



Public Sector Act 2022

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Queensland

Public Sector Act 2022

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Public Sector Act 2022

An Act to provide for the administration of the public sector, the employment arrangements for public sector employees, a fair and responsive public sector and particular matters relating to individuals other than public sector employees

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Public Sector Act 2022*.

2 Commencement

This Act commences on 1 March 2023.

3 Main purpose of Act

The main purpose of this Act is to provide a framework for a fair and integrated public sector that serves the people of Queensland and the State.

4 How main purpose is primarily achieved

The main purpose of this Act is to be achieved primarily by—

- (a) ensuring the public sector is responsive to the community it serves by—

- (i) promoting a spirit of service to the community; and
 - (ii) providing for the appointment of chief executives and the employment of senior executives to provide the public service with high-performing, future-focused leadership; and
 - (iii) providing for the employment and administration of the public service; and
 - (iv) taking measures to promote the effectiveness and efficiency of public sector entities; and
 - (v) establishing the Public Sector Commission and providing for the appointment of a Public Sector Commissioner to enhance the public sector's human resource management and capability; and
 - (vi) establishing the Public Sector Governance Council to provide oversight of public sector governance; and
 - (vii) establishing a shared responsibility for the effective stewardship of the public sector between the Public Sector Governance Council, the Public Sector Commissioner and chief executives of departments; and
- (b) creating a public sector that supports the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples by—
- (i) ensuring public sector entities recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination; and
 - (ii) ensuring public sector entities actively promote the perspectives of Aboriginal peoples and Torres Strait Islander peoples; and

- (c) creating a public sector that ensures fairness in the employment relationship and fair treatment of its employees by—
 - (i) providing for the key rights, obligations and employment arrangements of public sector employees; and
 - (ii) maximising employment security and permanency of employment; and
 - (iii) taking steps to promote equity, diversity, respect and inclusion in employment, including for diversity target groups; and
 - (iv) ensuring a high-performing and diverse workforce, through fair and transparent, merit-based selection processes; and
 - (v) ensuring fair and accountable decision-making, including by providing public sector employees with access to fair and independent reviews and appeals; and
 - (vi) setting a positive performance management framework for public sector employees; and
 - (vii) fixing principles to guide public sector managers, and the work performance and personal conduct of public sector employees; and
- (d) establishing a high-performing, apolitical public sector by effective stewardship that—
 - (i) responds to the needs of the community and the government; and
 - (ii) maintains accountability, impartiality and integrity, while supporting the public interest, and when giving advice to the government; and
 - (iii) focuses on the delivery of services and government programs; and

- (iv) supports the government in making and implementing decisions about public policy while harnessing creativity and innovation; and
- (v) ensures public resources are managed efficiently and their use is accountable.

5 Application of provisions of this Act by another Act

- (1) Nothing in this Act prevents another Act or regulation from—
 - (a) applying particular provisions of this Act to an entity that is not a public sector entity or to the chief executive or employees of that entity; or
 - (b) providing for the way in which the provisions mentioned in paragraph (a) are to apply, including, for example, that they apply with or without change.
- (2) In this section—

chief executive, of an entity, includes the individual responsible for the day-to-day management of the entity or the entity's affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity.

Part 2 Interpretation

Division 1 Dictionary

6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 2 Key terms

Subdivision 1 Entities

7 What is the *public sector*

The *public sector* is the sector that consists of—

- (a) public sector entities; and
- (b) public sector employees who are employed in public sector entities.

8 What is a *public sector entity*

(1) A *public sector entity* is—

- (a) a public service entity; or
- (b) an entity, other than a public service entity, prescribed by regulation as a public sector entity; or
- (c) a registry or other administrative office of a court or tribunal of the State; or
- (d) an agency, authority, commission, corporation, instrumentality, office, or other entity, other than an entity mentioned in paragraph (a), (b) or (c), established under an Act for a public or State purpose.

(2) However, none of the following is a public sector 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 established under the *Parliamentary Service Act 1988*;

- (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;
- (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) or 2.5(1)(b)(ii);
- (i) a community justice group established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*;
- (j) a school council established under the *Education (General Provisions) Act 2006*;
- (k) a parents and citizens association formed under the *Education (General Provisions) Act 2006*, chapter 7;
- (l) a university established under an Act;
- (m) a co-operative under the Co-operatives National Law (Queensland) for primary producers that is not in receipt of moneys of, or financial assistance from, the State;
- (n) an association incorporated under the *Associations Incorporation Act 1981*;
- (o) a government owned corporation, unless a regulation prescribes it to be a public sector entity;
- (p) a national system employer within the meaning of the *Fair Work Act 2009* (Cwlth), section 14, including a national system employer mentioned in section 30N of that Act;
- (q) the council;
- (r) a taskforce established under section 195;

- (s) another entity prescribed by another Act for this section not to be a public sector entity;
 - (t) another entity, or part of another entity, prescribed by regulation for this section not to be a public sector entity.
- (3) Also, if a public sector entity mentioned in subsection (1)(d) is part of a department, the public sector entity is taken not to have an existence as a public sector entity, separate to the existence of the department as a public sector entity, for the purpose of this Act.
- (4) In this section—
court includes a court of record.

9 What is a *public service entity*

A *public service entity* is—

- (a) a department; or
- (b) an entity mentioned in schedule 1.

10 What is a *department*

A *department* is a department of government declared under section 197.

11 What is the *public service*

The *public service* consists of persons employed under chapter 4 or 5 in departments or other public service entities.

Subdivision 2 Employees

12 Who is a *public sector employee*

- (1) A *public sector employee* is—

- (a) a public service employee; or
 - (b) a person employed under another Act or law in a public sector entity.
- (2) However, none of the following is a public sector employee—
- (a) a person appointed to an office if—
 - (i) the appointment to the office is made by the Governor alone; or
 - (ii) the appointment to the office is made by the Governor in Council; or
 - (iii) the salary for the office is provided for, or calculated in accordance with a salary provided for, under the *Judicial Remuneration Act 2007*, the *District Court of Queensland Act 1967* or the *Magistrates Act 1991*; or
 - (iv) the office is a particular office established under an Act that expressly provides for the appointment of the holder of an office mentioned in subparagraph (ii); or
 - (v) the office is honorary; or
 - (vi) the office is prescribed by regulation for this subparagraph;
 - (b) a person appointed as a member of a board;
 - (c) a person appointed as a chief executive of a public sector entity if the person was appointed by a board;
 - (d) a person employed as an associate to a Supreme Court judge, District Court judge, commissioner under the *Industrial Relations Act 2016*, or judge or member of another court of record;
 - (e) a person employed as a ministerial staff member under the *Ministerial and Other Office Holder Staff Act 2010*;
 - (f) a person employed under a law of a jurisdiction outside Australia;

- (g) a person prescribed by another Act for this section not to be a public sector employee;
 - (h) a person prescribed by regulation for this section not to be a public sector employee.
- (3) Despite subsection (1) or (2), a person is a public sector employee if—
- (a) the person is appointed as a chief executive under section 171, the commissioner under section 212, or a special commissioner under section 230; or
 - (b) another Act provides the person is to be, may be, or is employed or appointed under this Act.
- (4) Public sector employees are generally employees for the *Industrial Relations Act 2016*.
- (5) Subsection (4) does not limit or otherwise affect section 141.

13 Who is a *public service employee*

- (1) A *public service employee* is a person employed under chapter 4 or 5 in a public service entity as—
- (a) a general employee; or
 - (b) a fixed term temporary employee; or
 - (c) a casual employee; or
 - (d) an officer; or
 - (e) a senior officer; or
 - (f) a senior executive; or
 - (g) a chief executive.
- (2) Also, the commissioner and each special commissioner are a *public service employee*.

14 Who is a *public service officer*

A *public service officer* is a public service employee mentioned in section 13(1)(d), (e), (f) or (g) or (2).

15 Conditions of employment of public sector employee

- (1) The purpose of this section is to give an overview of a public sector employee's conditions of employment.
- (2) A public sector employee's conditions of employment are governed by various laws and instruments, including, for example, the following—
 - (a) this Act;
 - (b) the *Industrial Relations Act 2016*;
 - (c) other Acts applying to the employee;
 - (d) industrial instruments applying to the employee;
 - (e) directives applying to the employee;
 - (f) the employee's contract of employment.
- (3) A public sector employee's conditions of employment may be affected by other Acts, including, for example, the *Human Rights Act 2019*.

Subdivision 3 Chief executives

16 Who is a *chief executive*

A *chief executive*, in relation to a public sector entity, is—

- (a) for a department—the individual appointed under this Act as the chief executive of the department; or
- (b) for a public service entity mentioned in section 9(b)—the head of the entity; or
- (c) for another public sector entity—

- (i) if a regulation prescribes a position for this subparagraph—the individual who holds the prescribed position; or
- (ii) otherwise—the individual responsible for the day-to-day management of the entity or the entity's affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity.

