



# **Public Service Act 2008**

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Queensland

# Public Service Act 2008

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# Public Service Act 2008

**An Act about the administration of the public service and the management and employment of public service employees, and to provide for matters concerning particular agencies, and for other persons involved, in the public sector**

## 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
  - (b) promote the effectiveness and efficiency of government entities; and

[s 4]

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- (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.

## 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 2016*.
- (3) Subsection (2) is subject to section 217.

*Note—*

Section 217 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.

## 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.
- (4) Also, chapters 6 and 7 have provisions relating to the discipline of former public service employees.

## **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
  - (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 commissioner under the *Industrial Relations Act 2016*.

- (3) Subsection (1) does not prevent the holder of an office mentioned in it from having or exercising powers under this Act.
- (4) This section does not limit the application of chapter 1, part 3, division 3.

## **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.

*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—
  - (a) the provisions about accountable officers under the *Financial Accountability Act 2009*, section 65; or
  - (b) the meaning of *department* under section 8 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.
- (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.

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## 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;
  - (b) a corporation owned by a local government, or a subsidiary of a corporation owned by a local government;
  - (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* or a university established under an Act;
- (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**

### **Division 1                Management and employment**

#### **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*.

## **Division 2                      Work performance and personal conduct**

### **26            Work performance and personal conduct principles**

- (1) In recognition that public service employment involves a public trust, a public service employee's work performance and personal conduct must be directed towards—
- (a) achieving excellence in service delivery; and
  - (b) ensuring the effective, efficient 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) acting honestly, fairly and in the public interest; and
  - (i) interacting with staff members under the *Ministerial and Other Office Holder Staff Act 2010* respectfully, collaboratively and with integrity; and
  - (j) observing all laws relevant to the employment; and
  - (k) ensuring the employee's personal conduct does not reflect adversely on the reputation of the public service; and
  - (l) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4; and
  - (m) complying with an approved code of conduct and any approved standard of practice as required under the *Public Sector Ethics Act 1994*, section 12H or 18.
- (2) Also, a public service manager must take all reasonable steps to ensure each public service employee under the manager's management is aware of the following—
- (a) the work performance and personal conduct expected of the employee;
  - (b) the values of the public service and of the department or public service office in which the employee is employed;
  - (c) what constitutes corrupt conduct under the *Crime and Corruption Act 2001*.
- (3) Further, a public service manager must—
- (a) pro-actively manage the work performance and personal conduct of public service employees under the manager's management; and

- (b) if a case of unacceptable work performance or personal conduct arises, take prompt and appropriate action to address the matter.
- (4) In this section—

*public service manager* means a public service employee whose duties involve or include managing other public service employees in the carrying out of their duties.

## **Division 3                      Supporting principles under divisions 1 and 2**

### **26A    Main purpose of div 3**

The main purpose of this division is to support—

- (a) the management and employment principles; and
- (b) the principles mentioned in section 26.

### **26B    Application of div 3**

- (1) This division applies to each of the following—
  - (a) a public service employee;
  - (b) a ministerial staff member within the meaning of the *Ministerial and Other Office Holder Staff Act 2010*;
  - (c) a person mentioned in section 13(2);
  - (d) a person appointed under an Act (other than this Act) if the appointment involves the person acting for or representing the State;
  - (e) a person who is not a public service employee but who is a member or employee of a government entity that represents the State;
  - (f) a person (other than a public service employee) to whom a function or power of a person mentioned in paragraph (a), (d) or (e) is delegated under an Act;

- (g) another person prescribed by regulation as a State employee.
- (2) Also, this division applies to a person who was a person of the type mentioned in subsection (1) at the time the person engaged in conduct in an official capacity.
- (3) Despite subsections (1) and (2), this division does not apply to the following—
  - (a) a person who is the holder of an office mentioned in section 13(1);
  - (b) a person to whom the *Police Service Administration Act 1990*, section 10.5 applies;
  - (c) a person employed in or appointed by—
    - (i) a GOC; or
    - (ii) a subsidiary of a GOC under the Corporations Act; or
    - (iii) a government entity within the meaning of the *Government Owned Corporations Act 1993* declared by regulation under that Act to be a subsidiary of a GOC; or
    - (iv) a government company within the meaning of the *Government Owned Corporations Act 1993*, section 2;
  - (d) another person prescribed by regulation as a person who is not a State employee, including a person to whom this division would otherwise apply because of subsection (1)(d), (e) or (f).
- (4) A person to whom this division applies is a *State employee*.

## **26C Civil liability of State employee for engaging in conduct in official capacity**

- (1) A State employee does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity.



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- (2) If subsection (1) prevents liability attaching to a State employee, the liability attaches instead as follows—
    - (a) if paragraph (b) does not apply—to the State;
    - (b) if, at the time the State employee engaged in the conduct, the person did so as a member of a body corporate or the governing body of a body corporate, or as a person who was employed by, appointed by or a delegate of, a body corporate—the body corporate.
  - (3) If liability attaches to the State under subsection (2)(a), the State may recover contribution from the State employee but only if the conduct was engaged in—
    - (a) other than in good faith; and
    - (b) with gross negligence.
  - (4) If liability attaches to a body corporate under subsection (2)(b), the body corporate may recover contribution from the State employee but only if the conduct was engaged in—
    - (a) other than in good faith; and
    - (b) with gross negligence.
  - (5) In a proceeding under subsection (3) or (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
  - (6) In this section—

*civil liability*, of a State employee for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the State employee because of—

    - (a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or

- (b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or
- (c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or result, unless the proceeding was for an offence by the State employee.

*Examples of types of liability—*

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to rectify damage to a building or to publish an apology in a newspaper

***conduct*** means an act or an omission to perform an act.

***engage in conduct in an official capacity*** means engage in conduct as part of, or otherwise in connection with, a person's role as a State employee, including, for example, engaging in conduct under or purportedly under an Act.

*Example of a State employee engaging in conduct in an official capacity—*

A State employee makes a decision in relation to an application for a licence.

***State employee*** see section 26B(4).

## 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.

### **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 office of the information commissioner; 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;

- (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.

*Note—*

For management reviews of the audit office, see the *Auditor-General Act 2009*.

- (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.

## **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—
  - *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.

*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) enhance and promote an ethical culture and ethical decision-making across the public service;
  - (d) enhance the public service's leadership and management capabilities in relation to disciplinary matters;
  - (e) conduct commission reviews;
  - (ea) conduct reviews under part 6 about the handling by departments of work performance matters;
  - (f) develop and implement public service-wide workforce management strategies;
  - (g) 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;
  - (h) facilitate the purposes of the chief executive and senior executive services and the position of senior officer;
  - (i) report, at least annually, to the Minister on the application of the management and employment principles within the public service, including reporting on the following—

- (i) the application of the principles, as a whole, within the public service as a whole;
  - (ii) the application of only 1 or more of the principles within the public service as a whole or a part of the public service;
  - (iii) the application of 1 or more of the principles for a specific purpose or to a specific group of persons;
  - (j) monitor, and report to the Minister about, the workforce profile of the public service;
  - (k) advise the Minister about the need for commission reviews about particular matters;
  - (l) promote a culture of continuous improvement and organisational performance management across all public service offices;
  - (m) 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.
- (3) In this section—  
*workforce profile* means the demographic categories and other characteristics of a workforce.

## **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, or were, 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.

#### **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 2016* 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.

## **49A Consultation for directives**

- (1) This section applies if the commission chief executive or the industrial relations Minister proposes to make a directive that affects—
  - (a) a public service agency; or
  - (b) public service employees who are entitled to be represented by an employee organisation.
- (2) The commission chief executive or the industrial relations Minister must consult with the public service agency and employee organisation about the making of the proposed directive.
- (3) In this section—

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

*public service agency* means—

- (a) a department; or
- (b) a public service office.

## **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 *Auditor-General Act 2009*.

## **51 Relationship with legislation**

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



- 
- (2) For subsection (1), a ruling is not inconsistent with an Act or subordinate legislation to the extent that the ruling is at least as favourable as the Act or subordinate legislation.

## **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.
- (2) The industrial instrument prevails over the directive to the extent of any inconsistency between the directive and the industrial instrument.
- (3) For subsection (2), a directive is not inconsistent with an industrial instrument to the extent that the remuneration and conditions of employment provided for in the directive are at least as favourable as the remuneration and conditions of employment provided for in the industrial instrument.
- (4) In this section—  
*directive* includes—
- (a) a directive as applied by a regulation made for section 23; and
  - (b) a decision made in the exercise of a discretion under a directive.

## **Division 2 General ruling-making powers**

### **53 Rulings by commission chief executive**

- (1) 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
- (b) the overall employment conditions for persons employed or to be employed as—
- (i) chief executives, senior executives or senior officers; or
  - (ii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer; or
- (ba) a matter relating to the application of chapter 6 or 7 to a former public service employee; or
- (c) other specific matters that, under this Act, the commission chief executive may make a ruling about.
- (2) To remove any doubt, it is declared that the commission chief executive can not make a ruling about the remuneration or conditions of employment of a public service employee who is covered by an industrial instrument.

## **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) To remove any doubt, it is declared that the industrial relations Minister can make a ruling about the remuneration or conditions of employment of a public service employee who is covered by an industrial instrument.
- (4) In this section—

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

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

#### **54A Joint rulings**

Nothing in this Act or the *Industrial Relations Act 2016* prevents the commission chief executive and the industrial relations Minister from making a joint ruling.

#### **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*)—
  - (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.

##### **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 Minister.
- (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) perform other duties as directed by the Minister.

## **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 an appropriately qualified staff member of the commission.
- (2) The commission chief executive may also delegate his or her functions under section 88I to any other appropriately qualified entity.
- (3) 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.

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## Subdivision 2      Chairperson

### 64      Appointment

- (1) This section applies for the appointment of a person as the chairperson of the commission.
- (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) the chairperson has an interest in a matter being considered, or about to be considered, by the commission at a commission meeting; and
  - (b) the interest could conflict with the proper performance of the chairperson's functions for the matter.
- (2) The chairperson must, as soon as practicable, disclose the interest to the commission chief executive.
- (3) Unless the commission otherwise decides, the chairperson must not participate in the commission's consideration of the matter at the meeting.
- (4) A reference to an interest or to a conflict of interest is a reference to those matters within their ordinary meaning under the general law, and, in relation to an interest, the definition in the *Acts Interpretation Act 1954*, schedule 1, does not apply.

### 66      Resignation

The chairperson 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 the chairperson, 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.

## **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 2 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 2 commissioners.

## **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 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 2 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 generally 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.

## **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

- (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—

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

## Part 5                      IRC members

### **88A    Functions of IRC members include functions under this Act**

- (1) An IRC member has functions under this Act.
- (2) The performance of functions by an IRC member under this Act does not limit the member's functions under the *Industrial Relations Act 2016* unless otherwise provided.
- (3) The performance of functions by an IRC member under this Act is taken to be service as an IRC member under the *Industrial Relations Act 2016*.

### **88B    Senior IRC member**

- (1) The president of the IRC is the senior IRC member for this Act.
- (2) The president may delegate the functions of the senior IRC member to another IRC member.

### **88C    Functions of IRC members**

- (1) An IRC member's function under this Act is to hear and decide appeals under chapter 7, part 1.
- (2) The senior IRC member also has the function under this Act of making decisions and directions about practice under sections 203A and 203B.
- (3) The senior IRC member may delegate the member's function under subsection (2) to another IRC member.

