) If the doctor's opinion is that the disclosure will not be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must give the employee a copy of the report as soon as practicable after receiving it.
- (4) If the doctor's opinion is that the disclosure might be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must not disclose the contents of the report to the employee.
- (5) However, if asked by the employee in writing, the chief executive must make the disclosure to another doctor nominated by the employee in the request.

## **178 Action following report**

- (1) If, after considering the report of the medical examination, the chief executive is reasonably satisfied the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability, the chief executive may—
  - (a) transfer or redeploy the employee; or

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- (b) if it is not reasonably practicable to transfer or redeploy the employee—retire the employee from the public service.
- (2) Subsection (1) does not limit the action that may be taken relating to the employee.

### **179 Record of requirement and report**

- (1) The chief executive must keep a record of—
- (a) the requirement; and
  - (b) the report on the medical examination.
- (2) If the chief executive considers it necessary to protect the employee's interests, the chief executive may keep the record separate from other records about the employee.

## **Part 8 Miscellaneous provisions**

### **180 Requirement to give evidence of age**

A public service employee must, within 1 month after starting employment in the public service, give the employee's chief executive—

- (a) a certified copy or certified extract of the employee's birth certificate; or
- (b) if it is not practicable to obtain the copy or extract, another document the chief executive considers satisfactorily establishes the employee's age.

### **181 Requirement to give notice of charge or conviction for indictable offence**

- (1) This section applies if a public service employee is—

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- (a) charged with an indictable offence; or
  - (b) convicted by a court of an indictable offence.
- (2) The employee must give the employee's chief executive a notice stating—
- (a) if the employee has been charged with an indictable offence—
    - (i) that the employee has been charged; and
    - (ii) the details of the alleged offence; or
  - (b) if the employee has been convicted of an indictable offence—
    - (i) that the employee has been convicted; and
    - (ii) the details of the offence; and
    - (iii) the penalty imposed on the employee.
- (3) The notice must be given—
- (a) if the employee has been charged with an indictable offence—immediately after the employee is charged; or
  - (b) if the employee has been convicted of an indictable offence—immediately after the employee is convicted.
- (4) In this section—

*convicted* includes a finding of guilt, whether or not a conviction is recorded.

*indictable offence* means an offence for which a charge may be laid by indictment or an equivalent process, whether that is the only, or an optional, way to lay a charge of the offence.

## **182 Confidentiality of private information contained in notice**

- (1) This section applies to a person if—
- (a) the person is or has been a public service employee; and
  - (b) in that capacity, the person has or had access to, or custody of, a notice given under section 181; and

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- (c) information contained in the notice is not publicly available.
- (2) The person must not—
- (a) make a record of the information; or
  - (b) whether directly or indirectly, divulge or communicate the information; or
  - (c) use the information to benefit any person.
- Maximum penalty—100 penalty units.
- (3) However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used—
- (a) to the extent necessary to perform the person’s functions under or relating to this Act; or
  - (b) with the consent of the person who gave the notice; or
  - (c) as required or permitted by law.

### **183 Work performance arrangements**

- (1) A chief executive may enter into, and give effect to, an arrangement (a *work performance arrangement*) under which—
- (a) a public service employee employed in a department performs work for another entity; or
  - (b) a person employed by or within another entity performs work for a department.

*Examples of another entity—*

- another government entity
- An entity of the Commonwealth or another State, including, for example, any of the following—
  - (a) a department of government, or part of a department of government, of the Commonwealth or other State;
  - (b) an entity, or part of an entity, corresponding to a public service office;

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- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under a law of the jurisdiction or under an authorisation of the Commonwealth or other State for its public or other purposes;
  - (d) a part of an entity mentioned in paragraph (c).
    - a private or public company
- (2) A work performance arrangement must be made with the chief executive of the other department or the appropriate authority of the other entity.
- (3) A work performance 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 someone else to any office for the arrangement; and
  - (b) for the authorising of a public service employee or someone else to exercise any powers for the arrangement; and
  - (c) for 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.

## 184 Interchange arrangements

- (1) A chief executive may enter into, and give effect to, an arrangement (an *interchange arrangement*) under which—
- (a) a public service employee employed in a department performs duties in another entity; or
  - (b) a person employed by or within another entity performs duties in a department.

*Note—*

For examples of other entities, see section 183(1), examples.

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- (2) An interchange arrangement must be made with the chief executive of the other department or the appropriate authority of the other entity.
- (3) An interchange arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.

### **185 Declaration of interests**

- (1) The chief executive of a department may direct a person employed in the department to prepare and give the chief executive a statement about the employee's interests.
- (2) The statement must include the information required under a directive of the commission chief executive.
- (3) Subsections (4) and (5) apply if—
  - (a) a change to the employee's interests happens after the giving of the statement; and
  - (b) the change is of a type prescribed under a directive of the commission chief executive.
- (4) The chief executive may direct the employee to give the chief executive a revised version of the statement.
- (5) The revised version must—
  - (a) be given as soon as possible after the relevant facts about the change come to the employee's knowledge; and
  - (b) comply with subsection (2).
- (6) A direction under this section may—
  - (a) be given whenever the chief executive considers it necessary, because of the employee's duties and responsibilities; and
  - (b) require the statement, or revised version, to be given—

- (i) to the chief executive or someone nominated by the chief executive; or
- (ii) within a stated period or at stated intervals.

## **186 Conflicts of interest**

- (1) If a public service employee, other than a chief executive, 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 relating 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 employed in the department to resolve a conflict or possible conflict between an interest of the employee and the employee's duties.

# **Chapter 6 Disciplinary action for public service officers**

## **187 Grounds for discipline**

- (1) A public service officer's chief executive may discipline the officer if the chief executive is reasonably satisfied the officer has—
  - (a) performed the officer's duties carelessly, incompetently or inefficiently; or

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- (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 a public service officer by a responsible person; 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 an obligation imposed on the person under a code of conduct—
  - (i) approved under the *Public Sector Ethics Act 1994*; or
  - (ii) prescribed under a directive of the commission chief executive.