17 Who is a public sector employee's chief executive

- (1) The *chief executive*, of a public sector employee, is—
 - (a) for a public service employee—the chief executive of the public service entity in which the employee is employed as a public service employee; or
 - (b) for a public sector employee mentioned in section 12(1)(b)—the chief executive of the public sector entity in which the employee is employed as a public sector employee.
- (2) Despite subsection (1)(a), if the employee is employed in a public service entity mentioned in section 9(b), the chief executive of the employee is the head of the entity.
- (3) To remove any doubt, it is declared that—
 - (a) the chief executive of a health service employee appointed under the *Hospital and Health Boards Act 2011*, section 67(1) is the chief executive of the department mentioned in that section; and
 - (b) the chief executive of a health executive or a senior health service employee appointed under the *Hospital and Health Boards Act 2011*, section 67(2) is the chief executive of the Service mentioned in that section; and
 - (c) the chief executive of a health service employee appointed under the *Hospital and Health Boards Act 2011*, section 67(3) is the chief executive of the prescribed Service mentioned in that section.

18 Relationship between chief executives and their 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.
- (3) The chief executive of a public sector entity other than a department is, for the State or the public sector entity, responsible for the employment of public sector employees of that public sector entity.
- (4) The public sector employees of a public sector entity other than a department are responsible to that public sector entity's chief executive in relation to their employment in that public sector entity.

Part 3 Reframing of State's relationship with Aboriginal peoples and Torres Strait Islander peoples

Division 1 Preliminary

19 Purpose of part

- (1) The purpose of this part is to—
 - (a) ensure reframing entities support the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples, being Australia's first peoples; and
 - (b) develop the cultural capability of prescribed entities.

- (2) The purpose is to be achieved by ensuring reframing entities and prescribed entities take active steps to—
- (a) recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination; and
 - (b) foster a culturally capable workforce and a culturally safe workplace by developing the cultural capability of the entities.

20 Definitions for part

In this part—

cultural capability, of an entity, means the integration of knowledge about the experiences and aspirations of Aboriginal peoples and Torres Strait Islander peoples into the entity's workplace standards, policies, practices and attitudes to produce improved outcomes for Aboriginal peoples and Torres Strait Islander peoples.

reframing entity means—

- (a) a public sector entity; or
- (b) the police service; or
- (c) an entity prescribed by another Act for this definition; or
- (d) an entity prescribed by regulation for this definition.

Division 2 Responsibilities

21 Responsibilities for supporting a reframed relationship with Aboriginal peoples and Torres Strait Islander peoples

- (1) Reframing entities, as providers of public services to the people of Queensland, have a unique role in supporting the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples.

- (2) Reframing entities fulfil the role by—
 - (a) recognising and honouring Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland; and
 - (b) engaging in truth-telling about the shared history of all Australians; and
 - (c) recognising the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination; and
 - (d) promoting cultural safety and cultural capability at all levels of the public sector; and
 - (e) working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them; and
 - (f) ensuring the workforce and leadership of the entities are reflective of the community they serve, having regard to chapter 2 and chapter 3, part 3; and
 - (g) promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples; and
 - (h) supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.
- (3) The chief executive of a reframing entity is responsible for ensuring the entity fulfils the role.
- (4) To remove any doubt, it is declared that—
 - (a) an act or decision is not invalid merely because a person fails to comply with this section; and
 - (b) nothing in this section creates in a person a legal right or gives rise to a civil cause of action.

Division 3 Plan and audit

22 Definition for division

In this division—

prescribed entity means—

- (a) a department; or
- (b) a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; or
- (c) the police service; or
- (d) an entity prescribed by another Act for this definition; or
- (e) an entity prescribed by regulation for this definition.

23 Reframing the relationship plan and audit

- (1) The chief executive of a prescribed entity must, as part of the entity's workforce planning, make a document (a *reframing the relationship plan*), informed by the matters mentioned in section 21, that identifies the measures for developing the cultural capability of the entity when—
 - (a) providing advice to the State government; and
 - (b) delivering services to the community.
- (2) The reframing the relationship plan must be published—
 - (a) on the prescribed entity's website; or
 - (b) if the prescribed entity does not have a website, in another publicly available way the chief executive of the entity considers appropriate.
- (3) As soon as practicable after the end of each financial year, the chief executive of the prescribed entity must conduct an audit of the entity's performance as measured against the reframing the relationship plan.
- (4) The chief executive of the prescribed entity—

- (a) must review the reframing the relationship plan annually; and
- (b) may amend the plan at any time; and
- (c) is responsible for the implementation and outcomes of the plan.

Chapter 2 Equity, diversity, respect and inclusion

Part 1 Preliminary

24 Purpose of chapter

- (1) The purpose of this chapter is to ensure each prescribed entity—
 - (a) develops a diverse workforce that represents and reflects the diverse views, experiences and backgrounds of the people of Queensland; and
 - (b) actively progresses equity and diversity in employment matters for diversity target groups, including conducting an annual equity and diversity audit and actively progressing gender pay equity; and
 - (c) can demonstrate there are equal conditions of employment and equality in access to employment opportunities and leadership roles; and
 - (d) fosters a respectful and inclusive workplace culture in which all employees feel safe, valued, accepted and supported at work and can participate equally; and
 - (e) creates a workplace free from unlawful discrimination.
- (2) In this section—

actively progressing gender pay equity includes taking measures to achieve—

- (a) equal remuneration for male and female employees for work of equal or comparable value; and
- (b) equity for women in employment conditions; and
- (c) equity in women’s access to working arrangements and employment and development opportunities.

25 Definitions for chapter

In this chapter—

chapter 2 special commissioner means a person appointed as a special commissioner under section 230 whose area of public sector administration stated in the person’s instrument of appointment relates to promoting equity, diversity, respect and inclusion in employment.

chief executive, of a prescribed entity—

- (a) for a prescribed entity that is a public sector entity—see section 16; or
- (b) otherwise—the individual responsible for the day-to-day management of the entity or the entity’s affairs, whether or not the individual is subject to the direction of, or reports to, a governing body of the entity.

culture of respect and inclusion, in relation to a prescribed entity’s workforce, see section 32.

diversity target group means any of the following groups—

- (a) Aboriginal peoples and Torres Strait Islander peoples;
- (b) people from culturally and linguistically diverse backgrounds;
- (c) people with disability;
- (d) women;

(e) a group prescribed by regulation for this definition.

employee includes an individual appointed under a statutory appointment.

equity and diversity audit see section 29(1).

equity and diversity plan see section 28(1).

equity and diversity report see section 29(3).

prescribed entity means—

- (a) a public sector entity; or
- (b) the police service; or
- (c) an entity prescribed by another Act for this definition; or
- (d) an entity prescribed by regulation for this definition.

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

26 Application of chapter

This chapter applies in relation to a prescribed entity only to the extent the prescribed entity has employees.

Part 2 Equity and diversity in employment

27 Duty to promote equity and diversity

The chief executive of a prescribed entity must take reasonable action to—

- (a) promote, support and progress equity and diversity in the entity in relation to employment matters; and
- (b) ensure people who are members of 1 or more diversity target groups are able to pursue careers, and compete for

recruitment, selection and promotion opportunities, in the entity; and

- (c) eliminate unlawful discrimination in the entity in relation to employment matters.

28 Equity and diversity plan

- (1) The chief executive of a prescribed entity must, as part of the entity's workforce planning, make a document (an *equity and diversity plan*) that identifies the measures for improving equity and diversity in the entity in relation to employment matters.
- (2) Without limiting subsection (1), the measures identified in the equity and diversity plan must include—
 - (a) the establishment of objectives, strategies and targets for the employment of people who are members of 1 or more diversity target groups in the prescribed entity; and
 - (b) any other measure prescribed by regulation.
- (3) The equity and diversity plan must be published—
 - (a) on the prescribed entity's website; or
 - (b) if the prescribed entity does not have a website, in another publicly available way the chief executive of the entity considers appropriate.
- (4) The chief executive of the prescribed entity—
 - (a) must review the equity and diversity plan annually; and
 - (b) may amend the plan at any time, having regard to the most recent equity and diversity audit and equity and diversity report; and
 - (c) is responsible for the implementation and outcomes of the plan.
- (5) To remove any doubt, it is declared that the equity and diversity plan may also address matters about a group of employees that is not a diversity target group.

Example of a group of employees that is not a diversity target group—

people with diverse sexual orientations, gender identities or intersex variations

29 Equity and diversity audit and report

- (1) The chief executive of a prescribed entity must conduct an audit each year (an ***equity and diversity audit***)—
 - (a) to gather information about the composition of the entity's workforce; and
 - (b) if the entity had an equity and diversity plan for the previous year—to analyse performance against that plan; and
 - (c) otherwise to identify and analyse opportunities to promote, support and progress equity and diversity in the entity.
- (2) In planning for and conducting the audit, the chief executive of the prescribed entity must consider—
 - (a) the purpose of this chapter under section 24; and
 - (b) the chief executive's duty under section 27; and
 - (c) the obligation under section 28 for the chief executive to make an equity and diversity plan.
- (3) As soon as practicable after conducting the audit, the chief executive of the prescribed entity must prepare a report about the information gathered in the audit (an ***equity and diversity report***).
- (4) If the commissioner or chapter 2 special commissioner asks the chief executive of the prescribed entity for a copy of the equity and diversity report, the chief executive must comply with the request.

30 Request for information

- (1) The commissioner or chapter 2 special commissioner may ask the chief executive of a prescribed entity to provide information about the chief executive's compliance with section 27, 28 or 29.
- (2) Also, the commissioner or chapter 2 special commissioner may ask for the following information for the prescribed entity—
 - (a) the steps the entity has taken to comply with its equity and diversity plan;
 - (b) the other information prescribed by regulation.
- (3) The chief executive of the prescribed entity must give the commissioner and chapter 2 special commissioner the information within 3 months after receiving the request.