## **Part 6                      Functions of commission    relating to work performance    matters**

### **88H    Definitions for pt 6**

In this part—

*information* includes a document.

*public service employee* includes a person who was a public service employee.

*work performance information directive* means a directive issued by the commission chief executive under section 53(a) under which a department must give the commission information about work performance matters being, or that have been, handled by the department.

*work performance matter* means a matter involving a public service employee's work performance or personal conduct, including, for example, an allegation against the employee that constitutes or would, if proved, constitute a disciplinary ground.

### **88I    Commission may conduct review of department's          handling of work performance matters**

- (1) This section applies if, on the basis of information received under a work performance information directive, the commission chief executive reasonably considers it may be beneficial to conduct a review under this section to promote—
  - (a) the continuous improvement of a department's practices regarding the handling of work performance matters; or
  - (b) the optimal resolution of a current work performance matter.
- (2) The commission may—
  - (a) conduct a review of—



- 
- (i) 1 or more work performance matters that have been handled by the department; or
    - (ii) a current work performance matter; and
  - (b) give the chief executive of the department a report about the review.
- (3) The report mentioned in subsection (2)(b) must include any recommendations made by the commission about—
- (a) for a review mentioned in subsection (2)(a)(i)—improvements to the department’s practices regarding the handling of work performance matters; or
  - (b) for a review mentioned in subsection (2)(a)(ii)—the optimal resolution of the current work performance matter the subject of the review.
- (4) A review under this section must be conducted—
- (a) by the commission chief executive; or
  - (b) for the commission chief executive by—
    - (i) a staff member of the commission to whom the function is delegated under section 62(1); or
    - (ii) any other appropriately qualified entity to whom the function is delegated under section 62(2).
- (5) In this section—

***current work performance matter*** means a work performance matter being handled by the department at the time the commission chief executive forms the view mentioned in subsection (1).

## **88J Chief executive of department to provide help for review under s 88I**

- (1) This section applies if the commission chief executive or another person (the ***reviewer***) is conducting a review under section 88I for a department.

[s 88K]

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- (2) The chief executive of the department must give the reviewer the help the reviewer reasonably requires to conduct the review.
- (3) The reviewer may ask the chief executive of the department for information relevant to the review.
- (4) The chief executive of the department must comply with a request under subsection (3).

### **88K Exchange of information with external agency**

- (1) The commission chief executive may enter into an information exchange agreement with the chief executive officer (however described) of an external agency.
- (2) For the purposes of a review under section 88I, the commission chief executive may do either or both of the following under the information exchange agreement—
  - (a) obtain relevant information from the external agency;
  - (b) with the consent of the chief executive of the department to which the review relates, give relevant information to the external agency.
- (3) Also, to help the commission chief executive perform his or her functions under this part, the commission chief executive may give information to an external agency under an information exchange agreement.
- (4) In this section—

*external agency* means an entity established under an Act and prescribed under a regulation as an external agency for this section.

*information exchange agreement* means an agreement providing for the giving and receiving of information.

*relevant information* means information about or relevant to any of the following—

- (a) a review of a work performance matter being conducted under section 88I;

- (b) an investigation, inquiry or other activity being conducted by an external agency relating to the conduct, of a public service employee, that is the subject of a work performance matter being reviewed under section 88I.

### **88L Protection from liability for giving information**

- (1) This section applies to a person who, acting honestly and reasonably, gives information under this part.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) the person—
    - (i) does not, by giving the information, contravene an Act, oath, rule of law or practice requiring the person to maintain the confidentiality of the information; and
    - (ii) is not liable for disciplinary action for giving the information.
- (4) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

### **88M Confidentiality of information**

- (1) This section applies to a person who—
  - (a) is, or has been, any of the following—
    - (i) the commission chief executive;

- (ii) a staff member of the commission, or any other person, to whom the function of conducting a review under section 88I is delegated by the commission chief executive; and
- (b) in that capacity, acquired confidential information under this part.
- (2) The person must not disclose the confidential information to anyone else.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to the disclosure of confidential information—
  - (a) for the purpose of administering this Act; or
  - (b) to the extent necessary to perform the person’s functions under an Act; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) with the consent of the person to whom the confidential information relates; or
  - (e) if the disclosure is otherwise required or permitted under another Act or law.

- (4) In this section—

***confidential information***—

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

***personal information*** means information or an opinion about an individual—

- (a) if the individual’s identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (b) whether or not the information or opinion—
  - (i) is true; or

- (ii) forms part of a database; or
- (iii) is recorded in a material form.

**88N Publication of information about work performance matters**

- (1) By 30 September after each financial year, the commission must publish the following information for the financial year in a publicly accessible way—
  - (a) the number of work performance matters handled by each department in the year;
  - (b) the types of work performance matters handled by each department in the year;
  - (c) information about how work performance matters were handled by each department in the year, including, for example—
    - (i) the period within which the handling of the matters was finalised; and
    - (ii) the outcomes of the handling of the matters.
- (2) Subsection (1) applies only in relation to information the commission receives under the work performance information directive or to which the commission otherwise has access.

## **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
  - (b) collaboration between departments with a focus on public service-wide priorities as well 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.

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- (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.
- (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.

## **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;
  - (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 office of the information commission (See the *Right to Information Act 2009*,

sections 126, 146 and 149, and the *Information Privacy Act 2009*, sections 140 and 143)

- the auditor-general, deputy auditor-general and staff of the audit office (See the *Auditor-General Act 2009*.)

(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.

## **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).

## **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*, schedule 1, definition *appoint*.

- (2) The chief executive must, within 1 month, give the relevant people 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 relevant people 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).
- (6A) When giving the integrity commissioner and commission chief executive a statement under subsection (2) or (5), the chief executive must also give the integrity commissioner and commission chief executive written advice that the chief executive has given the statement to the departmental Minister.

- (7) For the interpretation of a reference to an interest, see section 65(4).
- (8) In this section—  
*relevant people* means—
  - (a) the departmental Minister; and
  - (b) the integrity commissioner; and
  - (c) the commission chief executive.

## **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 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.
- (3) For the interpretation of a reference to an interest or a conflict of interest, see section 65(4).

## **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.

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- (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.

**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
  - (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 contract may provide that, if the person's employment as a senior executive continues to the end of the term of the person's appointment as senior executive, a further contract of employment may be entered into under this section.

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- (4) The entry into a further contract of employment as mentioned in subsection (3) extends the person's appointment by the further term stated in the contract.
- (5) 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, or an extension of that term in the way provided for in section 113(3) and (4), 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.

#### **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.

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## 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—
  - (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.
- (5) A directive may provide for any of the following about the secondment of a public service officer under this section—
- (a) the circumstances in which a public service officer may be seconded;
  - (b) the terms that may apply to a secondment;
  - (c) administrative arrangements that may apply to a secondment;
  - (d) any other matter the commission chief executive considers relevant to a secondment.
- (6) In making a decision to second a public service officer under this section, the chief executive of the first department must comply with any relevant directive under subsection (5).

## **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

- (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 must be a reasonable period having regard to the nature and circumstances of the employment.
- (4) The chief executive may, by signed notice given to the officer, terminate the officer's employment at any time during the probationary period.
- (5) If, at the end of the probationary period, the officer's employment has not been terminated under subsection (4), the chief executive must—
  - (a) confirm the appointment; or
  - (b) extend the probationary period for a further period (*extended probationary period*); or
  - (c) by signed notice given to the officer, terminate the employment.
- (6) The extended probationary period must be a reasonable period having regard to the nature and circumstances of the employment.

## 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

- (b) resides in Australia and has permission, under a Commonwealth law, to—
  - (i) work in Australia; and
  - (ii) remain in Australia indefinitely.
- (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.

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



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### 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.
- (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**

### **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, by notice, 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) The notice must state—
  - (a) when the suspension starts and ends; and
  - (b) the remuneration to which the officer is entitled for the period of the suspension under subsection (5); and
  - (c) the effect that alternative employment may, under subsections (6) and (7), have on the entitlement.
- (3) However, before suspending the officer, the chief executive must consider all alternative duties that may be available for the officer to perform.
- (4) The period of the suspension can not be more than the period that the chief executive reasonably believes is necessary to avoid the prejudice.
- (5) 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.
- (6) For subsection (5), 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—
  - (i) this Act; or
  - (ii) a standard of conduct applying to the officer under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
- (c) a standard of conduct, if any, applying to the officer under an approved standard of practice under the *Public Sector Ethics Act 1994*.
- (7) The deduction under subsection (5) must not be more than the amount of the officer's normal remuneration during the period of the suspension.
- (8) The continuity of the officer's service as a public service officer is taken not to have been broken only because of the suspension.
- (9) The chief executive may cancel the suspension at any time.
- (10) 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—
  - (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.

## **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.

### **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—

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- (a) at the end of 2 years after a temporary employee has been continuously employed as a temporary employee in a department; and
- (b) at the end of each 1-year period, after the period mentioned in paragraph (a), that a temporary employee has been continuously employed as a temporary employee in the department.
- (2) The department's chief executive must, within the required period, decide whether the person's employment in the department is to—
- (a) continue as a temporary employee according to the terms of the existing employment; or
- (b) be as a general employee on tenure or a public service officer.
- (3) In making the decision, the chief executive must—
- (a) consider any criteria for the decision fixed under—
- (i) a directive by the commission chief executive; and
- (ii) an industrial instrument; and
- (b) if an industrial instrument provides for the way the decision must be made—comply with the industrial instrument.
- (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 according to the terms of the existing employment.
- (5) In this section—
- continuously employed as a temporary employee* has the meaning given under a commission chief executive directive or an industrial instrument.
- required period*, for making a decision under subsection (2), means—

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- (a) the period stated in an industrial instrument within which the decision must be made; or
- (b) if paragraph (a) does not apply—the period starting on the last day of the period mentioned in subsection (1)(a) or (b) and ending 28 days later.

*temporary employee*—

- (a) includes a general employee employed on a temporary basis; but
- (b) does not include a person employed under section 147 or 148 on a casual basis.

#### **149A Commission chief executive must make directive about casual employees**

- (1) The commission chief executive must make a directive about reviewing the status of casual employees for the purpose of deciding whether or not to convert their employment to permanent employment.
- (2) The chief executive of the department in which a casual employee the subject of the directive is employed must, within the period provided for in the directive, decide whether the person's employment in the department is to—
  - (a) continue as a casual employee according to the terms of the existing employment; 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 the 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 casual employee according to the terms of the existing employment.



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- (5) A person's employment can not be converted without the person's consent.
  - (6) A person may apply to have the person's employment converted if the person has been employed as a casual employee on a regular and systematic basis for at least—
    - (a) 2 years; or
    - (b) if a shorter time is decided by the commission chief executive—the shorter time.

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

### Division 1                **Preliminary**

#### 150    **Definitions for pt 6**

In this part—

*chief executive (employment screening)* means the chief executive of the employment-screening department.

*child-related duties* see section 156.

*criminal history report* means—

- (a) for division 2—a report given under section 154; or
- (b) for division 3A—a report given under section 165C; or
- (c) otherwise—a report given under section 154 or 165C.

*employment-screening department* means the department in which the Working with Children Act is administered.

*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
- (c) start training the person in a department as an apprentice or trainee, within the meaning of the *Further Education and Training Act 2014*.