(2) In this section—

***misconduct*** means—

- (a) inappropriate or improper conduct in an official capacity; or
- (b) inappropriate 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

***responsible person***, for a direction, means a person with authority to give the direction, whether the authority derives from this Act or otherwise.

## **188 Disciplinary action that may be taken**

- (1) In disciplining a public service officer, the officer's chief executive may take the action, or order the action be taken,



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*(disciplinary action)* that the chief executive considers reasonable in the circumstances.

*Examples of disciplinary action—*

- termination of employment
  - reduction of classification level and a consequential change of duties
  - transfer or redeployment to other public service employment
  - forfeiture or deferment of a remuneration increment or increase
  - reduction of remuneration level
  - imposition of a monetary penalty
  - if a penalty is imposed, a direction that the amount of the penalty be deducted from the officer's periodic remuneration payments
  - a reprimand
- (2) However, a monetary penalty can not be more than the total of 2 of the officer's periodic remuneration payments.
- (3) Also, an amount directed to be deducted from any particular periodic remuneration payment of the officer—
- (a) must not be more than half of the amount payable to or for the officer in relation to the payment; and
  - (b) must not reduce the amount of salary payable to the officer in relation to the period to less than—
    - (i) if the officer has a dependant—the guaranteed minimum wage for each week of the period; or
    - (ii) otherwise—two-thirds of the guaranteed minimum wage for each week of the period.
- (4) In acting under subsection (1), the chief executive must comply with this Act and any relevant directive of the commission chief executive.
- (5) An order under subsection (1) is binding on anyone affected by it.

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### **189 Suspension of public service officer liable to discipline**

- (1) The chief executive may suspend a public service officer from duty if the chief executive reasonably believes the officer is liable to discipline under a disciplinary law.
- (2) The chief executive may cancel the suspension at any time.

### **190 Procedure for disciplinary action**

- (1) In disciplining or suspending a public service officer, a chief executive must comply with this Act, any relevant directive of the commission chief executive, and the principles of natural justice.
- (2) However, natural justice is not required if the suspension is on normal remuneration.

### **191 Effect of suspension from duty**

- (1) This section applies to a public service officer suspended from duty under this chapter unless the officer's chief executive decides otherwise.
- (2) During the period of the suspension the officer is entitled to normal remuneration, less any amount earned by the officer from alternative employment that the officer engages in during the period.
- (3) For subsection (2), alternative employment does not include employment if—
  - (a) the employee was engaged in the employment at the time of the suspension; and
  - (b) the officer's engaging in the employment was not in contravention of this Act or an obligation imposed on the officer under a code of conduct—
    - (i) approved under the *Public Sector Ethics Act 1994*; or
    - (ii) prescribed under a directive of the commission chief executive.

- (4) The deduction under subsection (2) must not be more than the amount of the officer's normal remuneration during the period of the suspension.
- (5) The continuity of the officer's service as a public service officer is taken not to have been broken only because of the suspension.

## **192 Additional procedures for suspension or termination**

- (1) If a chief executive decides to suspend or terminate the employment of a public service officer, the chief executive must give the officer notice of the suspension or termination.
- (2) The notice must state—
  - (a) for a suspension—
    - (i) when the suspension starts and ends; and
    - (ii) the remuneration to which the officer is entitled for the period of the suspension, under a decision mentioned in section 191(1) or, if no decision has been made under section 191(1), under section 191(2); and
    - (iii) the effect that alternative employment may, under section 191, have on the entitlement; or
  - (b) for a termination—the day when it takes effect.

## **Chapter 7      Appeals and reviews**

### **Part 1            Appeals to the commission                          chief executive**

#### **Division 1        Right of appeal**

##### **193      Appeals to commission chief executive**

A person may appeal to the commission chief executive against a decision if—

- (a) an appeal may be made against the decision, under section 194; and
- (b) the person is entitled to appeal against the decision under section 196.

##### **194      Decisions against which appeals may be made**

- (1) An appeal may be made to the commission chief executive 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 a public service officer (a *promotion decision*);
  - (d) a decision to transfer a public service officer (a *transfer decision*);
  - (e) a decision under section 149 that a temporary employee's employment in a department is to continue as a temporary employee;

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- (f) a decision about anything else against which another Act allows a person to appeal to the commission chief executive.
- (2) However, an appeal can not be made against a decision if section 195 applies to the decision.

### **195 Decisions against which appeals can not be made**

- (1) A person can not appeal to the commission chief executive 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 a public service officer employed on probation;
  - (f) a decision about the classification level of employment, unless the decision is declared under a directive of the commission chief executive to be a decision against which an appeal may be made;
  - (g) a decision to promote, transfer, redeploy or second a person as a chief executive, senior executive or senior officer;
  - (h) a decision mentioned in section 161(1);  
*Editor's note—*  
section 161 (Decision by police commissioner that information is investigative information)
  - (i) 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.

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- (3) A person can not appeal against a promotion decision if—
- (a) the relevant public service 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 the commission, a commissioner or a staff member of the commission; or
  - (b) it is a matter that has been heard by the IRC.

*Note—*

Under section 215, the IRC has jurisdiction to hear and decide a matter mentioned in this subsection.

- (5) In this section—
- non-appealable appointment*** means an appointment—
- (a) for which the commission chief executive is satisfied merit in selection processes is sufficiently protected by ways other than an appeal under this part; and
  - (b) that the commission chief executive has declared by gazette notice to be an appointment against which an appeal may not be made.