31 Recommendation to take particular action

- (1) This section applies if the commissioner or chapter 2 special commissioner believes that the chief executive of a prescribed entity has not fully complied with the obligation under section 28(1) to make an equity and diversity plan.
- (2) The commissioner or chapter 2 special commissioner may recommend to the chief executive of the prescribed entity that particular action (the *recommended action*) be taken to improve compliance with the obligation.
- (3) Without limiting subsection (2), the commissioner or chapter 2 special commissioner may recommend to the chief executive of the prescribed entity that the entity's equity and diversity plan be amended.
- (4) The chief executive of the prescribed entity must either—
 - (a) take the recommended action; or
 - (b) give the commissioner and chapter 2 special commissioner a notice stating the reasons why the recommended action can not be taken.

- (3) To remove any doubt, it is declared that the prescribed entity's equity and diversity plan may outline measures for fulfilling the requirements under subsection (1) or (2).

Example—

The prescribed entity's equity and diversity plan may contain measures for promoting a culture in which the experiences and perspectives of people with diverse sexual orientations, gender identities or intersex variations are invited and respected.

34 Request for information

- (1) The commissioner or chapter 2 special commissioner may ask the chief executive of a prescribed entity to provide information about the entity's compliance with section 33.
- (2) The chief executive of the prescribed entity must give the commissioner and chapter 2 special commissioner the information within 3 months after receiving the request.

35 Recommendation to take particular action

- (1) This section applies if the commissioner or chapter 2 special commissioner believes, on the basis of information given under section 34, that the chief executive of a prescribed entity has not fully complied with the obligation under section 33(2).
- (2) The commissioner or chapter 2 special commissioner may recommend to the chief executive of the prescribed entity that particular action (the *recommended action*) be taken to improve compliance with the obligation.
- (3) The chief executive of the prescribed entity must either—
 - (a) take the recommended action; or
 - (b) give the commissioner and chapter 2 special commissioner a notice stating the reasons why the recommended action can not be taken.

- (4) The commissioner or chapter 2 special commissioner may cancel all or part of the exemption.
- (5) The exemption or cancellation must be in writing.

Chapter 3 Public sector arrangements

Part 1 Preliminary

38 Application of chapter

This chapter applies to public sector entities and public sector employees.

Part 2 Principles

39 Public sector principles

- (1) In recognition that public sector entities are established for a public or State purpose, and of the trust the people of Queensland place in public sector entities, a public sector entity should be guided by the principles mentioned in subsections (2) and (3) (the *public sector principles*).
- (2) The management of the public sector should be guided by the following principles—
 - (a) achieving a spirit of service to the community;
 - (b) ensuring accountability, integrity and support of the public interest;
 - (c) ensuring independence, transparency and impartiality in giving advice and making decisions;
 - (d) achieving responsiveness, innovation and creativity;

- (e) promoting collaboration between public sector entities and other entities in providing services to the community;
 - (f) achieving continuous organisational improvement.
- (3) The employment of public sector employees should be guided by the following principles—
- (a) ensuring employment on a permanent basis is the default basis of employment, other than for non-industrial instrument employees;
 - (b) supporting equity, diversity, respect and inclusion at work;
 - (c) ensuring the taking of measures aimed at implementing and promoting pay equity;
 - (d) ensuring effectiveness and efficiency while maintaining a focus on the future;
 - (e) ensuring fairness and impartiality in making decisions;
 - (f) remunerating employees at rates appropriate to their responsibilities;
 - (g) promoting equitable and flexible working environments.

40 Work performance and personal conduct principles

- (1) In recognition that public sector employment involves a public trust, the work performance and personal conduct of each public sector employee should be guided by the following principles (the *work performance and personal conduct principles*)—
- (a) achieving excellence in service delivery;
 - (b) ensuring the effective, efficient and appropriate use of public resources;
 - (c) giving effect to government policies and priorities;
 - (d) collaborating with other public sector entities with a focus on public sector-wide priorities in addition to

- priorities specific to particular public sector entities, if appropriate and while recognising the need for independence of particular public sector entities;
- (e) providing sound and impartial advice to government;
 - (f) continuously improving work performance, including through training and development;
 - (g) carrying out duties impartially and with integrity;
 - (h) acting honestly, fairly and in the public interest;
 - (i) interacting with staff members under the *Ministerial and Other Office Holder Staff Act 2010* respectfully, collaboratively and with integrity;
 - (j) observing all laws relevant to the employment;
 - (k) ensuring the employee's personal conduct does not reflect adversely on the reputation of the public sector entity in which the employee is employed;
 - (l) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4;
 - (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) A public sector manager must take all reasonable steps to ensure each public sector employee under the manager's management is aware of the following matters—
- (a) the work performance and personal conduct expected of the employee;
 - (b) the public sector principles;
 - (c) the values of the public sector entity in which the employee is employed;
 - (d) for a public service employee—the values of the public service;
 - (e) what constitutes corrupt conduct under the *Crime and Corruption Act 2001*.

- (3) Also, a public sector manager must—
 - (a) provide working environments in which all public sector employees are—
 - (i) treated fairly and reasonably; and
 - (ii) assigned work according to the employee’s responsibilities as reflected in remuneration rates; and
 - (b) consider and give effect to the following matters when undertaking management responsibilities—
 - (i) the public sector principles;
 - (ii) the values of the public sector entity in which the employee is employed;
 - (iii) if the manager is a public service employee—the values of the public service; and
 - (c) ensure fairness and integrity in performing managerial functions, including when making decisions; and
 - (d) undertake best practice human resource management, including the application of the positive performance management principles in the following ways—
 - (i) pro-actively managing the work performance and personal conduct of public sector employees;
 - (ii) constructively engaging with public sector employees to identify development and training opportunities, improve work performance, and build expertise in the public sector;
 - (iii) taking prompt and appropriate action to address any unacceptable work performance or personal conduct that arises; and
 - (e) take personal responsibility for development as a manager.
- (4) A chief executive of a public sector entity has overall responsibility for—

- (a) ensuring the entity performs its functions in a way consistent with—
 - (i) the main purpose of the Act; and
 - (ii) the ways in which the main purpose of the Act is to be primarily achieved; and
 - (iii) the public sector principles; and
- (b) ensuring managers within the entity perform managerial functions in accordance with the positive performance management principles; and
- (c) ensuring public sector employees have access to fair and independent reviews and appeals; and
- (d) ensuring the entity has workforce and human resource planning and practices, including systems for the regular review of employment arrangements for public sector employees.

Note—

If the chief executive is an accountable officer under the *Financial Accountability Act 2009*, see also the responsibility of the chief executive to develop the strategic plan and operational plan under the *Financial and Performance Management Standard 2019*, section 8.

41 How chief executive must perform functions and discharge responsibilities

In performing functions and discharging responsibilities under an Act, a chief executive of a public sector entity must—

- (a) observe the public sector principles; and
- (b) comply with all relevant laws, industrial instruments and directives.

Part 3 Recruitment and selection

42 Definition for part

In this part—

employ, a person as a public sector employee, includes—

- (a) for a public service officer—second or promote the officer; and
- (b) for a chief executive—appoint.

43 Application of part

This part applies to the employment of an eligible person in or to a public sector entity.

44 Principles underpinning recruitment and selection

- (1) The purpose of this section is to ensure the recruitment and selection of a high-performing, apolitical and representative public sector workforce.
- (2) A person undertaking a recruitment and selection process in a public sector entity, including, for example, making a decision about employment of a public sector employee, must undertake the process in accordance with the principles mentioned in subsection (3).
- (3) The principles are—
 - (a) recruitment and selection processes must be directed to the selection of the eligible person best suited to the position; and
 - (b) recruitment and selection processes must be fair and transparent; and
 - (c) recruitment and selection processes must reflect the obligations under chapter 2 relating to equity, diversity, respect and inclusion.

45 Employment on merit and for equity and diversity

- (1) A person selected for employment in or to a public sector entity must be the eligible applicant best suited to the position.
- (2) In deciding the eligible applicant best suited to a position, a person undertaking a recruitment and selection process in a public sector entity—
 - (a) must consider each eligible applicant’s ability to perform the requirements of the position; and
 - (b) may consider—
 - (i) the way in which each eligible applicant carried out any previous employment; and
 - (ii) the potential of each eligible applicant to make a future contribution to the entity; and
 - (iii) the extent to which the proposed decision would contribute to fulfilment of the entity’s obligations under chapter 2, including, for example, the objectives, strategies and targets stated in the entity’s equity and diversity plan.

46 Directive about recruitment and selection

The commissioner may make a directive about recruitment and selection under this part, including, for example—

- (a) the way in which recruitment or selection processes in public sector entities must be carried out; and
- (b) the way in which the principles mentioned in section 44(3) are to be applied; and
- (c) a matter mentioned in section 45(2).

Part 4 Eligibility for employment

47 Requirement for citizenship or residency

- (1) A person is eligible to be a public sector employee only if the person—
 - (a) is an Australian citizen; or
 - (b) resides in Australia and has permission, under a law of the Commonwealth, to work in Australia.
- (2) A public sector employee's chief executive may, by signed notice, terminate the employee's employment if the employee is ineligible under subsection (1) to be a public sector employee.
- (3) If a public sector employee's permission to work in Australia ends, the employee's employment is taken to have been terminated by the employee's chief executive on the same day.