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

**positive exemption notice** means a positive exemption notice under the Working with Children Act.

**positive prescribed notice** means a positive notice under the Working with Children Act.

**regulated employment** see the Working with Children Act, section 156.

**relevant duties** see section 151.

**Working with Children Act** means the *Working with Children (Risk Management and Screening) Act 2000*.

## Division 2            Relevant duties

### Subdivision 1        General

#### 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

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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—
  - (i) regulated employment; or
  - (ii) child-related duties.

*Note—*

See—

- (a) the Working with Children Act, chapter 8, and division 3A, in relation to persons to be engaged in duties that are regulated employment; and
  - (b) divisions 3 and 3A for assessing the suitability of persons to be engaged in child-related duties.
- (2) However, this division does not apply to duties to be performed in the employment-screening department.

*Note—*

See the Working with Children Act, chapter 8A, in relation to duties to be performed in the employment-screening department.

- (3) Duties to which this division applies are ***relevant duties***.
- (4) 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.

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

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## **Subdivision 2      Changes in criminal history of persons engaged by department of communities**

### **155A    Definitions for sdiv 2**

In this subdivision—

*approved form* means a form approved by the commission chief executive for use under section 155B.

*chief executive (communities)* means the chief executive of the department of communities.

*department of communities* means the department in which the following Acts are administered—

- (a) the *Community Services Act 2007*;
- (b) the *Disability Services Act 2006*.

### **155B    Engaged person to disclose change in criminal history**

- (1) This section applies if there is a change in the criminal history of a person engaged by the department of communities to perform relevant duties.
- (2) The person must immediately disclose the details of the change to the chief executive (communities).
- (3) The disclosure under subsection (2) must be in the approved form.
- (4) Information disclosed in the approved form by the person about a conviction or charge for an offence in the person's criminal history must include—
  - (a) the existence of the conviction or charge; and
  - (b) when the offence was committed or alleged to have been committed; and
  - (c) the details of the offence or alleged offence; and

- (d) for a conviction—whether or not a conviction was recorded and the sentence imposed on the person.
- (5) For a person who does not have a criminal history, there is taken to be a change in the person’s criminal history if the person acquires a criminal history.

**155C Failing to make disclosure or making false, misleading or incomplete disclosure**

- (1) A person must not—
  - (a) fail to give the chief executive (communities) a disclosure as required under section 155B, unless the person has a reasonable excuse; or
  - (b) give the chief executive (communities) an approved form under section 155B that is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1)(b) does not apply to a person in relation to particular information that the person is unable to provide if the person—
  - (a) indicates in the approved form the information that the person is unable to provide; and
  - (b) otherwise gives the information in the approved form to the best of the person’s ability.
- (3) It is enough for a complaint for an offence against subsection (1)(b) to state that the disclosure was ‘false or misleading’ to the person’s knowledge, without specifying which.

**155D Chief executive (communities) may obtain report from police commissioner**

- (1) This section applies to a person who is engaged by the department of communities.

- (2) The chief executive (communities) may ask the police commissioner to give the chief executive a written report about the person's criminal history.
- (3) The police commissioner must comply with the request.

### **155E Use of information obtained under this subdivision**

- (1) This section applies to the chief executive (communities) in considering information about a person received under this subdivision.
- (2) The information must not be used for any purpose other than assessing the person's suitability to continue to be engaged by the department of communities to perform relevant duties.
- (3) When making the assessment, the chief executive (communities) must have regard to the following matters relating to information about the commission, or alleged or possible commission, of an offence by the person—
  - (a) when the offence was committed, is alleged to have been committed or may possibly have been committed;
  - (b) the nature of the offence and its relevance to the person's proposed duties or duties under the engagement;
  - (c) anything else the chief executive considers relevant to the assessment of the person.

### **155F Person to be advised of information obtained from police commissioner**

- (1) This section applies to information obtained by the chief executive (communities) about a person under section 155D from the police commissioner.
- (2) Before using the information to assess the person's suitability to continue to be engaged by the department, the chief executive (communities) must—
  - (a) disclose the information to the person; and

- (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.

### **155G Guidelines for dealing with information obtained under this subdivision**

- (1) The chief executive (communities) must make guidelines, consistent with this Act, for dealing with information obtained by the chief executive under this subdivision.
- (2) The purpose of the guidelines is to ensure—
  - (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in assessing the persons' suitability to continue to be engaged by the department of communities; and
  - (c) decisions about the suitability of persons, based on the information, are made consistently.
- (3) The chief executive (communities) must give a copy of the guidelines, on request, to a person engaged by the department of communities.

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

### **156 Application of div 3**

- (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) the duties—
    - (i) are to be performed at a place at which services are provided only or mainly to a child or children; or
    - (ii) are to be performed in a role involving providing services only or mainly to a child or children; or



- (iii) involve contact with a child or children that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children; and
- (b) it is necessary to conduct child-related employment screening of a person engaged to perform the particular duties to ensure the person is suitable to perform them; and
- (c) the particular duties are not likely to involve regulated employment.

*Note—*

See the Working with Children Act, chapter 8, and division 3A, in relation to persons to be engaged in duties that are regulated employment.

- (2) However, this division does not apply to duties to be performed in the employment-screening department.

*Note—*

See the Working with Children Act, chapter 8A, in relation to duties to be performed in the employment-screening department.

- (3) Duties to which this division applies are *child-related duties*.

## 157 Definitions for div 3

In this division—

*child-related employment screening* means employment screening under the Working with Children Act, chapter 8.

*current*, for a positive prescribed notice or positive exemption notice, means current within the meaning of the Working with Children Act.

*engage*, a person, includes—

- (a) engage the person under a contract for services; and
- (b) engage the person on a voluntary basis; and

- (c) if the person is a student, engage the person under an arrangement to provide the person with practical experience in the person's field of study.

***exemption notice*** means an exemption notice under the Working with Children Act.

***negative exemption notice*** means a negative exemption notice under the Working with Children Act.

***negative prescribed notice*** means a negative notice under the Working with Children Act.

***prescribed notice*** means a prescribed notice under the Working with Children Act.

## **158 Prescribed notice or exemption notice required for child-related duties**

- (1) The chief executive of a department must ensure a person does not perform child-related duties in the department unless—
- (a) if the person is engaged by the department as a volunteer and is not a police officer or registered teacher—the person has a current positive prescribed notice; or
- (b) otherwise—
- (i) the person has a current positive prescribed notice or current positive exemption notice; or
- (ii) the chief executive has applied for a prescribed notice or exemption notice about the person as provided under section 159.
- (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) In this section—

***registered teacher*** see the Working with Children Act, schedule 7.

***volunteer*** see the Working with Children Act, section 165.

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**159 Chief executive to apply for prescribed notice or exemption notice**

- (1) This section applies if—
  - (a) the chief executive of a department proposes to engage a person in the department to perform child-related duties; and
  - (b) the person does not have a prescribed notice or exemption notice.
- (2) The chief executive must apply to the chief executive (employment screening) for the prescribed notice or exemption notice.
- (3) The application must be made, and dealt with, under the Working with Children Act as if the chief executive were proposing to start employing, or continue employing, the person in regulated employment.

*Notes—*

- 1 Under the Working with Children Act, section 199(3), a person who asks someone else to sign an application for a prescribed notice about the other person must warn the other person that it is an offence for a disqualified person within the meaning of the Working with Children Act to sign the application.
- 2 An application for a prescribed notice or exemption notice must include the person's consent to child-related employment screening. See the Working with Children Act, section 200 (for applications for prescribed notices) or 261 (for applications for exemption notices).
- 3 A person's consent to child-related employment screening may be withdrawn by the person or may be taken to be withdrawn in particular circumstances. See the Working with Children Act, sections 204 to 210 (for applications for prescribed notices) or sections 264 to 271 (for applications for exemption notices).

**161 Engaging public service employee before prescribed notice or exemption notice issued**

- (1) This section applies if—
  - (a) the chief executive of a department engages a person to perform child-related duties on the basis the chief

- executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii); and
- (b) the person is a public service employee at the time the chief executive engages the person; and
  - (c) either of the following happens—
    - (i) the person’s consent to child-related employment screening is withdrawn, or taken to be withdrawn, under the Working with Children Act;
    - (ii) the person is issued a negative prescribed notice or negative exemption notice.
- (2) The chief executive must ensure the person does not continue to perform child-related duties.

## **162 Engaging other person before prescribed notice or exemption notice issued**

- (1) This section applies if—
- (a) the chief executive of a department engages a person to perform child-related duties on the basis the chief executive has applied for a prescribed notice or exemption notice about the person as mentioned in section 158(1)(b)(ii); and
  - (b) the person is not a public service employee at the time the chief executive engages the person.
- (2) The chief executive—
- (a) may only appoint the person on probation under section 126 for a period not ending before the prescribed notice or exemption notice is issued to the person; and
  - (b) may confirm the person’s appointment under section 126 only if the person is issued a positive prescribed notice or positive exemption notice; and
  - (c) must not confirm the person’s appointment under section 126 if either of the following happens—

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- (i) the person's consent to child-related employment screening is withdrawn, or taken to be withdrawn, under the Working with Children Act;
    - (ii) the person is issued a negative prescribed notice or negative exemption notice.
  - (3) Subsection (2) does not limit the power under section 126 to have a longer probationary period or to terminate the person's employment.

**163 Effect of suspension or cancellation of positive prescribed notice or positive exemption notice**

- (1) If the chief executive of a department engages a person to perform child-related duties in the department and the person's positive prescribed notice or positive exemption notice is suspended under the Working with Children Act, the chief executive must ensure the person does not perform child-related duties while the notice is suspended.
- (2) If the chief executive of a department engages a person to perform child-related duties in the department and the person's positive prescribed notice or positive exemption notice is cancelled under the Working with Children Act, the chief executive must ensure the person does not perform child-related duties.

**Division 3A Further assessment of person to whom prescribed notice or exemption notice is issued**

**164 This division does not apply to particular engagements**

This division does not apply in relation to the following—

- (a) engaging a person under a contract for services;
- (b) engaging a person on a voluntary basis;

- (c) engaging a student under an arrangement to provide the student with practical experience in the student's field of study.

## **165 Application of Criminal Law (Rehabilitation of Offenders) Act 1986**

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.

### **165A Chief executive may decide to obtain criminal history**

- (1) This section applies if the chief executive (employment screening)—
  - (a) issues a positive prescribed notice or positive exemption notice to a person to be engaged by a department to perform either or both of the following (*prescribed duties*)—
    - (i) child-related duties;
    - (ii) regulated employment; and
  - (b) under the Working with Children Act, section 235 or 293 (including as applied for section 159), gives the chief executive of the department a notice stating that the chief executive may need to undertake a further assessment of the person under this division to decide whether or not the department should engage the person.
- (2) If the chief executive proposes to engage the person to perform the prescribed 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 under this division.
- (3) Subsection (2) applies even if the person is an employee of the department at the time the chief executive proposes to engage the person to perform the prescribed duties.

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### **165B 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 an employee of the department who is engaged in performing prescribed duties, the chief executive must ensure the person does not perform prescribed duties.
- (3) If the person is not an employee of the department who is engaged in performing prescribed duties, the chief executive is not required to consider the person for engagement to perform the prescribed duties.

### **165C 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 or must not give the requested report.

### **165D 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 assessment about the person's suitability for engagement to perform the prescribed duties.