## 196 Who may appeal

The following persons may appeal against the following decisions to the commission chief executive—

- (a) for a decision mentioned in section 194(1)(a)—a public service officer aggrieved by the decision if the officer is entitled to appeal under a directive of the commission chief executive;
- (b) for a decision mentioned in section 194(1)(b)—a public service officer aggrieved by the decision to discipline

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- the officer if the officer is entitled to appeal under a directive of the commission chief executive;
- (c) for promotion decision—a public service officer aggrieved by the decision who is entitled to appeal under a directive of the commission chief executive;
  - (d) for a transfer decision—the public service officer the subject of the transfer;
  - (e) for a decision mentioned in section 194(1)(e)—the temporary employee the subject of the decision;
  - (f) for a decision mentioned in section 194(1)(f)—the person the other Act allows to appeal.

## **Division 2                      Appeal procedures**

### **197      Starting an appeal**

- (1) An appeal to the commission chief executive may be started only by giving the commission chief executive a notice (an *appeal notice*) stating—
  - (a) details identifying the decision appealed against; and
  - (b) reasons for the appeal.
- (2) An appeal notice must be given and actually received by the commission chief executive before 5:00p.m. on the day that is 21 days after—
  - (a) for a promotion decision—the day the decision is publicly notified; or
  - (b) otherwise—the day the appellant received notice of the decision appealed against.
- (3) However, the commission chief executive may at any time extend the time for giving an appeal notice.

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## **198 Notice by commission chief executive of appeal**

- (1) As soon as possible after receiving an appeal notice under section 197, the commission chief executive must give notice of its receipt to the appellant.
- (2) The commission chief executive must give a copy of an appeal notice to—
  - (a) each other party to the appeal; and
  - (b) for a relocation decision—the chief executive of the department or the head of the public service office in which the promoted or transferred officer was employed immediately before the promotion or transfer took effect.
- (3) In this section—

*relocation decision* means a promotion decision or transfer decision involving a public service officer's promotion or transfer to employment in a different department or public service office to the one in which the officer was employed immediately before the promotion or transfer.

## **199 Stay of operation of decisions etc.**

- (1) The commission chief executive may stay a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be given on conditions; and
  - (b) operates for the period fixed by the commission chief executive; and
  - (c) may be revoked or amended by the commission chief executive.
- (3) The period of a stay must not extend past the time when the commission chief executive decides the appeal.



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- (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.

**200 Commission chief executive may decline to hear particular appeals**

- (1) The commission chief executive may decline to hear an appeal against a decision mentioned in section 194(1)(a) unless he or she is satisfied the appellant has used grievance procedures required to be used under a directive.
- (2) The commission chief executive may decline to hear an appeal against a promotion decision unless he or she is satisfied, by oral or written submissions, that the appellant has an arguable case for the appeal.
- (3) The commission chief executive may decline to hear an appeal against any 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) he or she 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) However, before declining to hear an appeal under subsection (3)(b), the commission chief executive must ask the appellant to establish by oral or written submissions that the appellant has an arguable case for the appeal.

**201 Appeal is by way of review**

- (1) The commission chief executive must decide an appeal by reviewing the decision appealed against.

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- (2) For an appeal against a decision about a promotion or disciplinary action, the commission chief executive must decide the appeal on the basis of the evidence available to the decision maker when the decision was made.
- (3) However, subsection (2) does not prevent the commission chief executive from allowing other evidence to be taken into account.

## **202 Commission chief executive's functions on appeal**

In hearing and deciding an appeal, the commission chief executive 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.

## **203 Commission chief executive may decide procedures**

- (1) The commission chief executive—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform himself or herself in the way, and to the extent, he or she 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 commission chief executive must comply with  
this part and any relevant procedural rules prescribed under a  
regulation.

#### **204 Representation of parties**

- (1) A party to an appeal may appear personally or by an agent.
- (2) 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 so acting, the person would be subject to the *Legal  
Profession Act 2007*.
- (3) Also, a party to an appeal about a promotion decision may be  
represented by an agent only with the commission chief  
executive's leave.

#### **205 Commission chief executive's powers on appeal**

- (1) In hearing an appeal, the commission chief executive 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.

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- (2) The commission chief executive may administer an oath or affirmation to a person appearing as a witness.

## **206 Withdrawing an appeal**

- (1) An appellant may withdraw the appeal by notice to the commission chief executive.
- (2) However, the notice may only be given before the commission chief executive gives the appellant notice of the decision on the appeal.
- (3) The commission chief executive must give notice of the withdrawal to the other parties to the appeal and to anyone else he or she considers has an interest in the appeal.

## **207 Lapse of appeal**

An appeal lapses if the appellant stops being—

- (a) a public service employee; or
- (b) a person who may appeal against the decision the subject of the appeal.

## **Division 3 Deciding appeal**

### **208 Decision on appeal**

- (1) In deciding an appeal, the commission chief executive 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 decision on appeal and any directions permitted under a directive of the commission chief executive that he or she considers appropriate; or
  - (c) for another appeal—set the decision aside, and substitute another decision or return the issue to the

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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 chief executive may set the decision aside only if he or she finds that the recruitment or selection process was deficient.
- (3) A decision on an appeal must be written and state the reasons for the decision.
- (4) The commission chief executive must give a copy of a decision on an appeal to the parties to the appeal as soon as possible after it is available.

## **209 Criteria for deciding process deficiency**

For section 208(2), the commission chief executive must have regard to whether or not the selection or recruitment process complied with—

- (a) generally—this Act, a regulation or a directive of the commission chief executive; and
- (b) for persons employed other than under this Act—the relevant Act or a regulation under that Act.

## **210 Reopening decided appeals**

The commission chief executive may reopen an appeal that has been decided if he or she is satisfied there are compelling reasons for hearing and deciding it again.

## **Division 4 Miscellaneous provisions**

### **211 Attendance at an appeal is part of an employee's duties**

Attendance at an appeal proceeding is part of a public service employee's duties if the employee—

- (a) is a party to the appeal; or

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- (b) is requested or required by the commission chief executive to attend the proceeding.