Part 5 Suitability for employment

Division 1 Preliminary

48 Definitions for part

In this part—

engage, a person as a public sector employee, includes—

- (a) employ, promote, transfer, redeploy or second the person within or to a public sector entity; and
- (b) allow the person to participate in a mobility arrangement in a public sector entity; and
- (c) start training the person in a public sector entity as an apprentice or trainee, within the meaning of the *Further Education and Training Act 2014*.

suitability directive means a directive made for this part.

Division 2 Criminal history

49 Definition for division

In this division—

relevant duty see section 50.

50 Meaning of *relevant duty*

- (1) A particular duty to be performed in a public sector entity is a *relevant duty* if the chief executive of the entity decides under the suitability directive that because of the nature of the duty, it may be necessary to have regard to the criminal history of a person engaged to perform the duty to ensure the person is suitable to perform the duty.
- (2) However, the duty is not a relevant duty if the duty is likely to involve—
 - (a) child-related duties; or
 - (b) regulated employment.

Notes—

- 1 See divisions 3 and 4 for assessing the suitability of persons to be engaged in child-related duties.
- 2 See the *Working with Children (Risk Management and Screening) Act 2000*, chapter 7, and division 4, in relation to persons to be engaged in duties that are regulated employment.

51 Relationship with other laws

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.

52 Chief executive may decide to obtain criminal history

- (1) This section applies if the chief executive of a public sector entity engages, or proposes to engage, a person to perform a relevant duty in the entity.
- (2) Also, this section applies if the chief executive of a public sector entity changes, or proposes to change, the duties of a public sector employee employed in the entity to include a relevant duty.
- (3) The chief executive may, under the suitability directive, ask the person for written consent for the chief executive to obtain the person's criminal history.

53 Failure to consent to obtaining criminal history

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

54 Obtaining criminal history with consent

- (1) This section applies if the person gives written consent to the chief executive obtaining the person's criminal history.
- (2) The chief executive may ask the police commissioner for a written report about the person's criminal history.
- (3) 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.
- (4) The police commissioner must comply with the request to the extent the police commissioner has possession of or access to the person's criminal history.

55 Assessment of suitability using criminal history

After the report about the person's criminal history is given to the chief executive, the chief executive must, under the suitability directive, consider the person's criminal history in making an assessment about—

- (a) for section 52(1)—the person's suitability for the engagement to perform the relevant duty; or
- (b) for section 52(2)—the person's suitability for the change to the person's duties to include the relevant duty.

Division 3 Child-related duties

56 Definitions for division

In this division—

child-related duty see section 57.

negative notice means a negative notice under the *Working with Children (Risk Management and Screening) Act 2000*.

registered teacher see the *Working with Children (Risk Management and Screening) Act 2000*, schedule 7.

57 Meaning of *child-related duty*

- (1) A duty to be performed in a public sector entity is a *child-related duty* if the chief executive of the entity decides under the suitability directive that—
 - (a) the duty—

- (i) is to be performed at a place at which services are provided only or mainly to children; or
 - (ii) is to be performed in a role involving providing services only or mainly to children; or
 - (iii) involves contact with children that is of a type, or happens in a context, that may create an unacceptable level of risk for children; and
 - (b) it is necessary to conduct child-related employment screening, under the *Working with Children (Risk Management and Screening) Act 2000*, chapter 8, of a person the chief executive engages, proposes to engage, or has engaged, to perform the duty, to ensure the person is suitable to perform the duty.
- (2) However, the duty is not a child-related duty if the duty is likely to involve regulated employment.

Note—

See the *Working with Children (Risk Management and Screening) Act 2000*, chapter 7, and division 4, in relation to persons to be engaged in duties that are regulated employment.

58 Chief executive must ensure person holds working with children authority

- (1) The chief executive of a public sector entity must ensure a person does not perform a child-related duty in the entity unless—
- (a) the person holds a working with children authority; or
 - (b) if the person is a police officer or registered teacher—the person has made a working with children check (exemption) application under the *Working with Children (Risk Management and Screening) Act 2000*.
- (2) Subsection (1) applies even if the person is a public sector employee at the time the chief executive proposes to engage the person to perform the child-related duty.

59 Chief executive must ensure police officer or registered teacher who is also a public sector employee holds exemption

- (1) This section applies if—
 - (a) the chief executive of a public sector entity engages a person who is a police officer or registered teacher to perform child-related duties on the basis the person made an application mentioned in section 58(1)(b); and
 - (b) when the chief executive engages the person, the person is also a public sector employee; and
 - (c) either of the following happens—
 - (i) the person’s application is withdrawn under the *Working with Children (Risk Management and Screening) Act 2000*;
 - (ii) the person is issued a negative notice.
- (2) The chief executive must ensure the person does not continue to perform child-related duties.

60 Chief executive must ensure police officer or registered teacher who is not public sector employee holds exemption

- (1) This section applies if—
 - (a) the chief executive of a public sector entity engages a person who is a police officer or registered teacher to perform child-related duties on the basis the person has made an application mentioned in section 58(1)(b); and
 - (b) when the chief executive engages the person, the person is not a public sector employee.
- (2) The chief executive—
 - (a) may employ the person on probation only for a period that does not end before a working with children exemption is issued to the person; and

- (b) may confirm the person's employment after probation only if the person is issued a working with children exemption; and
- (c) must not confirm the person's employment after probation if either of the following happens—
 - (i) the person's application is withdrawn under the *Working with Children (Risk Management and Screening) Act 2000*;
 - (ii) the person is issued a negative notice.
- (3) Subsection (2) does not limit or otherwise affect a power to impose a longer probationary period or to terminate a person's employment.
- (4) In this section—
working with children exemption see the *Working with Children (Risk Management and Screening) Act 2000*, section 282(2).

61 Effect of suspension of working with children authority

- (1) This section applies if a person's working with children authority is suspended under the *Working with Children (Risk Management and Screening) Act 2000*.
- (2) The chief executive must ensure the person does not perform a child-related duty in the public sector entity during the period of the suspension.

62 Effect of cancellation of working with children authority

- (1) This section applies if a person's working with children authority is cancelled under the *Working with Children (Risk Management and Screening) Act 2000*.
- (2) The chief executive must ensure the person does not perform a child-related duty in the public sector entity.

Division 4 **Further assessment of persons issued with working with children authority**

63 **Definition for division**

In this division—

prescribed duty means—

- (a) a child-related duty; or
- (b) a duty relating to regulated employment.

64 **Application of division**

(1) This division applies if—

- (a) the chief executive of a public sector entity engages, proposes to engage, or has engaged, a person to perform a prescribed duty in the entity; and
- (b) the chief executive (working with children) has issued a working with children authority to the person; and
- (c) the chief executive (working with children) has advised the chief executive of the public sector entity, under the *Working with Children (Risk Management and Screening) Act 2000*, section 235 or 293, that a further assessment of the person may be needed to decide whether the person should be engaged to perform the prescribed duty.

(2) However, this section does not apply if the chief executive of the public sector entity engages, proposes to engage, or has engaged, the person to perform the prescribed duty only—

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

(c) if the person is a student—under an arrangement to provide the person with practical experience in the person’s field of study.

(3) In this section—

chief executive (working with children) means the chief executive of the department in which the *Working with Children (Risk Management and Screening) Act 2000* is administered.

65 Relationship with other laws

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.

66 Chief executive may decide to obtain criminal history

The chief executive may, under the suitability directive, ask the person for written consent for the chief executive to obtain the person’s criminal history.

67 Failure to consent to obtaining criminal history

- (1) This section applies if the person does not consent, or withdraws the person’s consent, to the chief executive obtaining the person’s criminal history.
- (2) If the person is a public sector employee in the public sector entity who is engaged in performing a prescribed duty, the chief executive must ensure the person does not perform a prescribed duty.
- (3) If the person is not a public sector employee in the public sector entity who is engaged in performing a prescribed duty, the chief executive is not required to consider the person for the engagement.

68 Obtaining criminal history with consent

- (1) This section applies if the person gives written consent to the chief executive obtaining the person's criminal history.
- (2) The chief executive may ask the police commissioner for a written report about the person's criminal history.
- (3) 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.
- (4) The police commissioner must comply with the request to the extent the police commissioner has possession of or access to the person's criminal history.

69 Assessment of suitability using criminal history

After the report about the person's criminal history is given to the chief executive, the chief executive must, under the suitability directive, consider the person's criminal history in making an assessment about the person's suitability for the engagement to perform the prescribed duty.

Division 5 Serious disciplinary action

70 Definition for division

In this division—

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 that the disciplinary action that would have been taken against a person if the person's employment had not ended is the disciplinary action mentioned in paragraph (a)(i) or (ii); or
- (c) action taken by a chief executive to end a person's employment as a public sector employee, or to consider a person's employment as a public sector employee as ended, as mentioned in part 11.

71 Chief executive may require person to disclose serious disciplinary action

- (1) This section applies if the chief executive of a public sector entity proposes to employ a person in, or second a person to, the entity.
- (2) The chief executive may, under a directive, require the person to give the chief executive a notice stating the particulars of any serious disciplinary action taken against the person.
- (3) The person must comply with the requirement before the employment or secondment takes effect and within the period and in the way stated by the chief executive.
- (4) The chief executive is not required to further consider the person for the employment or secondment if the person—
 - (a) fails to comply with the requirement; or
 - (b) gives false or misleading information in response to the requirement.