## **Division 4                      Provisions relating to reports under divisions 2 and 3A and other information etc.**

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

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 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 no longer required to be obtained**

- (1) This section applies if—
  - (a) the chief executive has, under section 154 or 165C, requested the police commissioner to give the chief executive a written report about a person's criminal history; and
  - (b) the chief executive decides the criminal history 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 165C(2) about a person must not be accessed, disclosed or used for any purpose



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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 about a person after the chief executive who requested the report makes an assessment about the person under division 2 or 3A;
  - (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.

## **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, the person is charged with a relevant offence.
- (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 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 the person is convicted as mentioned in subsection (3), and the person has appealed against the conviction, 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;
  - (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.
- (5) 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 department's 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.
- (6) For subsection (4), 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.
- (7) In this section—
- disqualifying offence* see the Working with Children Act, schedule 7.
- 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 165A, or another document for this 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—

*child-related duties* includes duties that are regulated employment.

*police information* means police information as defined under section 150 of this Act as in force from time to time before the commencement of this definition.

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

*previous section 160* means section 160 of this Act as in force from time to time before the commencement of this definition.

*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.

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**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) the following—
    - (i) the kinds of places a chief executive may decide are places at which services are provided only or mainly to a child or children;
    - (ii) the kinds of roles a chief executive may decide involve providing services only or mainly to a child or children;
    - (iii) the duties that involve contact with a child or children that is of a kind, or happens in a context, that may create an unacceptable level of risk for the child or children; and
  - (c) a reasonable opportunity to be given to a person to make written representations about a criminal history report before an adverse decision relating to the person is made.

- (3) In this section—

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

- (b) child-related duties, other than a decision that the person is suitable for engagement to perform the child-related duties; or
- (c) duties that are regulated employment, other than a decision that the person is suitable to perform the 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

- (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.

### **179AA Directives about applying this part**

- (1) A directive of the commission chief executive may provide for matters relevant to how this part is to be applied in relation to a public service employee.
- (2) In acting under this part, a chief executive must comply with any relevant directive under subsection (1).

## **Part 8 Miscellaneous provisions**

### **179A Requirement to disclose previous history of serious disciplinary action**

- (1) If a chief executive of a department proposes to appoint or second a person to, or employ a person in, the department, the chief executive, under a directive, may require the person to disclose to the chief executive particulars of any serious disciplinary action taken against the person.



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- (2) The person must comply with the requirement before the appointment, secondment or employment takes effect and within the time and in the way stated by the chief executive.
  - (3) The chief executive is not required to further consider the person for appointment, secondment or employment if the person—
    - (a) fails to comply with the requirement; or
    - (b) gives false or misleading information in response to the requirement.
  - (4) In this section—

*serious disciplinary action* means—

- (a) disciplinary action under a public sector disciplinary law involving—
  - (i) termination of employment; or
  - (ii) reduction of classification level or rank; or
  - (iii) transfer or redeployment to other employment; or
  - (iv) reduction of remuneration level; or
- (b) a disciplinary declaration under a public sector disciplinary law that states a disciplinary action mentioned in paragraph (a)(i) or (ii) as the disciplinary action that would have been taken against the person if the person's employment had not ended.

## **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—
  - (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—

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- (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
  - (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;
  - (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.

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*Note—*

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

- (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.
- (7) For the interpretation of a reference to an interest, see section 65(4).

## **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.
- (3) For the interpretation of a reference to an interest or a conflict of interest, see section 65(4).

## Chapter 6      **Disciplinary action for public service employees and former public service employees**

### Part 1              **Preliminary**

#### 186A    **Definitions for ch 6**

In this chapter—

*changes employment* includes changes employment by promotion, transfer, redeployment or secondment.

*employing chief executive*, of a public service employee, means the chief executive of a department in which the employee holds an appointment or is employed after the employee changes from one department to another department.

*former public service employee* means a public service employee whose employment ends for any reason after a disciplinary ground arises.

*previous chief executive*, for a public service employee, means the chief executive of the department in which the employee holds an appointment or is employed before—

- (a) the employee changes employment from the department to another department; or
- (b) the employment of the employee as a public service employee ends for any reason.

## Part 2 Disciplinary action

### 187 Grounds for discipline

- (1) A public service employee's chief executive may discipline the employee if the chief executive is reasonably satisfied the employee has—
  - (a) performed the employee's duties carelessly, incompetently or inefficiently; or
  - (b) been guilty of misconduct; or
  - (c) been absent from duty without approved leave and without reasonable excuse; or
  - (d) contravened, without reasonable excuse, a direction given to the employee as a public service employee by a responsible person; or
  - (e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the employee's duties; or
  - (ea) contravened, without reasonable excuse, a requirement of the chief executive under section 179A(1) in relation to the employee's appointment, secondment or employment by, in response to the requirement—
    - (i) failing to disclose a serious disciplinary action; or
    - (ii) giving false or misleading information; or
  - (f) contravened, without reasonable excuse—
    - (i) a provision of this Act; or
    - (ii) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
    - (iii) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*.



- (2) A disciplinary ground arises when the act or omission constituting the ground is done or made.
- (3) Also, a chief executive may discipline, on the same grounds mentioned in subsection (1)—
  - (a) a public service employee under section 187A; or
  - (b) a former public service employee under section 188A.

- (4) 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.

## **187A How disciplinary action may be taken against a public service employee after the employee changes employment**

- (1) This section applies if—
  - (a) a public service employee holds an appointment with, or is employed by, a department and a disciplinary ground arises in relation to the employee; and
  - (b) after the disciplinary ground arises the employee changes employment from the department to another department.
- (2) The previous chief executive may make a disciplinary finding about the disciplinary ground even though the employee holds an appointment with, or is employed by, the other department.

- (3) The previous chief executive may not take disciplinary action about the disciplinary ground other than to the extent provided under subsection (4).
- (4) If—
  - (a) the previous chief executive makes a disciplinary finding about the disciplinary ground; and
  - (b) the previous chief executive and the employing chief executive agree that disciplinary action against the employee is reasonable in the circumstances;the employing chief executive may take disciplinary action against the employee under section 188.
- (5) Despite subsection (2) and without limiting or being limited by any other power of delegation under any Act, the previous chief executive may delegate to the employing chief executive the authority under subsection (2) to make a disciplinary finding about the employee.
- (6) If—
  - (a) the previous chief executive delegates to the employing chief executive the authority under subsection (2) to make a disciplinary finding about the employee; and
  - (b) the employing chief executive makes a disciplinary finding about the employee;the employing chief executive may take disciplinary action against the employee under section 188 without the agreement of the previous chief executive.
- (7) The previous chief executive may give to the employing chief executive any information about a public service employee or a disciplinary ground relating to the employee to help the employing chief executive to perform a function under subsection (4) or (5) in relation to the employee.

**188 Disciplinary action that may be taken against a public service employee**

- (1) In disciplining a public service employee, the employee's chief executive may take the action, or order the action be taken, (*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 employee's periodic remuneration payments
  - a reprimand
- (2) If the disciplinary action is taken following an agreement under section 187A(4) between the previous chief executive and the employing chief executive mentioned in the section, the chief executives must agree on the disciplinary action.
- (3) However, a monetary penalty can not be more than the total of 2 of the employee's periodic remuneration payments.
- (4) Also, an amount directed to be deducted from any particular periodic remuneration payment of the employee—
- (a) must not be more than half of the amount payable to or for the employee in relation to the payment; and
  - (b) must not reduce the amount of salary payable to the employee in relation to the period to less than—
    - (i) if the employee 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.

- (5) In acting under subsection (1), the chief executive must comply with this Act and any relevant directive of the commission chief executive.
- (6) An order under subsection (1) is binding on anyone affected by it.

### **188A Disciplinary action that may be taken against a former public service employee**

- (1) This section applies if—
  - (a) a disciplinary ground arises in relation to a public service employee; and
  - (b) after the disciplinary ground arises the employee's employment as a public service employee ends for any reason.
- (2) However, this section does not apply if—
  - (a) the former public service employee is an ambulance service officer and the ambulance service chief executive has taken, is taking, or intends to take disciplinary action against the employee in relation to the disciplinary ground under the *Ambulance Service Act 1991*, part 2, division 4, subdivision 2; or
  - (b) the former public service employee is a fire service officer and the fire service chief executive has taken, is taking, or intends to take disciplinary action against the employee in relation to the disciplinary ground under the *Fire and Emergency Services Act 1990*, chapter 3.
- (3) The previous chief executive may make a disciplinary finding or take or continue to take disciplinary action against the former public service employee in relation to the disciplinary ground.
- (4) The disciplinary finding or disciplinary action must be made or taken within a period of 2 years after the end of the employee's employment.

- (5) However, subsection (4) does not stop disciplinary action being taken following an appeal or review.
- (6) Subsection (4) does not affect—
  - (a) an investigation of a suspected criminal offence; or
  - (b) an investigation of a matter for the purpose of notifying the Crime and Corruption Commission of suspected corrupt conduct under the *Crime and Corruption Act 2001*.
- (7) In disciplining the former public service employee, the previous chief executive may make a disciplinary declaration and may not take any other disciplinary action.
- (8) The previous chief executive may only make a disciplinary declaration if the disciplinary action that would have been taken against the employee if the employee's employment had not ended would have been—
  - (a) termination of employment; or
  - (b) reduction of classification level.
- (9) The making of the disciplinary declaration does not affect the way in which the employee's employment ended, or any benefits, rights or liabilities arising because the employment ended.
- (10) In this section—

***disciplinary declaration*** means a declaration of—

  - (a) the disciplinary finding against the former public service employee; and
  - (b) the disciplinary action that would have been taken against the employee if the employee's employment had not ended.

**188AB Disciplinary action that may be taken against a former ambulance service officer or former fire service officer**

- (1) This section applies if—

- (a) a disciplinary ground arises in relation to an ambulance service officer or fire service officer (the *former service officer*); and
  - (b) after the disciplinary ground arises, the officer's employment as an ambulance service officer or fire service officer ends for any reason; and
  - (c) the officer is a public service employee in a department.
- (2) However, this section does not apply in relation to a former service officer if—
- (a) the officer was an ambulance service officer and the previous or employing chief executive has taken, is taking, or intends to take action against the officer under the *Ambulance Service Act 1991*, part 2, division 4, subdivision 3; or
  - (b) the officer was a fire service officer and the previous or employing chief executive has taken, is taking, or intends to take action against the officer under the *Fire and Emergency Services Act 1990*, chapter 3.
- (3) The previous chief executive may make a disciplinary finding about the disciplinary ground even though the former service officer is no longer employed in the service for which the previous chief executive is the chief executive.
- (4) Despite subsection (3) and without limiting or being limited by any other power of delegation under any Act, the previous chief executive may delegate to the employing chief executive the authority under subsection (3) to make a disciplinary finding about the former service officer.
- (5) If—
- (a) the previous chief executive makes a disciplinary finding about the disciplinary ground; and
  - (b) the previous chief executive and the person's employing chief executive agree that disciplinary action against the former service officer is reasonable in the circumstances;

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the employing chief executive may take disciplinary action against the officer under section 188 as if a disciplinary ground exists.

(6) If—

- (a) the previous chief executive delegates to the employing chief executive the authority under subsection (4) to make a disciplinary finding about the former service officer; and
- (b) the employing chief executive makes a disciplinary finding about the former service officer;

the employing chief executive may take disciplinary action against the officer under section 188 without the agreement of the previous chief executive.