**212 Public service employee's entitlements for attending appeal as part of duties**

- (1) A public service employee is entitled to be paid travelling expenses and allowances reasonably incurred in attending an appeal proceeding as part of the employee's duties.
- (2) The amount of the expenses and allowances is to be decided by the commission chief executive.
- (3) However, this section does not apply to an employee who is the appellant and is suspended from duty without pay, unless the employee's appeal is allowed.

**213 Entitlement of non-public service employees**

- (1) This section applies if the commission chief executive asks a person, other than a public service employee, to attend an appeal proceeding.
- (2) The person is entitled to be reimbursed for any expenses reasonably incurred by the person in attending the proceeding.
- (3) The amount of the expenses is to be decided by the commission chief executive.

**214 Relevant department's or public service office's financial obligation for appeal**

- (1) The department or public service office whose decision is appealed against must pay—
  - (a) the costs of the appeal, including the commission chief executive's costs incurred for, or attributable to, the appeal; and
  - (b) the travelling expenses and allowances payable under section 212; and

- (c) the amount of any expenses required to be reimbursed under section 213.
- (2) An amount payable for costs under subsection (1)(a) is the amount the commission chief executive considers is reasonable that is no more than the actual costs.
- (3) The chief executive of the department or head of the public service office must ensure subsection (1) is complied with as soon as practicable.

## **Part 2                      Alternate jurisdiction**

### **215      Jurisdiction of IRC for industrial matters**

- (1) This section is to be read in conjunction with the *Industrial Relations Act 1999*.
- (2) The IRC may hear and decide, as an industrial matter, an application by a person aggrieved by a matter mentioned in section 195(4).

*Note—*

Section 195(4) is about decisions that can not be appealed against because the appeal would involve the commission, a commissioner or a staff member of the commission, or a matter that has been heard by the IRC.

- (3) The IRC can not hear or decide, as an industrial matter, an application by a person about a decision against which the person has appealed to the commission chief executive.

## Part 3 Exclusion of particular matters from jurisdiction under other Acts

### 216 Application of pt 3

(1) This part applies to the following matters (each an *excluded matter*)—

- (a) a decision to appoint, or not to appoint, a person under this Act or as a statutory office holder;
- (b) the contract of employment of, or the application of this Act or a provision of this Act to, any of the following—
  - (i) a commissioner;
  - (ii) a chief executive;
  - (iii) a senior executive;
  - (iv) a senior officer;
  - (v) another public service officer whose employment is on contract for a fixed term;
- (c) the removal of a statutory office holder under this Act.

(2) In this section—

*decision* includes a purported decision affected by jurisdictional error.

### 217 Exclusion for Industrial Relations Act 1999

(1) An excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 1999*.

(2) However, subsection (1)—

- (a) is subject to section 122(7); and
- (b) does not apply for a dismissal of a public service officer who is employed on tenure; and



- 
- (c) has no effect on the *Industrial Relations Act 1999*, section 276.

*Editor's notes—*

- section 122 (Basis of employment for employment)
  - *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts)
- (3) Without limiting subsection (1), industrial instruments do not apply to a person who holds an office mentioned in section 216(1)(b).

## **218 Exclusion for Judicial Review Act 1991**

- (1) 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*.
- (2) However, subsection (1) does not apply to a decision about a senior officer.

# **Chapter 8 Miscellaneous provisions**

## **219 Effect of Act on the State**

- (1) Subject to subsection (3), this Act binds the State.
- (2) A person who employs another person under this Act employs the person as the authorised agent of the State.
- (3) The right or power of the State 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.

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## **220 Provision for acting appointments not by original appointor**

- (1) This section applies if—
  - (a) a provision of this Act authorises a person (the *appointor*) to appoint someone else to act in an office (the *appointee*); and
  - (b) the appointor is not the person who, under this Act, may appoint persons to that office.
- (2) The *Acts Interpretation Act 1954*, section 24B(8) and (9) apply to the appointor and the appointee as if the appointee had been appointed under that section.
- (3) This section does not limit or otherwise affect the *Acts Interpretation Act 1954*, section 24B.

## **221 Offences against Act are summary**

An offence against this Act is a summary offence.

## **222 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 provided for by a ruling.
- (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 Minister.

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## Chapter 9 Repeal and transitional provisions

### Part 1 Repeal provisions

#### 223 Acts repealed

The following Acts are repealed—

- Crown Employees Act 1958, No. 36
- Equal Opportunity in Public Employment Act 1992, No. 10
- Public Service Act 1996, No. 37
- Service Delivery and Performance Commission Act 2005, No. 52.

### Part 2 Transitional provisions

#### Division 1 Preliminary

#### 224 Definitions for pt 2

In this part—

*changeover day* means the day this section commences.

*former public service commissioner* means the person holding office as the Public Service Commissioner under the repealed Public Service Act immediately before the changeover day.

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*former public service office* means the Office of the Public Service Commissioner established under the repealed Public Service Act.

*former service delivery commission* means the Service Delivery and Performance Commission established under the repealed Commission Act.

*repealed Commission Act* means the repealed *Service Delivery and Performance Commission Act 2005*.

*repealed Public Service Act* means the repealed *Public Service Act 1996*.

## **Division 2                    Public service employees**

### **225    Existing public service officers generally**

- (1) A person who was a public service officer under the repealed Public Service Act immediately before the changeover day (an *existing officer*) is taken to be a public service officer under this Act.
- (2) The person's employment and conditions of employment are not affected by any discontinuance of public service positions because of the enactment of this Act.
- (3) If there is doubt about whether a person is an existing officer, a chief executive may, if the person asks, declare the person to be an existing officer.
- (4) On the making of the declaration, subsections (1) and (2) are taken to have always applied to the person.