72 Assessment of suitability using notice of serious disciplinary action

After the notice about the person's serious disciplinary action is given to the chief executive, the chief executive must consider, under a directive, the particulars of any serious

disciplinary action taken against the person in making an assessment about the person's suitability for the employment in, or secondment to, the public sector entity.

Division 6 Change in criminal history

73 Public sector employee must disclose to chief executive charge or conviction for indictable offence

- (1) This section applies if a public sector 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 includes an indictable offence dealt with summarily.

74 Prosecuting authority must disclose to chief executive committals, convictions and other information

- (1) This section applies if the police commissioner or the director of public prosecutions (a *prosecuting authority*) becomes aware that a person—
 - (a) is a public sector employee in a public sector entity; and
 - (b) has been 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 the person's chief executive a notice including the following information—
 - (a) the person's name;
 - (b) the court;
 - (c) particulars of the alleged relevant 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 a notice to the person's chief executive including the following information—
 - (a) the person's name;
 - (b) the court;
 - (c) particulars of the relevant 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 a notice to the person's chief executive including the following information—

- (a) the person's name;
 - (b) particulars of the relevant 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 a notice to the person's chief executive including the following information—
- (a) the person's name;
 - (b) if relevant, the court in which the prosecution process ended;
 - (c) particulars of the relevant offence;
 - (d) the date the prosecution process ended.
- (6) For subsection (5), the prosecution process ends if—
- (a) an indictment was presented against the person but a nolle prosequi is entered on the indictment or the person is acquitted; or
 - (b) the prosecution process otherwise ends.
- (7) In this section—

disqualifying offence see the *Working with Children (Risk Management and Screening) Act 2000*, section 16.

relevant offence means—

- (a) an indictable offence; or
- (b) a disqualifying offence that is not an indictable offence.

Division 7 Offences

75 Failure to give required notice

A person must not fail to give a notice required to be given under section 73 to the person's chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

76 Giving chief executive false or misleading information in notice

- (1) A person must not, in a notice required to be given under section 73 to the person's chief executive, give the chief executive information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the notice—
- (a) tells the chief executive, to the best of the person's ability, how the notice is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

77 False or misleading statements in written consent or other document

A person must not give a chief executive of a public sector entity a written consent as mentioned in section 52 or 66, or another document under this part, that the person knows contains information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

Division 8 Miscellaneous

78 Evidence of identity

A public sector employee must, within 1 month after starting employment in the public sector, 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 identity.

79 Destruction of reports and notices

(1) This section applies to each of the following documents if, under the suitability directive, the document 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 4;
- (b) a notice given to a chief executive under section 74.

(2) The chief executive must destroy the document and any other document required by the suitability directive to be destroyed.

80 Commissioner must make directive for this part

(1) The commissioner must make a directive for this part.

(2) The directive must include provision for—

- (a) the circumstances in which a chief executive may decide it is necessary to obtain the criminal history of a person; and
- (b) the following matters—

- (i) the types of places a chief executive may decide are places at which services are provided only or mainly to a child or children;
 - (ii) the types 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 type, or happens in a context, that may create an unacceptable level of risk for the child or children; and
- (c) giving a person a reasonable opportunity 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 6 Nature of employment

Division 1 Security of employment

81 Basis of employment—generally on permanent basis

- (1) Employment of a public sector employee is on a permanent basis unless the employee is employed on a non-permanent basis under this Act or another Act that enables the person to be employed on a non-permanent basis, including, for example—
 - (a) on a temporary basis for a fixed term; or
 - (b) on a casual basis.
- (2) However, a public sector employee may be employed under this Act or another Act on a non-permanent basis only if employment of the employee on a permanent basis is not viable or appropriate.
- (3) Without limiting subsection (2), employment of a public sector employee on a permanent basis may not be viable or appropriate if the employment is for any of the following purposes—
 - (a) in relation to employment on a temporary basis for a fixed term—
 - (i) to fill a temporary vacancy arising because a person is absent for a known period; or
Examples of absence for a known period—
approved leave (including parental leave), a secondment
 - (ii) to perform work for a particular project or purpose that has a known end date; or
Example—
employment for a set period as part of a training program or placement program

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

Example—

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

- (iv) to fill a short-term vacancy before a person is employed on a permanent basis; or
- (v) to perform work necessary to meet an unexpected short-term increase in workload;

Example—

an unexpected increase in workload for disaster management and recovery

- (b) in relation to employment on a casual basis—
 - (i) to fill a short-term vacancy arising because a person is absent for an unplanned or unexpected period; or
 - (ii) to perform work for a short period to fill a gap in a work roster for employees employed on a permanent basis, or on a temporary basis for a fixed term; or
 - (iii) to fill a position for which work patterns or work demand is variable and difficult to predict; or
 - (iv) to fill a position for which work hours are irregular, informal, flexible, occasional or non-rostered.

- (4) Without limiting subsection (3)(a), employment of a person on a permanent basis may be viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (3)(a) on a frequent or regular basis.

Example—

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

- (5) Without limiting subsection (3)(b), employment of a person on a permanent basis, or on a temporary basis for a fixed term,

may be viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (3)(b) on a regular or systematic basis.

Example—

an ongoing requirement to fill gaps in various work rosters, on a regular and systematic basis

- (6) Subsections (2), (3), (4) and (5) apply despite another Act.
- (7) To remove any doubt, it is declared that this section applies in relation to a public sector employee's employment on a temporary basis for a fixed term if the employment is extended under this Act or another Act.

Division 2 Mobility of employment

82 Mobility arrangement

- (1) A chief executive of a public sector entity may enter into an arrangement (a *mobility arrangement*) under which—
 - (a) a person who is a public sector employee employed in the entity temporarily performs work for or within, or duties in—
 - (i) another part of the entity; or
 - (ii) another entity; or
 - (b) a person employed in another entity temporarily performs work for or within, or duties in, the public sector entity.

Examples of another entity for paragraphs (a)(i) and (b)—

- another public sector 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 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;

- (c) a part of an entity mentioned in paragraph (b)
 - a private or public company
- (2) However, the mobility arrangement may be made only with the consent of—
 - (a) the person; and
 - (b) for subsection (1)(a)(ii) and (b)—the chief executive, or appropriate office holder, of the other entity.
- (3) The mobility arrangement may make provision for all matters necessary or convenient to be provided for under the arrangement.
- (4) The person's chief executive or the chief executive, or appropriate office holder, of the other entity may end the mobility arrangement.
- (5) If a chief executive, or appropriate office holder, ends a mobility arrangement under subsection (4), the chief executive, or appropriate office holder, must give notice of the ending of the arrangement to—
 - (a) the other chief executive, or appropriate office holder, who is a party to the arrangement; and
 - (b) the person.
- (6) The continuity of a person's employment in a public sector entity is taken not to have been broken by a mobility arrangement.
- (7) The commissioner must make a directive about mobility arrangements.
- (8) The directive may provide for the way in which this section is to be applied, including, for example, the period of notice to be given by a party to a mobility arrangement before ending the arrangement under subsection (4).

Part 8 Work performance and conduct

Division 1 Positive performance management

85 Positive performance management principles

- (1) For best practice human resource management and in recognition that public sector employees are selected based on recruitment and selection processes under chapter 3, part 3, the management of public sector employees must be directed towards the following principles (*positive performance management principles*)—
- (a) pro-actively managing the professional and personal development of public sector employees with a view to continuously building expertise within the public sector;
 - (b) ensuring regular and constructive communication between public sector managers and employees about the work performance and personal conduct principles;
 - (c) recognising the strengths, requirements and circumstances of individual employees and valuing their contributions;
 - (d) recognising performance that meets or exceeds expectations;
 - (e) providing opportunities and support to employees for improving performance;
 - (f) continuously improving performance through the provision of training and development;
 - (g) identifying at the earliest possible stage performance that does not meet expectations;
 - (h) integrating the matters mentioned in paragraphs (a) to (g) into management practices and policies.

- (2) The commissioner must make a directive about how the positive performance management principles are to be applied.

86 Requirement to apply positive performance management principles before taking disciplinary action

A public sector employee's chief executive must not take disciplinary action against the employee for a matter relating to the employee's performance until the chief executive has complied with a directive made under section 85(2) about applying the positive performance management principles in relation to the matter.

Division 2 Conflicts of interest

87 Meaning of *interest*

A reference to an *interest* or to a *conflict of interest* in this division 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.

88 Declaration of interests—public sector employee

- (1) A public sector employee's chief executive may direct the employee 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 made by the commissioner.
- (3) Subsection (4) applies 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 made by the commissioner; and
 - (c) the chief executive has directed the employee to give the chief executive a revised version of the statement, including the change, within a stated period or at a stated interval.
- (4) The employee must give the revised version of the statement, including the change, to the chief executive within the stated period or at the stated interval.
- (5) A reference to a public sector employee in this section does not include a reference to a chief executive of a public sector entity.

89 Conflicts of interest—public sector employee

- (1) If a public sector employee 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 concerning a matter that is, or may be, affected by the conflict unless authorised by the employee's chief executive.
- (2) A public sector employee's chief executive may direct the employee to resolve a conflict or possible conflict between an interest of the employee and the employee's duties.
- (3) A reference to a public sector employee in this section does not include a reference to a chief executive of a public sector entity.