(7) The previous chief executive may give to the employing chief executive any information about the person or a disciplinary ground relating to the person to help the employing chief executive to perform a function under subsection (5) or (6) in relation to the person.

(8) If, in relation to a person who was an ambulance service officer or fire service officer, a chief executive is both the previous chief executive and employing chief executive, this section applies with necessary changes to allow the chief executive to take disciplinary action against the person as provided under this section.

(9) In this section—

***employing chief executive***, for a person, means the chief executive of the department in which the person is employed.

***previous chief executive*** means—

- (a) for a person who was an ambulance service officer—the ambulance service chief executive; or
- (b) for a person who was a fire service officer—the fire service chief executive.

### **188B Information about disciplinary action to be given by chief executive**

- (1) This section applies if—
  - (a) the chief executive of a department asks the chief executive of another department (the *other chief executive*) for disciplinary information that the other chief executive has about a person who is or was a public service employee; and
  - (b) the information is reasonably necessary for the chief executive to make a decision about—
    - (i) an appointment or employment, or continued appointment or employment, of the person to the chief executive's department; or
    - (ii) a disciplinary finding, disciplinary action or disciplinary declaration the chief executive is considering in relation to the person.
- (2) The other chief executive must give the disciplinary information to the chief executive unless the other chief executive is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.
- (3) In this section—

*disciplinary information*, in relation to a request made of a chief executive about a person, means information about the following made or taken against the person under a public sector disciplinary law by the chief executive or another entity—

  - (a) a current investigation into whether the person should be disciplined;
  - (b) a finding that the person should be disciplined;
  - (c) possible disciplinary action under consideration;
  - (d) disciplinary action, including a disciplinary declaration.



**189 Suspension of public service employee liable to discipline**

- (1) The chief executive may suspend a public service employee from duty if the chief executive reasonably believes the employee is liable to discipline under a disciplinary law.
- (2) However, before suspending the employee, the chief executive must consider all alternative duties that may be available for the employee to perform.
- (3) The chief executive may cancel the suspension at any time.

**190 Procedure for disciplinary action**

- (1) In disciplining a public service employee or former public service employee or suspending a public service employee, 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 employee suspended from duty under this chapter unless the employee's chief executive decides otherwise.
- (2) During the period of the suspension the employee is entitled to normal remuneration, less any amount earned by the employee from alternative employment that the employee 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 employee's engaging in the employment was not in contravention of—

- (i) this Act; or
  - (ii) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
- (c) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*.
- (4) The deduction under subsection (2) must not be more than the amount of the employee's normal remuneration during the period of the suspension.
- (5) The continuity of a public service employee's service as a public service officer is taken not to have been broken only because of a suspension under this chapter.
- (6) The continuity of a general or temporary employee's employment as a general or temporary employee is taken not to have been broken only because of a suspension under this chapter.

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

- (1) If a chief executive decides to suspend or terminate the employment of a public service employee, the chief executive must give the employee 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 employee 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

#### Division 1 Right of appeal

##### 193 Appeals

A person may appeal 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.

*Note—*

The *Industrial Relations Act 2016* does not apply in relation to a matter that has been, or is, the subject of an appeal under this part except to the extent the matter relates to bullying in the workplace—see sections 425 and 449 of that Act.

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

- (1) An appeal may be made 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—
    - (i) a person (other than by termination of employment), including the action taken in disciplining the person; or
    - (ii) a former public service employee by way of a disciplinary declaration made under section 188A,

including if the disciplinary action that would have been taken was termination of employment;

- (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 (a ***temporary employment decision***);

*Note—*

A failure by the chief executive to make a decision under section 149 is taken to be a decision that the person's employment in the department is to continue as a temporary employee according to the terms of the existing employment. See section 149(4).

- (ea) a decision under section 149A that the employment of a casual employee in a department is to continue as a casual employee (a ***casual employment decision***);
  - (eb) a decision a public service employee believes is unfair and unreasonable (a ***fair treatment decision***);
  - (f) a decision about anything else against which another Act allows a person to appeal.
- (2) However—
- (a) if an appeal may be made under this section against a decision, other than under subsection (1)(eb), the appeal can not be made under subsection (1)(eb); and
  - (b) an appeal can not be made against a decision if section 195 applies to the decision.
- (3) In this section—
- temporary employee—***
- (a) includes a general employee employed on a temporary basis; but
  - (b) does not include a person employed under section 147 or 148 on a casual basis.

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

- (1) A person can not appeal 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 non-appealable appointment.
- (2) A person can not appeal against, or in an appeal call in question in any way, a decision that decides the policy, strategy, nature, scope, resourcing or direction of the public service or a department.
- (3) A person can not appeal against a 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.
- (3A) A person can not appeal against a fair treatment decision—
  - (a) made under chapter 5, part 7; or
  - (b) made under chapter 6, part 2, other than—

- (i) a finding under section 187 that a disciplinary ground exists for the person; or
- (ii) a decision under section 189 to suspend a person from duty without pay; or
- (c) relating to the recruitment or selection of a public service employee; or
- (d) relating to a person's work performance, other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review; or

*Example for paragraph (d)—*

a decision about performance recorded in a person's performance development agreement as part of the person's 6-monthly or annual performance review

- (e) relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of the grievance; or
  - (f) relating to the development or performance management of a chief executive or senior executive.
- (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.

- (4A) Subsection (4) does not apply in relation to a matter mentioned in subsection (4)(b) to the extent the matter relates to bullying in the workplace.
- (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, or a directive for this part, 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—

- (a) for a decision mentioned in section 194(1)(a)—a public service employee aggrieved by the decision if the employee 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 employee or former public service employee aggrieved by the decision to discipline the employee if the employee is entitled to appeal under a directive of the commission chief executive;
- (c) for a 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 temporary employment decision—the temporary employee the subject of the decision;
- (ea) for a casual employment decision—the casual employee the subject of the decision;
- (eb) for a fair treatment decision—a public service employee who is aggrieved by the decision;
- (f) for a decision mentioned in section 194(1)(f)—the person the other Act allows to appeal.

## **Division 1A                    Who must hear and decide appeals and requirement to act independently**

### **196A    Appeal heard and decided by IRC member**

- (1) An appeal under this part is heard and decided by an IRC member.
- (2) To remove any doubt, it is declared that an IRC member's functions and powers for this Act are performed and exercised under this Act and not under the *Industrial Relations Act 2016*.

### **196B    Duty of person performing appeal function**

An IRC member hearing and deciding an appeal and any staff member performing functions to help the IRC member to hear and decide an appeal—

- (a) must perform the functions independently, impartially, fairly, and in the public interest; and
- (b) in performing the functions, are not subject to direction by the commission, the commission chief executive or any Minister.

## **Division 2                    Appeal procedures**

### **197    Starting an appeal**

- (1) An appeal may be started only by giving the industrial registrar a notice (an *appeal notice*) stating—
  - (a) details identifying the decision appealed against; and
  - (b) reasons for the appeal.



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- (2) An appeal notice must be given and actually received by the industrial registrar 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 IRC member may at any time extend the time for giving an appeal notice if the appellant satisfies the member that there is a reasonable ground for extending the time.

## **198 Notice by industrial registrar of appeal**

- (1) As soon as possible after receiving an appeal notice under section 197, the industrial registrar must—
  - (a) give notice of receipt of the appeal notice to the appellant; and
  - (b) give the appeal notice to an IRC member.
- (2) The industrial registrar 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) An IRC member 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 IRC member; and
  - (c) may be revoked or amended by the IRC member.
- (3) The period of a stay must not extend past the time when the IRC member decides the appeal.
- (4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

## **200 IRC member may decline to hear particular appeals**

- (1) An IRC member may decline to hear an appeal against a decision mentioned in section 194(1)(a), (d) or (eb) unless the IRC member is satisfied the appellant has used procedures required to be used under the employee complaints directive.
- (1A) However, the IRC member may hear an appeal against a fair treatment decision under section 194(1)(eb) if the IRC member is satisfied it would be unreasonable to require the employee to comply with the procedures in the circumstances.
- (2) An IRC member 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) An IRC member 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 IRC member 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) An IRC member must decide an appeal by reviewing the decision appealed against.
- (2) The purpose of the appeal is to decide whether the decision appealed against was fair and reasonable.
- (3) For an appeal against a decision about a promotion or disciplinary action, an IRC member must decide the appeal on the basis of the evidence available to the decision maker when the decision was made.
- (4) However, subsection (3) does not prevent an IRC member from allowing other evidence to be taken into account.

### **202 IRC member's functions on appeal**

In hearing and deciding an appeal, an IRC member 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.

*Note—*

See also section 88G.

### **203 IRC member may decide procedures**

- (1) An IRC member—
  - (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; 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, an IRC member must comply with—
- (a) this part; and
  - (b) any relevant procedural rules prescribed under a regulation; and
  - (c) a decision of the senior IRC member made for the appeal under section 203A; and
  - (d) any practice directions made under section 203B.

### **203A Senior IRC member may decide procedures**

- (1) The senior IRC member may decide the procedures to be followed in a particular appeal.
- (2) The senior IRC member may make a decision under subsection (1) on the officer's own initiative or on the application of a party to the appeal.
- (3) However, a decision of the senior IRC member under subsection (1) must be consistent with this part or any relevant procedural rules prescribed under a regulation.

### **203B Practice directions**

- (1) The senior IRC member may make practice directions about the practices and procedures to be followed in appeals.
- (2) A practice direction must not be inconsistent with this part or any relevant procedural rules prescribed under a regulation.
- (3) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

### **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 leave of the IRC member who is hearing the appeal.

### **205 IRC member's powers on appeal**

- (1) In hearing an appeal, an IRC member may—
  - (a) act in the absence of a person who has been given reasonable notice; and
  - (b) receive evidence on oath or affirmation or by statutory declaration; and
  - (c) require a public service employee to attend as a witness to give evidence or produce documents or things; and
  - (d) require a public service employee attending as a witness to make an oath or affirmation.
- (2) The IRC member 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 industrial registrar.
- (2) However, the notice may only be given before the IRC member gives the appellant notice of the decision on the appeal.
- (3) The industrial registrar must give notice of the withdrawal to the IRC member who is hearing the appeal, 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.

*Note—*

This section has no relevance to an appeal against a disciplinary declaration.

## **Division 3 Deciding appeal**

### **208 Decision on appeal**

- (1) In deciding an appeal, an IRC member 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

decision maker with a copy of the decision on appeal and any directions considered appropriate.

- (2) In deciding an appeal against a promotion decision, an IRC member 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) As soon as possible after a decision on an appeal is available, the IRC member who made the decision must give a copy of it to—
  - (a) the parties to the appeal; and
  - (b) the industrial registrar; and
  - (c) the commission chief executive.

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

For section 208(2), the IRC member 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 Decision on appeal is binding on parties**

- (1) An IRC member's decision on an appeal is binding on all parties to the appeal.
- (2) Without limiting subsection (1), a chief executive of a department must take all steps necessary to give effect to a decision of the IRC member applying to the department.

## **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
- (b) is requested or required by an IRC member to attend the proceeding.

*Note—*

This section has no relevance to an appeal against a disciplinary declaration.

### **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.

*Note—*

This section has no relevance to an appeal against a disciplinary declaration.

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

- (1) This section applies if an IRC member 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.
- (4) This section does not apply to a person who is appealing against a disciplinary declaration.