### **226    Existing chief executives**

- (1) If, immediately before the changeover day, a person held appointment under the repealed Public Service Act 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 changeover day, 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 changeover day continues to be the title of the chief executive, subject to the Minister's power of appointment to particular departments, under section 93.
- (4) For section 95, the police commissioner 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 changeover day is taken to have been made under this Act.
- (6) An appointment in existence immediately before the changeover day for a person to act as a chief executive continues in force as if the appointment had been made under this Act.
- (7) To remove any doubt, it is declared that subsection (6) applies whether or not the person was acting under the appointment.

**227 General provision for existing senior executives other than chief executives**

- (1) This section applies to a person who, immediately before the changeover day, held appointment under the repealed Public Service Act as a senior executive other than a chief executive.
- (2) The person is taken to have been appointed under this Act as a senior executive.
- (3) If the person was seconded as a senior executive, other than a chief executive, the secondment continues as if it had been made under this Act.

**228 Existing tenured senior executives**

- (1) This section applies to a person if—

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- (a) immediately before the changeover day, the person held appointment under the repealed Public Service Act as a senior executive other than a chief executive; and
  - (b) the person's employment as a senior executive was on tenure.
- (2) The person may, but is not required to, enter into a contract of employment with the person's chief executive relating to the appointment.
- (3) If the person is transferred or redeployed, the person may, but is not required to, enter into a contract of employment with the person's chief executive for the transferred or redeployed employment.
- (4) Chapter 1, part 4 does not apply to the appointment on contract of the person if—
  - (a) the appointment on contract is to perform duties in the same department at a higher classification level; and
  - (b) 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
  - (c) the chief executive and the person agree to the appointment.
- (5) Despite section 118(1), sections 135, 136 and 138 apply to the person.
- (6) Despite section 218, the *Judicial Review Act 1991* continues to apply to a decision about an excluded matter relating to the person.
- (7) This section does not limit or otherwise affect section 227.

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**229 Exclusion from tenure on termination of contract for particular public service officers**

Section 123 does not apply to a person employed in a department as a public service officer on a contract for a fixed term that was first entered into before 1 December 1996.

**230 Existing contracts of employment**

- (1) This section applies if a person, other than a chief executive, was employed under the repealed Public Service Act under a contract of employment immediately before the changeover day.
- (2) The contract is taken to have been made under this Act between the person and the person's chief executive.
- (3) If the person was a public service officer immediately before the changeover day, the employment of the person under this Act is taken to be on contract for a fixed term.

**231 Existing general employees**

- (1) A person who was employed under the repealed Public Service Act as a general employee immediately before the changeover day (an *existing general employee*) is taken to be a general employee employed under this Act.
- (2) The person's employment and conditions of employment are not affected by the repeal of the repealed Public Service Act.
- (3) If there is doubt about whether a person is an existing general employee, a chief executive may, if the person asks, declare the person to be an existing general employee.
- (4) On the making of the declaration, subsections (1) and (2) are taken to have always applied to the person.

**232 Existing temporary employees**

- (1) A person who was employed under the repealed Public Service Act as a temporary employee immediately before the

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changeover day (an *existing temporary employee*) is taken to be a temporary employee employed under this Act.

- (2) The person's employment and conditions of employment are not affected by the repeal of the repealed Public Service Act.
- (3) If there is doubt about whether a person is an existing temporary employee, a chief executive may, if the person asks, declare the person to be an existing temporary employee.
- (4) On the making of the declaration, subsections (1) and (2) are taken to have always applied to the person.

### **233 Period for first status review of a temporary employee**

- (1) This section applies if a 3 year period in relation to a temporary employee as mentioned in section 149(1) ends before the first anniversary of the changeover day.
- (2) The period for making the decision under section 149(2) for the employee is the period that ends on the first anniversary.
- (3) However, if a directive is made under section 149(2) before the first anniversary and the directive provides for a longer period, the period is the longer period.

## **Division 3 Rulings**

### **234 Existing rulings**

- (1) A ruling in force under the repealed Public Service Act immediately before the changeover day (the *continued ruling*) remains in force as a ruling of the same type under this Act.
- (2) The continued ruling—
  - (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 under this Act made by the person who can make that type of ruling under this Act about the matters provided for under the continued ruling.
- (3) If the continued ruling was made by the former public service commissioner, it is taken to have been made by the commission chief executive.

### **235 References to existing rulings**

In an Act or document, a reference to a ruling under the repealed Public Service Act may, if the context permits, be taken as a reference to a ruling of the same type under this Act.

## **Division 4 Disciplinary action and suspension**

### **236 Existing disciplinary action**

If disciplinary action had been started, but not finished, under the repealed Public Service Act before the changeover day, the action may be finished under this Act.

### **237 Application of disciplinary action provisions to prior acts and omissions**

For the purpose of taking disciplinary action, chapter 6 applies to acts and omissions that happened before the changeover day as well as to acts and omissions that happen after the changeover day.

### **238 Existing suspensions**

If, immediately before the changeover day, a person was suspended from duty under the repealed Public Service Act, the suspension continues to have effect as a suspension under this Act.

## **Division 5                      Appeals**

### **239      Application of div 5**

This division applies if, immediately before the changeover day, an appeal under the repealed Public Service Act had not been decided.

### **240      Conversion to appeal under this Act**

The appeal is taken to be an appeal about the same matter made to the commission chief executive, under chapter 7, part 1.

### **241      Provision for former protective appeals**

If the appeal was made under section 106 of the repealed Public Service Act, it may be continued under chapter 7, part 1 despite there being no equivalent of that section under this Act.

### **242      Appeal documents or information**

As soon as practicable after the changeover day, the person who was the former public service commissioner must give the commission chief executive any documents or information given to that person for the appeal.