Division 3 Disciplinary action

Subdivision 1 Preliminary

90 Definitions for division

In this division—

disciplinary action see section 92.

disciplinary finding means a finding that a disciplinary ground exists.

disciplinary ground means a ground for disciplining a public sector employee under section 91.

take, disciplinary action, includes direct the action be taken.

91 Grounds for discipline

- (1) A public sector employee's chief executive may discipline the employee if the chief executive is reasonably satisfied the employee has—
 - (a) engaged in repeated unsatisfactory performance or serious under performance of the employee's duties, including, for example, by performing duties carelessly, incompetently or inefficiently; or
 - (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 sector 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

- (f) contravened, without reasonable excuse, a requirement of the chief executive under section 71 in relation to the employee's employment or secondment by, in response to the requirement—
 - (i) failing to disclose a serious disciplinary action; or
 - (ii) giving false or misleading information; or
 - (g) contravened, without reasonable excuse, a provision of—
 - (i) this Act, other than section 39 or 40; or
 - (ii) another Act that applies to the employee in relation to the employee's employment; or
 - (h) contravened, without reasonable excuse, a relevant standard of conduct in a way that is sufficiently serious to warrant disciplinary action.
- (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 public sector employee under section 94 or a person under section 95.
- (4) To remove any doubt, it is declared that a disciplinary ground does not arise in relation to a public sector employee only because the employee's work performance or personal conduct fails to satisfy the work performance and personal conduct principles or the public sector principles.
- (5) 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 sector entity in which the employee is employed.

Example of misconduct—

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

relevant standard of conduct —

- (a) for a public sector employee, means—
 - (i) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
 - (ii) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*; and
- (b) for a public sector employee who is an ambulance officer under the *Ambulance Service Act 1991*, section 13(1)—includes a code of practice under section 41 of that Act; and
- (c) for a public sector employee who is a fire service officer under the *Fire and Emergency Services Act 1990*—includes a code of practice under section 7B of that Act.

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

92 Meaning of ***disciplinary action***

- (1) ***Disciplinary action*** is any action relating to employment, including, for example, any of the following actions—
 - (a) termination of employment;
 - (b) reduction of classification level and a consequential change of duties;
 - (c) transfer or redeployment;
 - (d) forfeiture or deferment of a remuneration increment or increase;

- (e) reduction of remuneration level;
 - (f) imposition of a monetary penalty;
 - (g) if a penalty is imposed, a direction that the amount of the penalty be deducted from the employee's periodic remuneration payments;
 - (h) a reprimand.
- (2) However, disciplinary action consisting of a monetary penalty can not be more than the total of 2 of the employee's periodic remuneration payments.
- (3) Also, disciplinary action consisting of an amount directed to be deducted from a particular periodic remuneration payment of an 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 Queensland minimum wage for each week of the period; or
 - (ii) otherwise—two-thirds of the Queensland minimum wage for each week of the period.
- (4) In this section—

Queensland minimum wage see the *Industrial Relations Act 2016*, schedule 5.

Subdivision 2 Disciplinary action against public sector employee

Note—

See section 86.

93 **Disciplinary action against public sector employee**

- (1) In disciplining a public sector employee, the employee's chief executive may take the disciplinary action, or order the disciplinary action be taken, against the employee that the chief executive considers reasonable in the circumstances.
- (2) To remove any doubt, it is declared that disciplinary action mentioned in section 92(1)(c) is not limited or otherwise affected by chapter 4, part 4, division 3.
- (3) An order under subsection (1) is binding on anyone affected by it.

94 **Disciplinary action if public sector employee changes employment to another public sector entity**

- (1) This section applies if—
 - (a) a public sector employee is employed in a public sector entity (the *former entity*); and
 - (b) a disciplinary ground arises in relation to the employee; and
 - (c) after the disciplinary ground arises the employee changes employment from the former entity to another public sector entity (the *current entity*).
- (2) The chief executive of the former entity may—
 - (a) make a disciplinary finding; or
 - (b) delegate to the chief executive of the current entity the power under paragraph (a) to make a disciplinary finding.
- (3) Also, the chief executive of the current entity is taken to have the power to make a disciplinary finding if—
 - (a) the former entity no longer exists; or
 - (b) the former entity no longer has a chief executive; or
 - (c) the chief executive of the former entity and the chief executive of the current entity are the same person.

- (4) If the chief executive of the former entity makes a disciplinary finding under subsection (2)(a), in disciplining the employee, the chief executive of the current entity may take disciplinary action under section 93 against the employee that the chief executive of the former entity agrees is reasonable in the circumstances.
- (5) If the chief executive of the current entity makes a disciplinary finding under subsection (2)(b) or (3), in disciplining the employee, the chief executive of the current entity may take disciplinary action under section 93 against the employee.
- (6) The chief executive of the former entity may give the chief executive of the current entity information about the employee or a disciplinary ground relating to the employee for the purpose of helping the chief executive of the current entity perform a function or exercise a power under this section.
- (7) In this section—
changes employment includes change employment by promotion, transfer, secondment or redeployment.

Subdivision 3 Disciplinary action against former public sector employee

95 Disciplinary declaration if employment as public sector employee ends

- (1) This section applies if—
 - (a) a person is employed in a public sector entity (the *former entity*); and
 - (b) a disciplinary ground arises in relation to the person; and
 - (c) after the disciplinary ground arises the person's employment as a public sector employee ends for any reason.

- (2) However, this section does not apply in relation to a person who is a former public sector employee if the person's previous chief executive is aware—
 - (a) the person is a CCC employee; and
 - (b) the previous chief executive or the chief executive officer of the Crime and Corruption Commission has taken, is taking, or intends to take disciplinary action against the person, under the *Crime and Corruption Act 2001*, chapter 6, part 1, division 9, in relation to the disciplinary ground.
- (3) The former public sector employee's previous chief executive may make a disciplinary finding or take or continue to take disciplinary action against the former public sector 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 sector employee, the former public sector employee's previous chief executive may make a disciplinary declaration and may not take any other disciplinary action.
- (8) The former public sector employee's 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 sector employee; and
 - (b) the disciplinary action that would have been taken against the former public sector employee if the employee's employment had not ended.

previous chief executive, of a person, means the person's chief executive before the employment of the person as a public sector employee ends for any reason.

Subdivision 4 Disciplinary action against CCC employee who becomes public sector employee

96 Disciplinary action if CCC employee becomes public sector employee

- (1) This section applies if—
 - (a) a person is engaged as a CCC employee in the Crime and Corruption Commission (the *CCC*); and
 - (b) a relevant disciplinary ground arises in relation to the person; and
 - (c) after the relevant disciplinary ground arises, the person stops being engaged as a CCC employee in the CCC and is employed as a public sector employee in a public sector entity (the *current entity*).

- (2) However, this section does not apply if the chief executive officer of the CCC has taken, is taking, or intends to take, disciplinary action against the person, under the *Crime and Corruption Act 2001*, chapter 6, part 1, division 9, in relation to the relevant disciplinary ground.
- (3) The chief executive officer of the CCC may—
 - (a) make a disciplinary finding; or
 - (b) delegate to the chief executive of the current entity the power under paragraph (a) to make a disciplinary finding.
- (4) If the chief executive officer of the CCC makes a disciplinary finding under subsection (3)(a), in disciplining the person, the chief executive of the current entity may take disciplinary action under section 93 against the person that the chief executive officer of the CCC agrees is reasonable in the circumstances.
- (5) If the chief executive of the current entity makes a disciplinary finding under subsection (3)(b), in disciplining the person, the chief executive of the current entity may take disciplinary action under section 93 against the person.
- (6) The chief executive officer of the CCC may give the chief executive of the current entity information about the person or a relevant disciplinary ground relating to the person for the purpose of helping the chief executive of the current entity perform a function or exercise a power under this section.
- (7) In this section—
 - (a) a reference to a relevant disciplinary ground for a person is a reference to a disciplinary ground under the *Crime and Corruption Act 2001*, chapter 6, part 1, division 9 for the person; and
 - (b) a reference to a disciplinary finding in relation to a relevant disciplinary ground for a person is a reference to a finding that a relevant disciplinary ground for the person exists.

Subdivision 5 Procedure

97 Chief executive may ask another chief executive for disciplinary information

- (1) The chief executive of a public sector entity may ask the chief executive of another public sector entity (the *other chief executive*) for disciplinary information in the possession of the other chief executive about a person who is or was a public sector employee if the chief executive believes the information is necessary to make a decision about—
 - (a) employment, or continuing the employment, of the person as a public sector employee in the entity; or
 - (b) a disciplinary finding, disciplinary action or a disciplinary declaration the chief executive is considering in relation to the person.
- (2) The other chief executive must give the chief executive the disciplinary information unless the other chief executive is 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 any of the following made or taken against the person under a public sector disciplinary law by the chief executive or another entity—

 - (a) a finding that the person should be disciplined;
 - (b) possible disciplinary action under consideration;
 - (c) disciplinary action;
 - (d) a disciplinary declaration.

98 Procedure for disciplinary action

In disciplining a public sector employee or former public sector employee under this Act, a chief executive of a public sector entity must comply with this Act and any relevant directive.

99 Notice of termination

- (1) If a public sector employee's chief executive decides to terminate the employment of the employee under this division, the chief executive must give the employee notice of the termination.
- (2) The notice must state the day the termination takes effect.