#### **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 IRC member'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.

#### **214B Commission chief executive must make directive for this part**

- (1) The commission chief executive must make a directive for this part.
- (2) The directive—
  - (a) must make provision for—
    - (i) the decisions, if any, against which an appeal may be made; and
    - (ii) the persons who are entitled to appeal against a decision mentioned in section 194(1); and

- (iii) the directions, if any, an IRC member may give under section 208(1)(b); and
- (b) may, for section 195(5), definition *non-appealable appointment*, declare an appointment to be an appointment against which an appeal may not be made.
- (3) However, the directive must not direct, or purport to direct, an IRC member or another person to do or not do something, or to do or not do something in a particular way, in relation to an appeal under this part.

## 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 2016*.
- (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.

## 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;

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- (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.
- (2) In this section—
- decision* includes a purported decision affected by jurisdictional error.

## **217 Exclusion for Industrial Relations Act 2016**

- (1) An excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 2016*.
- (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 2016*, section 471.
- (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.

## Part 4                      Miscellaneous

### 218A Commission chief executive must make directive about dealing with complaints by officers and employees

- (1) The commission chief executive must make a directive (the *employee complaints directive*) about how departments must deal with complaints made by officers or employees of the department about—
- (a) decisions made by officers or employees of the department; or
  - (b) the conduct of officers or employees of the department.
- (2) Without limiting subsection (1), a directive made under this section—
- (a) must provide for—
    - (i) the procedures for dealing with complaints mentioned in subsection (1); and
    - (ii) the period within which the complaints must be finally dealt with; and
    - (iii) the notification of decisions made in dealing with the complaints; and
  - (b) must provide that, if a person required to deal with a complaint about a decision mentioned in subsection (1)(a) fails to finally deal with the complaint within the period mentioned in paragraph (a)(ii), the person is taken to have confirmed the decision at the end of that period; and
  - (c) may apply to a decision mentioned in section 194; and
  - (d) may provide for a system for dealing with complaints that involves—

- (i) a person dealing with a complaint in the first instance; and
- (ii) another person dealing with (including, for example, by way of review) decisions made by the person who dealt with the complaint in the first instance.

### **218B Commission chief executive's functions—appeals**

The commission chief executive may communicate, in the way the officer considers appropriate, matters arising out of an appeal under part 1 that may affect decision-making for particular decisions in the public service, or in a particular government entity, to—

- (a) persons who are likely to make decisions of that kind; or
- (b) persons who are likely to be affected by decisions of that kind; or
- (c) any other person if the officer considers the matters may be relevant to the person's functions under an Act or other law.

### **218C Report on appeals**

- (1) As soon as practicable after a financial year ends, the commission chief executive must give the Minister a written report about appeals started, lapsed, withdrawn or decided under part 1 during the financial year.
- (2) If the Minister asks the commission chief executive for particular information concerning a matter mentioned in the report, the commission chief executive must—
  - (a) comply with the request; and
  - (b) give the help the Minister needs to consider the information.
- (3) Information provided to the Minister under subsection (2) is confidential.

## **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.

### **219A    Departments to have complaints management system for customer complaints**

- (1) A department must establish and implement a system for dealing with customer complaints.
- (2) The system must—
  - (a) provide for the department to take responsibility for managing the receipt, processing and outcome of a customer complaint; and
  - (b) comply with any Australian Standard about the handling of customer complaints that is in effect from time to time; and
  - (c) provide for giving notice of the outcome of a customer complaint to the complainant (unless the complaint was made anonymously).
- (3) By 30 September after each financial year, the chief executive of the department must publish the following information for the financial year on the department's website—
  - (a) the number of customer complaints received by the department in the year;
  - (b) the number of those complaints resulting in further action;

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- (c) the number of those complaints resulting in no further action.
- (4) In this section—
- customer complaint***—
- (a) means a complaint about the service or action of a department, or its staff, by a person who is apparently directly affected by the service or action; and
- (b) includes, for example, a complaint about any of the following—
- (i) a decision made, or a failure to make a decision, by a public service employee of the department;
  - (ii) an act, or failure to act, of the department;
  - (iii) the formulation of a proposal or intention by the department;
  - (iv) the making of a recommendation by the department;
  - (v) the customer service provided by a public service employee of the department.

## **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.

# **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 for Act No. 38 of 2008**

### 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.

*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—
  - (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—

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- (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.

## **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.

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### **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 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.

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## **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



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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 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 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.

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- (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.
- (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.

## **Part 3**

# **Transitional provisions for the Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009**

### **252 Definition for pt 3**

In this part—

*commencement* means the commencement of this part.

### **253 Disciplinary action**

Section 187A only applies to a public service officer who changes from a department to another department after the commencement.

### **254 Former public service officer**

For section 188A, a person is a former public service officer only if the person's employment as a public service officer ends after the commencement.

## Part 4 Transitional provision for the Integrity Act 2009

### 255 Declaration of interests by chief executives

- (1) This section applies if, immediately before the commencement of this section, the commission chief executive has a statement about a chief executive's interests given to the commission chief executive under section 101.
- (2) The commission chief executive must give a copy of the statement to the integrity commissioner.
- (3) For section 101, the chief executive is taken to have—
  - (a) given the statement to the integrity commissioner when the chief executive gave the statement to the departmental Minister; and
  - (b) to have complied with section 101(6A).

## Part 5 Transitional provisions for Criminal History Screening Legislation Amendment Act 2010

### 256 Definitions for pt 5

In this part—

*amending Act* means the *Criminal History Screening Legislation Amendment Act 2010*.

*commencement* means the commencement of this part.

*regulated employment* see the CCYPCG Act, section 156.

*unamended Act* means this Act as in force from time to time before the commencement.

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**257 Application of s 155B**

- (1) This section applies if—
  - (a) before the commencement, a person engaged by the department of communities was required, under a relevant provision, to disclose a change in the person's criminal history to the chief executive of that department; and
  - (b) at the commencement, the person has not made the disclosure.
- (2) Section 155B applies in relation to the change as if it happened immediately after the commencement.
- (3) In this section—

*department of communities* see section 155A.

*relevant provision* means—

  - (a) the *Community Services Act 2007*, section 105 as in force before its repeal by the amending Act; or
  - (b) the *Disability Services Act 2006*, section 67 as in force before its repeal by the amending Act; or
  - (c) the *Family Services Act 1987*, section 19 as in force before its repeal by the amending Act.

**258 Persons being considered for engagement, or engaged, in child-related duties or regulated employment at the commencement**

- (1) Chapter 5, part 6, divisions 3 and 3A apply in relation to a person who, at the commencement, is—
  - (a) being considered for engagement by a department in child-related duties; or
  - (b) engaged by a department in child-related duties.
- (2) Chapter 5, part 6, division 3A applies in relation to a person who, at the commencement, is—

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- (a) being considered for engagement by a department in regulated employment; or
  - (b) engaged by a department in regulated employment.
- (3) For subsections (1) and (2), a person is being considered for engagement by a department at the commencement if—
- (a) the person applied or otherwise expressed an interest in being engaged by the department before the commencement; and
  - (b) at the commencement, the chief executive of the department has not finished making an assessment of the person's suitability for the engagement.
- (4) In this section—
- child-related duties* see section 156.

**259 Request for police information not complied with at the commencement**

- (1) This section applies if—
- (a) the chief executive of a department has, under section 159 of the unamended Act, asked the police commissioner for a written report about a person's police information; and
  - (b) at the commencement, the police commissioner has not given the written report to the chief executive.
- (2) Despite section 160 of the unamended Act, the police commissioner is no longer required to comply with the chief executive's request.

**260 Particular police information obtained before commencement**

- (1) This section applies if—
- (a) before the commencement, the police commissioner gave the chief executive of a department a written report



about a person's police information under section 160 of the unamended Act; and

- (b) at the commencement, the chief executive has not, in relation to the written report, made an assessment about the person's suitability for engagement, or continued engagement, to perform child-related duties under section 162 of the unamended Act.
- (2) The chief executive must immediately—
- (a) destroy the written report; and
  - (b) stop making the assessment.

*Note—*

The person's suitability for engagement, or continued engagement, to perform child-related duties is now dealt with under chapter 5, part 6, divisions 3 or 3A as in force from the commencement. See section 258.

- (3) In this section—

*child-related duties* means child-related duties within the meaning of section 156 of the unamended Act.

## **261 Particular appeals and appeal rights continue**

- (1) Subsection (2) applies if, at the commencement, a person has appealed to a Magistrates Court under section 161 of the unamended Act and the appeal has not been decided.
- (2) The Magistrates Court must hear, or continue to hear, and decide the appeal under section 161 of the unamended Act.
- (3) Subsection (4) applies if, at the commencement, a person could have but has not appealed to a Magistrates Court under section 161 of the unamended Act.
- (4) The person may appeal to a Magistrates Court under section 161 of the unamended Act within the period stated in section 161(3) of the unamended Act, and the court must hear and decide the appeal under section 161 of the unamended Act.
- (5) For subsections (2) and (4), subject to subsection (6), section 161 of the unamended Act continues to apply in

relation to the appeal as if the amending Act had not been enacted.

- (6) If, on appeal, a Magistrates 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—
- (a) if the person is to be engaged or continue to be engaged to perform relevant duties—assess the person's suitability to be engaged or to continue to be engaged to perform relevant duties under chapter 5, part 6, division 2; or
  - (b) if the person is to be engaged or continue to be engaged to perform child-related duties—apply for a prescribed notice or exemption notice about the person under the CCYPCG Act as provided in chapter 5, part 6, division 3; or
  - (c) if the person is to be engaged in regulated employment—apply for a prescribed notice or exemption notice under the CCYPCG Act.

*Note—*

A person about whom an application for a prescribed notice or exemption notice is made under the CCYPCG Act may withdraw the person's consent to employment screening under that Act. See section 204 (for applications for a prescribed notice) or 263 (for applications for an exemption notice).

- (7) In this section—
- CCYPCG Act* see section 150.
  - child-related duties* see section 156.
  - relevant duties* see section 151.

## **262 Particular information etc. obtained before commencement**

- (1) Section 168 of the unamended Act continues to apply in relation to information given to the police commissioner

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under section 159(2) of the unamended Act before the commencement as if the amending Act had not been enacted.

- (2) Subsection (3) applies to any of the following if, under a part 6 directive, it is no longer required to be kept—
  - (a) a report and other information about a person given to a chief executive under section 160 of the unamended Act;
  - (b) a notice given to a chief executive under section 170 of the unamended Act.
- (3) The chief executive must destroy the report, the information, the notice and any other document required by the directive to be destroyed.

## **263 Notice not given by prosecuting authority at the commencement**

- (1) This section applies if—
  - (a) before the commencement, something (the *relevant event*) mentioned in section 170(1)(b) to (e) of the unamended Act happened in relation to a person who is a public service employee in a department; and
  - (b) at the commencement, the police commissioner or director of public prosecutions has not given notice of the relevant event to the department's chief executive as required by section 170 of the unamended Act.
- (2) Despite section 170 of the unamended Act, the police commissioner or director of public prosecutions is no longer required to give notice of the relevant event to the chief executive.



- (2) The CCYPCG commissioner must immediately—
- (a) destroy the report; and
  - (b) stop making the assessment.

*Note—*

Now see the CCYPCG Act, chapter 8A for assessing the person's suitability for engagement, or continued engagement, by the CCYPCG commission.