## **Division 6                      Former commissioner and     commission**

### **243      Dissolutions**

- (1) On the changeover day—
  - (a) the following cease to exist—

- 
- (i) the office of the former public service commissioner;
  - (ii) the former public service office;
  - (iii) the former service delivery commission; and
- (b) each SDPC commissioner goes out of office as an SDPC commissioner; and
  - (c) each SDPC commissioner contract ends.
- (2) No amount, whether by way of compensation, reimbursement or otherwise is payable by the State for or in connection with the enactment or operation of subsection (1)(c), other than as expressly provided for under a SDPC commissioner contract.
  - (3) To remove any doubt, it is declared that subsections (1)(c) and (2) do not limit or otherwise affect an SDPC commissioner's right to a benefit or entitlement that, under an SDPC commissioner contract, had accrued or was accruing immediately before the changeover day.
  - (4) On the changeover day, a benefit or entitlement mentioned in subsection (3) ceases to accrue and becomes payable as if—
    - (a) the SDPC commissioner contract had, according to its terms, been terminated on that day; and
    - (b) the termination is other than by the SDPC commissioner.
  - (5) In this section—

*SDPC commissioner* means a commissioner under the repealed Commission Act.

*SDPC commissioner contract* means a contract of employment under section 51 of the repealed Commission Act.

## 244 References to former commissioner or commission

In a document other than an Act, a reference to the former public service commissioner or the former service delivery

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commission may, if the context permits, be taken as a reference to the commission under this Act.

#### **245 Former staff become commission staff**

If, immediately before the changeover day, a person was—

- (a) employed in the former public service office or was a staff member of the former service delivery commission under the repealed Commission Act; and
- (b) a public service officer under the repealed Act;

the person becomes a staff member of the commission under this Act, subject to this Act.

### **Division 7 Miscellaneous provisions**

#### **246 Specific provisions relating to criminal history of a person under the repealed Public Service Act**

- (1) The purpose of this provision is to make specific provision for matters that were dealt with under repealed part 9A.
- (2) If, under repealed part 9A, the chief executive of a department had decided that it may be necessary to have regard to the criminal history of anyone engaged to perform particular duties to ensure the person so engaged is suitable to perform them, that decision continues to have effect as if it had been made under section 151.
- (3) If, before the changeover day, the chief executive asked for a person's written consent to obtain the person's criminal history under repealed section 114C and the person had refused or not given the written consent, the chief executive's request for the consent is taken to be a request made under section 152.
- (4) If, before the changeover day, the chief executive asked the police commissioner to give a report about a person's criminal history under repealed section 114D and the police

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commissioner had not given it to the chief executive, the chief executive's request is taken to be a request under section 154 and, subject to sections 166 and 167, the police commissioner must give the report to the chief executive.

- (5) Section 169 applies to a criminal history report even if it was obtained before the changeover day.
- (6) If a person gained access to someone's criminal history under under repealed part 9A—
  - (a) the person is taken to have gained access to the criminal history under chapter 5, part 6; and
  - (b) if the person does not comply with section 172(2) in relation to the criminal history or a document relevant to the criminal history, the person may be prosecuted for an offence against that subsection.
- (7) A directive, that was issued under repealed section 114H and in force immediately before the changeover day, is taken to be a part 6 directive.
- (8) This section does not limit another provision of this part.
- (9) In this section—

*repealed*, in relation to a provision, means that provision as in force under the repealed Public Service Act before its repeal.

## **247 Existing term appointees**

Chapter 5, part 4, division 2 applies to a term appointee holding office before the changeover day as well as to a term appointee appointed to office after the changeover day.

## **248 Existing delegations by chief executives**

- (1) A delegation by a chief executive in force under the repealed Public Service Act immediately before the changeover day continues in force despite the repeal of that Act.

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- (2) If the delegation was for a matter under the repealed Public Service Act, it continues in force as if the delegation had been made under this Act for that matter.

## **249 References to repealed Acts**

- (1) A reference in another Act or a document to an Act repealed under part 1 may, if the context permits, be taken as a reference to this Act.
- (2) A reference in another Act or a document to a particular provision of the repealed Public Service Act (the *repealed provision*) may, if the context permits, be taken as a reference to any provision of this Act all or part of which corresponds, or substantially corresponds, to the repealed provision.

*Example—*

A reference in another Act to section 21 of the repealed public service Act is taken to be a reference to section 24 (What is a government entity) of this Act.

- (3) This section does not apply for the *Freedom of Information Act 1992*, section 39.
- (4) This section is subject to the other provisions of this part.

## **250 Corresponding approvals, decisions and notices under the repealed Public Service Act**

- (1) This section applies if—
  - (a) a provision of the repealed Public Service Act (the *old provision*) provides for an approval, decision, declaration or a gazette notice or other notice to be made or given for a matter; and
  - (b) an approval, decision, declaration or notice of that type is in force under the repealed Public Service Act immediately before the changeover day; and
  - (c) a provision of this Act corresponds or substantially corresponds to the old provision.

- (2) On the changeover day, the approval, decision, declaration or notice is taken to be an approval, decision, declaration or notice made or given for the matter under this Act.

*Example—*

A declaration under section 12 of the repealed Public Service Act in force immediately before the changeover day is taken to be a declaration under section 14 (Declaration of departments) of this Act.

## **251 Public Service Regulation 2007**

- (1) The *Public Service Regulation 2007*, other than the following provisions, remains in force for this Act—
- part 2, divisions 1 to 3
  - part 3.
- (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)—
- (a) a reference in the regulation to a public sector unit is taken to be a reference to a public service office; and
  - (b) a reference to the application of a provision of the repealed Public Service Act (the *repealed provision*) is taken to be a reference to the application of any provision of this Act all or part of which corresponds, or substantially corresponds, to the repealed provision.