100 Directive about disciplinary action

- (1) The commissioner must make a directive about—
 - (a) managing disciplinary action; and
 - (b) procedures for investigating the substance of a grievance or allegation relating to a public sector employee's work performance or personal conduct.
- (2) The directive must make provision for the following matters—
 - (a) the periodic review by public sector entities or the commissioner of disciplinary action being considered or undertaken by chief executives of public sector entities, including, for example, the period within which reviews must be conducted to ensure the timely resolution of disciplinary matters;
 - (b) how the requirements of procedural fairness may be met in relation to decisions about disciplinary matters, including, for example, requirements about providing reasons for decisions about taking disciplinary action;
 - (c) the circumstances in which a contravention of a relevant standard of conduct under section 91(1)(h) is likely to

be considered sufficiently serious to warrant disciplinary action;

- (d) any other matter relating to disciplinary action against public sector employees the commissioner considers appropriate.

Division 4 Suspension

101 Suspension

- (1) A public sector employee's chief executive may, by notice, suspend the employee from duty if the chief executive reasonably believes—
- (a) the employee is liable to discipline under a disciplinary law; or
 - (b) the proper and efficient management of the entity might be prejudiced if the employee is not suspended.
- (2) The notice must state—
- (a) when the suspension starts and ends; and
 - (b) whether the employee is entitled to remuneration for the period of the suspension; and
 - (c) the effect that alternative employment may, under subsection (5), have on any entitlement to remuneration for the period of the suspension.
- (3) However, before suspending the employee, the chief executive must consider all reasonable alternatives available to the employee.

Examples of reasonable alternatives which may be available to the employee—

- alternative duties
- a change in the location where the employee performs duties
- another alternative working arrangement

- (4) The employee is entitled to normal remuneration for the period of the suspension, unless—
 - (a) the employee is suspended under subsection (1)(a); and
 - (b) the employee’s chief executive considers it is not appropriate for the employee to be entitled to normal remuneration for the period of the suspension, having regard to the nature of the discipline to which the chief executive believes the employee is liable.
- (5) If the employee is entitled to normal remuneration for the period of the suspension, any amount earned by the employee from engaging in alternative employment during the period of the suspension must be deducted from the employee’s normal remuneration, unless—
 - (a) the employee was engaged in the employment at the time of the suspension; and
 - (b) the employee, in engaging in the employment, was not contravening—
 - (i) this Act; or
 - (ii) a standard of conduct applying to the employee under an approved code of conduct or approved standard of practice under the *Public Sector Ethics Act 1994*.
- (6) The deduction under subsection (5) must not be more than the amount of the employee’s normal remuneration during the period of the suspension.
- (7) The continuity of the employee’s service as a public sector employee is taken not to have been broken only because of the suspension.
- (8) The chief executive may cancel the suspension at any time.
- (9) In suspending a public sector employee under this section, the chief executive must comply with the directive made under section 102.

- (10) Procedural fairness is not required if the employee is entitled to normal remuneration during the suspension.

102 Directive about suspension

- (1) The commissioner must make a directive about procedures relating to suspension from duty of public sector employees.
- (2) The directive must make provision for the following matters—
- (a) the periodic review by public sector entities or the commissioner of suspensions being considered or undertaken by a chief executive of a public sector entity, including, for example, the period within which reviews must be conducted to ensure the timely resolution of suspension matters;
 - (b) how the requirements of procedural fairness may be met in relation to decisions about suspensions, including, for example, requirements about providing reasons for decisions about suspensions;
 - (c) the circumstances in which a chief executive of a public sector entity may, under section 101(4)(b), decide a public sector employee is not entitled to normal remuneration for the period of the suspension of the employee;
 - (d) any other matter about procedures relating to suspension from duty of public sector employees the chief executive considers appropriate.
- (3) The directive may make provision for the circumstances, and the way, in which a person may be reimbursed after a decision is made about whether or not the employee is liable for discipline for any remuneration the person does not receive during the person's suspension.

Division 5 Mental or physical incapacity

103 Application of division

This division applies to a public sector employee if—

- (a) the employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing the employee's 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.

104 Chief executive may require medical examination

The employee's 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.

105 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 a requirement under section 104(b).

106 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 the report.
- (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.

107 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—
 - (i) for a public service employee—retire the employee from the public service; or
 - (ii) for a public sector employee mentioned in section 12(1)(b)—retire the employee from the employee's employment.

- (2) Subsection (1) does not limit the action that may be taken relating to the employee.

108 Record of requirement and report

- (1) The chief executive must keep a record of—
- (a) the requirement to submit to a medical examination; 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.

109 Directive about mental or physical incapacity

- (1) The commissioner may make a directive providing for matters relevant to the way in which this division is to be applied in relation to public sector employees.
- (2) The chief executive of a public sector entity exercising a power or performing a function under this division must comply with the directive.

Division 6 Employee grievances

110 Directive about employee grievances

- (1) The commissioner must make a directive about how public sector entities must deal with grievances of employees of the entity about—
- (a) decisions made by employees of the entity; or
 - (b) the conduct of employees of the entity.
- (2) Without limiting subsection (1), the directive—
- (a) must provide for—

- (i) the procedures for dealing with grievances mentioned in subsection (1); and
 - (ii) the period within which the grievances must be finally dealt with; and
 - (iii) the notification of decisions made in dealing with the grievances; and
- (b) must provide that, if a person required to deal with a grievance about a decision mentioned in subsection (1)(a) fails to finally deal with the grievance 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 131; and
- (d) may provide for a system for dealing with grievances that involves—
- (i) a person dealing with a grievance in the first instance; and
 - (ii) another person dealing with decisions made by a person mentioned in subparagraph (i), including, for example, by way of review.

Part 9 Reviews

Division 1 Review of non-permanent employment

111 Definition for division

In this division—

continuously employed, in relation to a person employed for a period in a public sector entity, means the person is employed in the entity—

- (a) if the person is employed on a non-permanent basis other than a casual basis during the period—continuously for the period; or
- (b) if the person is employed on a non-permanent basis that is a casual basis during the period—on a regular and systematic basis during the period; or
- (c) if the person is employed on a non-permanent basis other than a casual basis, and on a casual basis, during the period—continuously under paragraphs (a) and (b) for the period.

112 Application of division

- (1) This division applies to the following public sector employees—
 - (a) a public service employee employed on a non-permanent basis under section 149(2)(b) or (c), 150(1)(a) or 151(1)(a); or
 - (b) a public sector employee mentioned in section 12(1)(b) employed on a non-permanent basis.
- (2) However, this division does not apply to—
 - (a) a non-industrial instrument employee; or
 - (b) an auxiliary fire service officer employed under the *Fire and Emergency Services Act 1990*, section 25.
- (3) Also, if the chief executive of a public sector employee mentioned in subsection (1)(b) is permitted or required to offer to convert the employee's employment to a permanent basis under this division, despite anything in another Act, the employee may be employed on a permanent basis.

113 Employee may request review of status after 1 year of continuous employment

- (1) A public sector employee who has been continuously employed on a non-permanent basis in the same public sector

entity for at least 1 year, may ask the employee's chief executive to decide whether to—

- (a) continue the employee's employment according to the terms of the employee's existing employment; or
 - (b) offer to convert the employee's employment to a permanent basis.
- (2) The employee can not make more than 1 request under subsection (1) in each 12 month period starting on the day the request is made.
- (3) For working out how long the employee has been continuously employed in the public sector entity—
- (a) all periods of authorised leave are to be included; and
 - (b) the employee is to be regarded as continuously employed even if there are periods during which the employee is not employed in the entity, if the periods of non-employment in the entity total 6 weeks or less in the year occurring immediately before the time when the duration of the employee's continuous employment is being worked out.

114 Chief executive must make decision on employee's request

- (1) This section applies if a public sector employee makes a request under section 113.
- (2) The employee's chief executive must decide the request within 28 days after receiving the request.
- (3) The employee's chief executive may decide to offer to convert the employee's employment to a permanent basis only if—
 - (a) the employee's chief executive considers—
 - (i) there is a continuing need for someone to be employed in the employee's role, or a role that is substantially the same as the employee's role; and
 - (ii) the employee is suitable to perform the role; and

- (b) any requirements of an industrial instrument are complied with in relation to the decision.
- (4) If the matters in subsection (3) are satisfied, the employee's chief executive must decide to offer to convert the employee's employment to a permanent basis, unless it is not viable or appropriate to do so having regard to the genuine operational requirements of the public sector entity.
- (5) If the employee's chief executive decides not to offer to convert the employee's employment to a permanent basis, the chief executive must give the employee a notice stating—
 - (a) the reasons for the decision; and
 - (b) the total period for which the employee has been continuously employed under section 113(3) in the public sector entity; and
 - (c) how many times the employee's employment on a non-permanent basis has been extended.
- (6) Subsection (5)(c) does not apply in relation to employment on a casual basis.
- (7) If the employee's chief executive does not make the decision within the period required under subsection (2), the chief executive is taken to have decided not to offer to convert the employee's employment to a permanent basis and to continue the employee's employment according to the terms of the employee's existing employment.
- (8) The commissioner must make a directive about the making of a decision under this section.
- (9) In this section—
suitable, in relation to an employee performing a role, has the meaning given under a directive.