**267 Notice not given to CCYPCG commissioner by prosecuting authority at the commencement**

- (1) This section applies if—
- (a) before the commencement, a person engaged by the CCYPCG commission is charged with a relevant offence within the meaning of section 170(7); and
  - (b) at the commencement, the police commissioner or director of public prosecutions has not given information about the charge to the CCYPCG commissioner as required by section 170.
- (2) Despite section 170, the police commissioner or director of public prosecutions is no longer required to give the information to the CCYPCG commissioner.

**Part 7 Transitional provisions for Integrity Reform (Miscellaneous Amendments) Act 2010**

**268 Definitions for pt 7**

In this part—

*commencement* means the commencement of this part.

*initial review decision*, for a person, means the decision under section 149(2) in relation to the person because the 2-year

period mentioned in section 149(1)(a) has ended for the person.

**section 149 directive** means a commission chief executive directive made for section 149(2).

**subsequent review decision**, for a person, means a decision under section 149(2) in relation to the person because a 1-year period mentioned in section 149(1)(b) has ended for the person.

**transition period** means the period—

- (a) starting at the commencement; and
- (b) ending 1 year after the commencement.

## **269 Appeals officer**

- (1) This section applies to a person who, immediately before the commencement, held appointment under this Act as the Executive Director, Appeal Services, Public Service Commission.
- (2) The person is taken to have been appointed under this Act as the appeals officer.

## **270 Appointments on probation if probationary period has not ended**

Section 126 as in force before the commencement continues to apply in relation to a public service officer appointed on probation before the commencement and whose probationary period has not ended at the commencement.

## **271 Application of s 127 to appointments made before the commencement**

The amendment of section 127 by the *Integrity Reform (Miscellaneous Amendments) Act 2010* does not affect the appointment of a public service officer appointed before the commencement.

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**272 Review of status of general employees employed on a temporary basis before the commencement**

- (1) This section applies to a person who is a temporary general employee employed in a department at the commencement.
- (2) Section 149, as in force after the commencement, applies in relation to the person, subject to subsections (3) to (5).
- (3) If the person has been continuously employed by the department as a temporary general employee for more than 2 years but less than 3 years—
  - (a) the period for making the initial review decision for the person is the period that ends when the transition period ends; and
  - (b) the period for making a subsequent review decision for the person is the period provided for in a section 149 directive worked out by reference to the 1 year anniversary of the day the initial review decision is made for the person.
- (4) If the person has been continuously employed by the department as a temporary general employee for 3 years or more and the chief executive of the department has, under a section 149 directive, previously reviewed the person's employment to decide whether the person is to continue as a temporary general employee—
  - (a) the decision of the chief executive on the previous review is taken to be the initial review decision for the person; and
  - (b) the period for making a subsequent review decision for the person is—
    - (i) the period that ends when the transition period ends; or
    - (ii) if a section 149 directive provides for a longer period, the longer period.
- (5) If the person has been continuously employed by the department as a temporary general employee for 3 years or more and subsection (4) does not apply—

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- (a) the period for making the initial review decision for the person is the period that ends when the transition period ends; and
  - (b) the period for making a subsequent review decision for the person is the period provided for in a section 149 directive worked out by reference to the 1 year anniversary of the day the initial review decision is made for the person.
- (6) In this section—
- temporary general employee* means a person who is a general employee—
- (a) employed on a temporary basis; and
  - (b) not employed on a casual basis.

**273 Review of status of temporary employees employed more than 2 years at the commencement**

- (1) This section applies in relation to a person who is a temporary employee employed in a department at the commencement if the person has been continuously employed in the department as a temporary employee for more than 2 years.
- (2) If the person has been continuously employed in the department as a temporary employee for less than 3 years—
  - (a) the period for making the initial review decision for the person is the period that ends when the transition period ends; and
  - (b) the period for making a subsequent review decision for the person is the period provided for in a section 149 directive worked out by reference to the 1 year anniversary of the day the initial review decision is made for the person.
- (3) If the person has been continuously employed in the department as a temporary employee for 3 years or more—
  - (a) the period for making the first subsequent review decision for the person is—



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- (i) the period that ends when the transition period ends; or
  - (ii) if a section 149 directive provides for a longer period, the longer period; and
- (b) the period for making any other subsequent review decision for the person is the period provided for in a section 149 directive worked out by reference to the 1 year anniversary of the day the first subsequent review decision is made for the person.
- (4) In this section—  
*temporary employee* does not include a temporary employee who is employed on a casual basis.

## **274 Disciplinary action against general and temporary employees**

- (1) A general or temporary employee may be disciplined under chapter 6 only in relation to a disciplinary ground that arises after the commencement.
- (2) Without limiting subsection (1), section 187A only applies to a general or temporary employee who changes from a department to another department after the commencement.
- (3) Subsection (4) applies if—
  - (a) at the commencement, there is, in relation to a general or temporary employee, 1 or more disciplinary grounds for which the employee has not been disciplined under any other law, code of conduct or other procedure; and
  - (b) another disciplinary ground in relation to the employee arises after the commencement; and
  - (c) the employee's chief executive when the grounds mentioned in paragraph (a) arose is the employee's chief executive when the ground mentioned in paragraph (b) arose.
- (4) The employee's chief executive when the ground mentioned in subsection (3)(b) arose may discipline the employee under

chapter 6 in relation to all of the grounds as if all of the grounds arose after the commencement.

## **275 Disciplinary action against former general and temporary employees**

- (1) A person who was a general or temporary employee may be disciplined under chapter 6 only in relation to a disciplinary ground that arises after the commencement.
- (2) To remove any doubt, it is declared that, for section 188A, a person who was a general or temporary employee is a former public service employee only if the person's employment as a general or temporary employee ends after the commencement.

## **276 Appeals not started at commencement**

- (1) This section applies if, immediately before the commencement, a person could have but has not appealed against a decision under chapter 7, part 1.
- (2) The person may appeal against the decision under this Act as in force before the commencement.
- (3) Without limiting subsection (2)—
  - (a) the appeal must be made within the period within which the period was required to be made under this Act as in force before the commencement; and
  - (b) the appeal must be heard and decided by the commission chief executive under this Act as in force before the commencement.
- (4) For subsections (2) and (3), this Act as in force before the commencement continues to apply in relation to starting the appeal and the appeal.
- (5) However, section 210 as in force before the commencement does not apply in relation to the commission chief executive's decision on the appeal.

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**277 Appeals started at commencement**

- (1) This section applies to an appeal against a decision under chapter 7, part 1 that has been started but not decided at the commencement.
- (2) The commission chief executive must hear and decide the appeal, or continue to hear and decide the appeal, under this Act as in force before the commencement.
- (3) For subsection (2), this Act as in force before the commencement continues to apply in relation to the appeal.
- (4) However, section 210 as in force before the commencement does not apply in relation to the commission chief executive's decision on the appeal.

**278 Reopening decisions made before the commencement**

- (1) Subsection (2) applies in relation to an appeal under chapter 7, part 1 that has been reopened under section 210 as in force before the commencement.
- (2) The commission chief executive must continue to hear and decide the reopened appeal under this Act as in force before the commencement.
- (3) Subsection (4) applies in relation to an appeal under chapter 7, part 1 that has been decided before the commencement but has not been reopened under section 210 as in force before the commencement.
- (4) A party to the appeal may apply to the commission chief executive to reopen the appeal under section 210 as in force before the commencement within 21 days after the commencement.
- (5) For subsections (2) and (4), this Act as in force before the commencement continues to apply in relation to the reopened appeal or the reopening of the appeal.

## **Part 9**

# **Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

### **281 Definitions for pt 9**

In this part—

*commencement* means the commencement of this part.

*former appeals officer* means the person who, immediately before the commencement, held appointment under old section 88A as the appeals officer.

*former delegate* means a person who, immediately before the commencement, was delegated under old section 88F to hear and decide appeals under the old appeals provisions.

*new appeals officer* means a person appointed to be an appeals officer under new section 88A.

*new section 88A* means section 88A as in force from the commencement.

*old appeals provisions* means chapter 7, part 1 as in force immediately before the commencement.

*old section 88A* means section 88A as in force immediately before the commencement.

*old section 88F* means section 88F as in force immediately before the commencement.

### **282 Appointment of former appeals officer and former delegate ends at commencement**

Subject to section 284(3), the following end at the commencement—

- (a) the former appeals officer's appointment;

- (b) a former delegate's delegation.

### **283 Appeals started after commencement**

- (1) This section applies if a person after the commencement starts an appeal under chapter 7, part 1 against a decision made before the commencement.
- (2) The appeal must be heard and decided by a new appeals officer under this Act as in force from the commencement.
- (3) This Act as in force from the commencement applies in relation to starting the appeal and the appeal.

### **284 Appeals started before commencement**

- (1) This section applies if a person before the commencement starts an appeal under chapter 7, part 1 and the appeal has not been decided or withdrawn at the commencement (a *transitional appeal*).
- (2) A transitional appeals officer or transitional delegate must hear and decide, or continue to hear and decide, a transitional appeal under the old appeals provisions.
- (3) For the purposes of subsection (2)—
  - (a) this Act as in force before the commencement continues to apply; and
  - (b) the former appeals officer and a former delegate are taken to hold the appointment and delegation ended under section 282; and
  - (c) if there is a vacancy in the office of the former appeals officer, the commission chief executive may appoint a person under old section 88A to be a transitional appeals officer; and
  - (d) a transitional appeals officer may delegate his or her functions in relation to the appeal to an appropriately qualified person.

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- (4) Each appointment and delegation mentioned in subsection (3)(b), (c) and (d) in effect when the last transitional appeal is decided or withdrawn ends when the decision is made or the withdrawal happens.
- (5) In this section—
- transitional appeals officer* means—
- (a) the former appeals officer; or
  - (b) a person appointed under subsection (3) to be the transitional appeals officer.
- transitional delegate* means—
- (a) a former delegate; or
  - (b) a person who is delegated under subsection (3) to hear and decide an appeal.

## **Part 10**

# **Transitional provision for Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013**

### **285 Practice directions etc. for appeals started before commencement**

- (1) This section applies to an appeal started under chapter 7, part 1 that, at the commencement, has not been decided or withdrawn.
- (2) The senior appeals officer may decide, under section 203A, the procedures to be followed in the appeal.
- (3) A practice direction made under section 203B applies to the appeal.
- (4) In this section—

*amending Act* means the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*.

*commencement* means the commencement of this section.

## Part 11 Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014

### 286 Definitions

In this part—

*appeals official* see section 214A as in force immediately before the commencement.

*civil liability* see section 26C(6).

*commencement* means the commencement of this section.

*conduct* see section 26C(6).

*engage in conduct in an official capacity* see section 26C(6).

*protection provision* means section 88 or 214A as in force at any time before the commencement.

*State employee* see section 26B(4).

### 287 Application of s 26C and continued application of protection provisions

- (1) Section 26C does not apply to conduct, or the result of conduct, engaged in by a State employee before the commencement.
- (2) If, immediately before the commencement, a protection provision applied to an act done or an omission made by a commission official or appeals official, the protection provision as in force at the time the act was done or the

omission was made continues to apply in relation to the act or omission.

- (3) If a State employee engaged in conduct in an official capacity after the commencement and the conduct is part of a course of conduct that also includes an act done or omission made by the employee before the commencement, section 26C applies to all the conduct forming the course of conduct.
- (4) Subsections (1) and (2) are subject to subsection (3).