## Schedule 1      Public service offices and their heads

section 21

<b>Public service office</b>	<b>Head</b>
adult guardian office under the <i>Guardianship and Administration Act 2000</i>	adult guardian
Anti-Discrimination Commission under the <i>Anti-Discrimination Act 1991</i>	anti-discrimination commissioner
audit office	auditor-general
Building and Construction Industry (Portable Long Service Leave) Authority under the <i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i>	general manager
Commission for Children and Young People and Child Guardian under the <i>Commission for Children and Young People and Child Guardian Act 2000</i>	Commissioner for Children and Young People and Child Guardian
Electoral Commission of Queensland under the <i>Electoral Act 1992</i>	electoral commissioner
Family Responsibilities Commission Registry under the <i>Family Responsibilities Commission Act 2008</i>	the commissioner under the <i>Family Responsibilities Commission Act 2008</i>
Forestry Plantations Queensland Office declared under the repealed <i>Public Service Act 1996</i> as a public service office under that Act, as mentioned in the <i>Forestry Plantations Queensland Act 2006</i> , section 58, definition <i>FPQO</i>	chief executive of the office



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Industrial Registry under the <i>Industrial Relations Act 1999</i>	industrial registrar
information commission office	information commissioner
Land Tribunal under the <i>Aboriginal Land Act 1991</i>	chairperson of the tribunal
Land Tribunal under <i>Torres Strait Islander Land Act 1991</i>	chairperson of the tribunal
Mental Health Review Tribunal under the <i>Mental Health Act 2000</i>	president of the tribunal
Office of the Energy Ombudsman under the <i>Energy Ombudsman Act 2006</i>	energy ombudsman under the <i>Energy Ombudsman Act 2006</i>
Office of Health Practitioner Registration Boards under the <i>Health Practitioner Registration Boards (Administration) Act 1999</i>	executive officer
Office of the Health Quality and Complaints Commission under the <i>Health Quality and Complaints Commission Act 2006</i>	chief executive officer of the office
Office of the Medical Board of Queensland under the <i>Medical Board (Administration) Act 2006</i>	executive officer of the office
Office of the Prostitution Licensing Authority under the <i>Prostitution Act 1999</i>	executive director
Office of the Queensland College of Teachers under the <i>Education (Queensland College of Teachers) Act 2005</i>	director of the office

Office of the Queensland Parliamentary Counsel under the <i>Legislative Standards Act 1992</i>	parliamentary counsel
Office of the Queensland Studies Authority under the <i>Education (Queensland Studies Authority) Act 2002</i>	director
Public Service Commission	commission chief executive
Public Trust Office under the <i>Public Trustee Act 1978</i>	public trustee
Queensland Water Commission under the <i>Water Act 2000</i>	chief executive officer of the commission
Queensland Workplace Rights Office under the <i>Industrial Relations Act 1999</i>	Queensland workplace rights ombudsman under the <i>Industrial Relations Act 1999</i>
TransLink Transit Authority Employing Office under the <i>Transport Operations (TransLink Transit Authority) Act 2008</i>	chief executive officer under the <i>Transport Operations (TransLink Transit Authority) Act 2008</i>
Urban Land Development Authority under the <i>Urban Land Development Authority Act 2007</i>	chief executive officer under the <i>Urban Land Development Authority Act 2007</i>
Workers' Compensation Regulatory Authority under the <i>Workers' Compensation and Rehabilitation Act 2003</i>	chief executive officer of the authority

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## **Schedule 2      Statutory office holders who are not term appointees**

section 140(3)(b)

*Aboriginal Land Act 1991*

- a member of the Land Tribunal

*Anti-Discrimination Act 1991*

- the anti-discrimination commissioner
- a member of the Anti-Discrimination Tribunal

*Children Services Tribunal Act 2000*

- a member of the Children Services Tribunal

*Classification of Computer Games and Images Regulation  
2005*

- a member of the Computer Games and Images Appeals Tribunal

*Classification of Films Regulation 1992*

- a member of the Films Appeals Tribunal

*Classification of Publications Regulation 1992*

- a member of the Publications Appeals Tribunal

*Commission for Children and Young People and Child  
Guardian Act 2000*

- the commissioner for children and young people and child guardian

*Crime and Misconduct Act 2001*

- the chairperson of the Crime and Misconduct Commission

*Director of Public Prosecutions Act 1984*

- the director of public prosecutions
- the deputy director of public prosecutions

*Electoral Act 1992*

- the electoral commissioner
- the deputy electoral commissioner
- an appointed commissioner

*Fisheries Act 1994*

- a member of the Fisheries Tribunal

*Gaming Machine Act 1991*

- commissioner of the Queensland Gaming Commission

*Guardianship and Administration Act 2000*

- the adult guardian

*Health Quality and Complaints Commission Act 2006*

- a member of the Health Quality and Complaints Commission
- the chief executive officer of the Office of the Health Quality and Complaints Commission

*Law Reform Commission Act 1968*

- the member of the Law Reform Commission

*Legal Aid Queensland Act 1997*

- the chief executive officer of Legal Aid Queensland

*Legislative Standards Act 1992*

- the parliamentary counsel

*Local Government Act 1993*

- a review commissioner

*Mental Health Act 2000*

- a member of the Mental Health Review Tribunal

*Misconduct Tribunals Act 1997*

- a member of the panel of misconduct tribunal members

*Parliamentary Service Act 1988*

- an officer in parliamentary service

*Police Service Administration Act 1990*

- a member of the police service

*Public Trustee Act 1978*

- the Public Trustee of Queensland

*Queensland Competition Authority Act 1997*

- a member of the Queensland Competition Authority

*Solicitor-General Act 1985*

- the solicitor-general

*Torres Strait Islander Land Act 1991*

- a member of the Land Tribunal

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## Schedule 4 Dictionary

### section 4

***appoint***, a person as a public service officer, means—

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

***appointed commissioner*** means a person appointed under section 45(c) or (d).

***appropriately qualified***, in relation to a delegated function or power, includes having the qualifications, experience or standing to perform the function or exercise the power.