**288 Relationship of ch 1, pt 3, div 3 if civil liability dealt with by another Act**

- (1) This section applies if—
  - (a) another Act states a person does not incur civil liability for conduct or the result of conduct (however expressed), including, for example, if the person acts honestly and without negligence; and
  - (b) the result of the application of the other Act to conduct, or the result of conduct, engaged in by the person after the commencement is that the person would not be protected from civil liability under the other Act for the conduct or result; and
  - (c) the person is a State employee who would not, under section 26C, incur civil liability for the conduct or the result of the conduct, but the State or a body corporate would be liable in relation to the conduct or result.
- (2) Section 26C applies in relation to the conduct, or the result of the conduct, despite the other Act but does not limit the application of the other Act in relation to any other liability of the person.



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## Part 12 **Transitional provisions for Industrial Relations Act 2016**

### **289 Rulings**

- (1) A ruling in force under section 53 or 54 immediately before the commencement is taken to have been made under whichever of sections 53 and 54 the ruling could be made under if it were to be made on the commencement.
- (2) Despite section 52, directive 17/13 relating to the pay date for employees of Queensland Health, including as applied by a regulation made for section 23, prevails over an industrial instrument to the extent of any inconsistency between the directive and the industrial instrument.
- (3) Despite, section 52 directive 09/16 relating to field staff prevails over an industrial instrument to the extent of any inconsistency between the directive and the industrial instrument, but only until the end of 30 September 2017 after which section 52 applies to the directive.

### **289A Review of status of temporary employees—reviews triggered before commencement**

- (1) This section applies in relation to a decision under section 149(2) if—
  - (a) the period mentioned in section 149(1)(a) or (b) ended before the commencement; and
  - (b) immediately before the commencement, the decision had not been made.
- (2) Section 149 and any directive of the commission chief executive mentioned in that section, as in force immediately before the commencement, continue to apply for the making of the decision.

## **289B Review of status of casual employees**

For section 149A, a person's employment as a casual employee on a regular and systematic basis includes employment before the commencement.

## **290 Appeals under ch 7, pt 1**

- (1) An appeal started, but not completed, under chapter 7, part 1 immediately before the commencement is taken to be an appeal under chapter 7, part 1.
- (1A) However, chapter 7, part 1 and any commission chief executive directive mentioned in that part, as in force immediately before the commencement, continue to apply for an appeal against a decision mentioned in section 194(1)(a) or (e) that was made before the commencement.
- (1B) For subsection (1A), a person who, immediately before the commencement, was appointed as an appeals officer under section 88A is taken to be an IRC member.
- (2) A procedure in force under section 203A immediately before the commencement for an appeal continued under subsection (1) is taken to be a procedure decided under section 203A.
- (3) A practice direction in force under section 203B immediately before the commencement is taken to be a practice direction made under section 203B.

# Schedule 1      Public service offices and their heads

## section 21

<b>Public service office</b>	<b>Head</b>
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
Building Queensland under the <i>Building Queensland Act 2015</i>	chief executive officer under the <i>Building Queensland Act 2015</i>
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>
Gold Coast Waterways Authority under the <i>Gold Coast Waterways Authority Act 2012</i>	chief executive officer under the <i>Gold Coast Waterways Authority Act 2012</i>
Industrial Registry under the <i>Industrial Relations Act 2016</i>	registrar
Land Tribunal under the <i>Aboriginal Land Act 1991</i>	chairperson of the tribunal

<b>Public service office</b>	<b>Head</b>
Mental Health Review Tribunal under the <i>Mental Health Act 2016</i>	president of the tribunal
Office of the Director of Child Protection Litigation under the <i>Director of Child Protection Litigation Act 2016</i>	Director of Child Protection Litigation
Office of the Energy and Water Ombudsman under the <i>Energy and Water Ombudsman Act 2006</i>	energy and water ombudsman under the <i>Energy and Water Ombudsman Act 2006</i>
Office of the Health Ombudsman under the <i>Health Ombudsman Act 2013</i>	health ombudsman
Office of the Independent Assessor under the <i>Local Government Act 2009</i>	Independent Assessor
office of the information commissioner	information commissioner
Office of the Inspector-General of Emergency Management under the <i>Disaster Management Act 2003</i>	Inspector-General of Emergency Management
Office of the Prostitution Licensing Authority under the <i>Prostitution Act 1999</i>	executive director
office of the public guardian under the <i>Public Guardian Act 2014</i>	public guardian
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

<b>Public service office</b>	<b>Head</b>
office of the training ombudsman under the <i>Further Education and Training Act 2014</i>	training ombudsman
Public Safety Business Agency under the <i>Public Safety Business Agency Act 2014</i>	chief operating officer under the <i>Public Safety Business Agency Act 2014</i>
Public Service Commission	commission chief executive
Public Trust Office under the <i>Public Trustee Act 1978</i>	public trustee
Queensland Curriculum and Assessment Authority under the <i>Education (Queensland Curriculum and Assessment Authority) Act 2014</i>	chief executive officer
Queensland Family and Child Commission under the <i>Family and Child Commission Act 2014</i>	principal commissioner under the <i>Family and Child Commission Act 2014</i>
Queensland Mental Health Commission	commissioner under the <i>Queensland Mental Health Commission Act 2013</i>
Queensland Racing Integrity Commission under the <i>Racing Integrity Act 2016</i>	Racing Integrity Commissioner
Queensland Reconstruction Authority under the <i>Queensland Reconstruction Authority Act 2011</i>	chief executive officer under the <i>Queensland Reconstruction Authority Act 2011</i>

## Schedule 4 Dictionary

### section 4

***ambulance service chief executive*** means the chief executive under the *Ambulance Service Act 1991*.

***ambulance service officer*** means a person employed under the *Ambulance Service Act 1991*, section 13.

***amending Act***, for chapter 9, part 5, see section 256.

***appeals officer*** see section 88A(1).

***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.

***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 form***, for chapter 5, part 6, division 2, subdivision 2, see section 155A.

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

***audit office*** means the Queensland Audit Office under the *Auditor-General Act 2009*.

***auditor-general*** means the Queensland Auditor-General under the *Auditor-General Act 2009*.

***award*** see the *Industrial Relations Act 2016*, schedule 5.

***casual employment decision*** see section 194(1)(ea).

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

***changes employment***, for chapter 6, see section 186A.

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

***chief executive (communities)***, for chapter 5, part 6, division 2, subdivision 2, see section 155A.

***chief executive (employment screening)*** see section 150.

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

***child-related employment screening***, for chapter 5, part 6, division 3, see section 157.

***commencement***—

(a) for chapter 9, part 5—see section 256; or

(b) for chapter 9, part 6—see section 264.

***commencement***, for chapter 9, part 7, see section 268.

***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.

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

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

***current***, for chapter 5, part 6, division 3, see section 157.

***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.

***department of communities***, for chapter 5, part 6, division 2, subdivision 2, see section 155A.

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

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

***disciplinary declaration***—

- (a) for a disciplinary declaration made under a public sector disciplinary law, means—
  - (i) a disciplinary declaration made under—
    - (A) section 188A(7); or
    - (B) the *Police Service Administration Act 1990*, section 7A.2(2); or
    - (C) the *Misconduct Tribunals Act 1997* or QCAT Act; or
  - (ii) a declaration under another public sector disciplinary law that states the disciplinary action that would have been taken against the person if the person’s employment had not ended; or
- (b) otherwise, means a disciplinary declaration made under section 188A(7).

***disciplinary finding*** means a finding that a disciplinary ground exists.

***disciplinary ground*** means a ground for disciplining a public service officer under section 187.

***disciplinary information*** see section 188B(3).

***disciplinary law*** means—



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

***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 Corruption Act 2001*;
  - (v) the information commissioner;
  - (vi) the RTI commissioner;
  - (vii) the privacy 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.

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

***employee complaints directive*** see section 218A(1).

***employing chief executive***, for chapter 6, see section 186A.

***employment-screening department*** see section 150.

***engage***—

- (a) for chapter 5, part 6 generally—see section 150; and
- (b) for chapter 5, part 6, division 3—see also section 157.

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

***exemption notice***, for chapter 5, part 6, division 3, see section 157.

***fair treatment decision*** see section 194(1)(eb).

***fire service chief executive*** means the chief executive under the *Fire and Emergency Services Act 1990*.

***fire service officer*** means a person employed under the *Fire and Emergency Services Act 1990*, section 25.

***former public service employee***, for chapter 6 or 7, see section 186A.

***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 instrument*** see the *Industrial Relations Act 2016*, schedule 5.

***industrial matter*** see the *Industrial Relations Act 2016*, section 9.

***industrial registrar*** means the person appointed under the *Industrial Relations Act 2016*, section 514.

***industrial relations Minister*** means the Minister administering the *Industrial Relations Act 2016*.

***information***, for chapter 3, part 6, see section 88H.

***information commissioner*** means the information commissioner under the *Right to Information Act 2009*.

***initial review decision***, for chapter 9, part 7, see section 268.

***integrity commissioner*** means the Queensland Integrity Commissioner under the *Integrity Act 2009*.

***IRC*** means the commission under the *Industrial Relations Act 2016*.

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***IRC member*** means a person appointed as a member of the IRC under the *Industrial Relations Act 2016*.

***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).

***negative exemption notice***, for chapter 5, part 6, division 3, see section 157.

***negative prescribed notice***, for chapter 5, part 6, division 3, see section 157.

***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.

***office of the information commissioner*** means the office of the information commissioner under the *Right to Information Act 2009*.

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

***positive exemption notice***, for chapter 5, part 6, see section 150.

***positive prescribed notice***, for chapter 5, part 6, see section 150.

***prescribed notice***, for chapter 5, part 6, division 3, see section 157.

***previous chief executive***, for chapter 6, see section 186A.

***privacy commissioner*** means the privacy commissioner under the *Information Privacy Act 2009*.

***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 sector disciplinary law*** means—

- (a) this Act or any repealed Act regulating the public service; or
- (b) the *Police Service Administration Act 1990* or any repealed Act regulating police; or
- (c) the *Misconduct Tribunals Act 1997* or QCAT Act; or
- (d) the *Crime and Corruption Act 2001*; or
- (e) a disciplinary provision of an industrial instrument; or
- (f) another Act prescribed under a regulation.

***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.
- 3 For chapter 3, part 6, see also section 88H.

***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.

**regulated employment**—

- (a) for chapter 5, part 6—see section 150; or
- (b) for chapter 9, part 5—see section 256.

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

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

**remuneration** includes salary.

**RTI commissioner** means the Right to Information commissioner under the *Right to Information Act 2009*.

**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.

**section 149 directive**, for chapter 9, part 7, see section 268.

**senior appeals officer** see section 88B.

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

**senior IRC member** means the president of the IRC, or the president's delegate, under section 88B.

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

**serious disciplinary action** see section 179A(4).

**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*** means an office established under an Act to which a person may be appointed only by the Governor in Council or a Minister.

***subsequent review decision***, for chapter 9, part 7, see section 268.

***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 employment decision*** see section 194(1)(e).

***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).

***transition period***, for chapter 9, part 7, see section 268.

***unamended Act***, for chapter 9, part 5, see section 256.

***Working with Children Act*** see section 150.

***work performance information directive***, for chapter 3, part 6, see section 88H.

***work performance matter***, for chapter 3, part 6, see section 88H.