*Example of standing—*

a person's classification level in the public service

***approved leave*** means leave approved under an Act or industrial instrument.

***audit office*** means the Queensland Audit Office under the *Financial Administration and Audit Act 1977*.

***auditor-general*** means the Queensland Auditor-General under the *Financial Administration and Audit Act 1977*.

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

***CCYPCG disqualification order***, for chapter 5, part 6, see section 150.

***chairperson*** means the chairperson of the commission.

***chief executive*** see section 10.

***child-related duties***, for chapter 5, part 6, see section 150.

***commission*** means the Public Service Commission established under section 43.

***commission chief executive*** see section 56(1).

***commissioner*** see section 45.

***commission official*** means—

- (a) a commissioner; or
- (b) a staff member of the commission; or
- (c) an agent of the commission or an employee of the State performing functions for a commission review.

***commission review*** see section 37(1).

***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.

***CPOPOA disqualification order***, for chapter 5, part 6, see section 150.

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

***criminal history report***, for chapter 5, part 6, see section 150.

***department*** see section 7.

***departmental Minister*** means—

- (a) for a department or public service office—the Minister administering the department or public service office; or
- (b) for a chief executive—the Minister administering the chief executive’s department; or
- (c) for another public service employee—the Minister administering the employee’s department.

***directive*** means a directive made under chapter 3, part 3.

***disciplinary action*** see section 188(1).

***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.

***disqualification order***, for chapter 5, part 6, see section 150.



***disqualified person*** means—

- (a) a person who holds office as any of the following—
  - (i) the auditor-general;
  - (ii) the ombudsman;
  - (iii) the integrity commissioner;
  - (iv) any commission officer under the *Crime and Misconduct Act 2001*;
  - (v) the information commissioner; or
- (b) a person who has been convicted of an indictable offence; or
- (c) a person who is or has been—
  - (i) an insolvent under administration under the Corporations Act, section 9; or
  - (ii) disqualified from managing corporations under the Corporations Act, part 2D.6.

***disqualifying offence*** see the *Commission for Children and Young People and Child Guardian Act 2000*, schedule 4.

***EEO*** means equality of employment opportunity.

***engage***, for chapter 5, part 6, see section 150.

***excluded matter*** see section 216(1).

***function***, for a provision about a delegation, includes power.

***general employee*** means a person employed under section 147.

***government entity*** see section 24.

***guideline*** means a guideline made under chapter 3, part 3.

***head***, of a public service office, see section 21(2).

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

***industrial agreement*** means an industrial agreement or a certified agreement under the *Industrial Relations Act 1999*.

***industrial instrument*** includes—

- (a) an award or industrial agreement; and
- (b) a determination or rule of 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 matter*** see the *Industrial Relations Act 1999*, section 7.

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

***information commissioner*** means the Information Commissioner under the *Freedom of Information Act 1992*.

***information commission office*** means the Office of the Information Commissioner under the *Freedom of Information Act 1992*.

***integrity commissioner*** means the Queensland Integrity Commissioner under the *Public Sector Ethics Act 1994*.

***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.

***investigative information***, for chapter 5, part 6, see section 150.

***IRC*** means the Industrial Relations Commission under the *Industrial Relations Act 1999*.

***law*** includes an unwritten law.

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

***management and employment principles*** see section 25(3).

***merit principle*** see section 27(1).

**normal remuneration**, for a public service officer, means all of the remuneration and other entitlements to which the employee is or would be entitled, as prescribed under a directive.

**notice** means a notice in writing.

**offender prohibition order**, for chapter 5, part 6, see section 150.

**overall employment conditions** means remuneration and conditions of employment.

**part 6 directive**, for chapter 5, part 6, see section 150.

**police commissioner** means the commissioner of the police service, under the *Police Service Administration Act 1990*.

**police information**, for chapter 5, part 6, see section 150.

**police information report**, for chapter 5, part 6, see section 150.

**police service** means the Queensland Police Service under the *Police Service Administration Act 1990*.

**promote**, a public service officer, means employ the officer at a higher classification level, whether or not on different duties, other than temporarily.

**promotion decision** see section 194(1)(c).

**publicly notified**, for a notice, includes that the notice was published in the gazette or on a department's website.

**public service** means the Queensland Public Service.

**public service employee**—

- 1 Generally, a *public service employee* is a public service employee as defined under section 9(1).
- 2 For a particular department, a *public service employee* is a public service employee as defined under section 9(1) whose employment is in that department.

**public service office**—

- 1 Generally, a *public service office* is a public service office as defined under section 21(1).

2 However, for chapter 3, part 1, see section 35.

*public service officer* see section 8.

*Queensland Public Service* see section 5.

*redeploy*, a public service 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 disqualified person*, for chapter 5, part 6, see section 150.

*relevant duties*, for chapter 5, part 6, see section 150.

*relevant EEO agency* see section 30(1).

*remuneration* includes salary.

*ruling* see section 47(6).

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

*second*, a public service officer, means temporarily employ the officer—

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

*senior executive* means a person employed under this Act as a senior executive.

*senior officer* means a person employed under this Act as a senior officer.

*serious offence*, for chapter 5, part 6, see section 150.

*service with the State*, for chapter 5, part 2, division 2, see section 129.

*staff members*, of the commission, see section 77(2).

*statutory office* see section 139.

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

***temporary employee*** means a person employed under section 148.

***temporary offender prohibition order***, for chapter 5, part 6, see section 150.

***term appointee*** see section 140.

***the State***, for chapter 5, part 2, division 2, see section 129.

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

***transfer decision*** see section 194(1)(d).

## 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). However, no amendments have commenced operation on or before that day. Future amendments of the Public Service Act 2008 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 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 included	Effective	Notes
1	none	1 July 2008	

### 5 List of legislation

#### Public Service Act 2008 No. 38

date of assent 11 June 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2008 (2008 SL No. 208)

## **6 List of annotations**

### **CHAPTER 10—AMENDMENT OF ACTS**

**ch 10 (s 252)** om R1 (see RA ss 7(1)(k) and 40)

### **SCHEDULE 3—MINOR AND CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

om R1 (see RA s 40)

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