115 Chief executive must review status after 2 years of continuous employment

- (1) If a public sector employee mentioned in section 112(1) has been continuously employed in the same public sector entity for at least 2 years, the employee's chief executive must decide whether to—
 - (a) continue the employee's employment according to the terms of the employee's existing employment; or
 - (b) offer to convert the employee's employment to a permanent basis.
- (2) The employee's chief executive must make the decision within the required period after—
 - (a) the end of 2 years after the employee has been continuously employed on a non-permanent basis in the public sector entity; and
 - (b) each 1-year period after the end of the period mentioned in paragraph (a) during which the employee is continuously employed on a non-permanent basis in the public sector entity.
- (3) In making the decision—
 - (a) section 114(3) and (4) applies to the employee's chief executive; and
 - (b) the employee's chief executive must have regard to the reasons for each decision previously made, or taken to have been made, under this section or section 114 in relation to the employee during the employee's period of continuous employment.
- (4) If the employee's chief executive decides not to offer to convert the employee's employment to a permanent basis, the chief executive must give the employee a notice stating—
 - (a) the reasons for the decision; and

- (b) the total period for which the employee has been continuously employed on a temporary basis for a fixed term or on a casual basis in the public sector entity; and
 - (c) how many times the employee's employment on a non-permanent basis has been extended; and
 - (d) each decision previously made, or taken to have been made, under this section or section 114 in relation to the employee during the employee's period of continuous employment.
- (5) Subsection (4)(c) does not apply in relation to employment on a casual basis.
- (6) If the employee's chief executive does not make the decision within the required period, the chief executive is taken to have decided not to offer to convert the employee's employment to a permanent basis and to continue the employee's employment according to the terms of the employee's existing employment.
- (7) For working out how long the employee has been continuously employed in the public sector entity—
- (a) all periods of authorised leave are to be included; and
 - (b) the employee is to be regarded as continuously employed even if there are periods during which the employee is not employed in the entity, if the periods of non-employment in the entity total 12 weeks or less in the 2 years occurring immediately before the time when the duration of the person's continuous employment is being worked out.
- (8) The commissioner must make a directive about the making of a decision under this section.
- (9) The directive must provide for—
- (a) the matters a chief executive must consider in deciding the hours of work to be offered in converting a person's employment under subsection (1)(b); and

- (b) the circumstances in which a person may appeal against the decision about the hours of work offered in converting the person's employment under subsection (1)(b).
- (10) This section does not limit or otherwise affect section 113.
- (11) In this section—
- required period*, for making a decision under subsection (1), means—
- (a) the period stated in an industrial instrument within which the decision must be made; or
 - (b) if paragraph (a) does not apply—28 days after the end of the period mentioned in subsection (2)(a) or (b).

116 Employee's right to make additional request for review

- (1) This section applies in relation to a public sector employee mentioned in section 113(1) if—
- (a) both of the following apply—
 - (i) the employee's chief executive has decided under section 114 or 115 not to offer to convert the employee's employment to a permanent basis because the chief executive considered the employee was not suitable to perform the role;
 - (ii) the employee considers the employee may have become suitable to perform the role; or
 - (b) both of the following apply—
 - (i) the employee's chief executive is taken to have made a decision under section 114(7) or 115(6) not to offer to convert the employee's employment to a permanent basis;
 - (ii) the employee has not appealed against the decision under section 130.

- (2) The public sector employee may ask the employee's chief executive to decide whether to—
 - (a) continue the employee's employment according to the terms of the employee's existing employment; or
 - (b) offer to convert the employee's employment to a permanent basis.
- (3) The public sector employee must make the request—
 - (a) for subsection (1)(a)—within 3 months after the employee considers the employee may have become suitable to perform the role; or
 - (b) for subsection (1)(b)—within 3 months after the chief executive is taken to have made the decision mentioned in subsection (1)(b)(i).
- (4) The employee's chief executive must decide the request within 28 days after receiving the request.
- (5) In making the decision—
 - (a) if the decision relates to a request arising from a decision under section 114—section 114(3), (4), (5) and (6) applies to the employee's chief executive; and
 - (b) if the decision relates to a request arising from a decision under section 115—section 115(3), (4) and (5) applies to the employee's chief executive.
- (6) If the employee's chief executive does not make the decision within the period required under subsection (4), the chief executive is taken to have decided not to offer to convert the employee's employment to a permanent basis and to continue the employee's employment according to the terms of the employee's existing employment.
- (7) The employee may make only 1 request under this section in relation to each separate decision made, or taken to have been made, under section 114 or 115.
- (8) The commissioner must make a directive about the making of a decision under this section.

117 Chief executive's discretion to conduct additional review

- (1) This section applies in relation to a public sector employee mentioned in section 115(1) if the employee's chief executive—
 - (a) has made a decision under section 115(2) not to offer to convert the employee's employment to a permanent basis; and
 - (b) considers the circumstances justify the making of another decision mentioned in section 115(1) before the start of the next 1-year period mentioned in section 115(2)(b).
- (2) The employee's chief executive must decide whether to—
 - (a) continue the employee's employment according to the terms of the employee's existing employment; or
 - (b) offer to convert the employee's employment to a permanent basis.
- (3) The employee's chief executive must make the decision within 28 days after forming the opinion mentioned in subsection (1)(b).
- (4) In making the decision, section 115(3), (4), (5), and (7) applies to the employee's chief executive.
- (5) If the employee's chief executive does not make the decision within the period required under subsection (3), the chief executive is taken to have decided not to offer to convert the employee's employment to a permanent basis and to continue the employee's employment according to the terms of the employee's existing employment.

Division 2 Review of acting or secondment at higher classification level

118 Definition for division

In this division—

second, a public sector employee, means second under section 160 or another Act.

119 Application of division

- (1) This division applies to a public sector employee who is acting at, or seconded to, a higher classification level in the public sector entity in which the employee is employed.
- (2) However, this division does not apply to—
 - (a) a public sector employee employed on a casual basis; or
Note—
For a public service employee, see sections 149(2)(c) and 151.
 - (b) a non-industrial instrument employee; or
 - (c) an employee who is acting in, or seconded to, a position that is ordinarily held by a non-industrial instrument employee.

120 Employee may request employment at higher classification level after 1 year of continuous acting or secondment

- (1) If the public sector employee has been acting at, or seconded to, a higher classification level for a continuous period of at least 1 year, the employee may ask the employee's chief executive to employ the employee in the position at the higher classification level on a permanent basis, after—
 - (a) the end of 1 year of acting at, or being seconded to, the higher classification level; and

- (b) the end of each subsequent 1-year period.
- (2) The employee's chief executive must decide the request within the required period.
- (3) The employee's chief executive may decide to employ the employee in the position at the higher classification level on a permanent basis only if the chief executive considers the employee is suitable to perform the role.
- (4) In making the decision, the employee's chief executive must have regard to—
 - (a) the genuine operational requirements of the public sector entity; and
 - (b) the reasons for each decision previously made, or taken to have been made, under this section in relation to the person during the person's continuous period of acting at, or secondment to, the higher classification level.
- (5) If the employee's chief executive decides to refuse the request, the chief executive must give the employee a notice stating—
 - (a) the reasons for the decision; and
 - (b) the total continuous period for which the employee has been acting at, or seconded to, the higher classification level in the public sector entity; and
 - (c) how many times the employee's acting arrangement or secondment has been extended; and
 - (d) each decision previously made, or taken to have been made, under this section in relation to the employee during the employee's continuous period of acting at, or secondment to, the higher classification level.
- (6) If the employee's chief executive does not make the decision within the required period, the chief executive is taken to have refused the request.
- (7) The commissioner must make a directive about employing an employee at a higher classification level under this section.
- (8) In this section—

continuous period, in relation to an employee acting at, or seconded to, a higher classification level, has the meaning given under a directive.

required period, for making a decision under subsection (2), means—

- (a) the period stated in an industrial instrument within which the decision must be made; or
- (b) if paragraph (a) does not apply—28 days after the request is made.

suitable, in relation to an employee performing a role, has the meaning given under a directive.

121 Employee’s right to make additional request for review

- (1) This section applies in relation to a public sector employee mentioned in section 120(1) if—
 - (a) both of the following apply—
 - (i) the employee’s chief executive has decided under section 120 not to employ the employee in the position at the higher classification level on a permanent basis because the chief executive considered the employee was not suitable to perform the role;
 - (ii) the employee considers the employee may have become suitable to perform the role; or
 - (b) both of the following apply—
 - (i) the employee’s chief executive is taken, under section 120(6), to have refused the employee’s request to be employed in the position at the higher classification level on a permanent basis;
 - (ii) the employee has not appealed against the decision under section 130; or

- (c) the position in which the employee is acting, or to which the employee is seconded, at the higher classification level becomes vacant.
- (2) The public sector employee may ask the employee's chief executive to employ the employee in the position at the higher classification level on a permanent basis.
- (3) The public sector employee must make the request—
 - (a) for subsection (1)(a)—within 3 months after the employee first considers the employee may have become suitable to perform the role; or
 - (b) for subsection (1)(b)—within 3 months after the chief executive is taken to have refused the employee's request as mentioned in subsection (1)(b)(i); or
 - (c) for subsection (1)(c)—within 3 months after the position becomes vacant.
- (4) The employee's chief executive must decide the request within 28 days after receiving the request.
- (5) In making the decision, section 120(3), (4) and (5) applies to the employee's chief executive.
- (6) If the employee's chief executive does not make the decision within the period required under subsection (4), the chief executive is taken to have refused the request.
- (7) The employee may make only 1 request under this section in relation to each separate decision made, or taken to have been made, under section 120.
- (8) The commissioner must make a directive about the making of a decision under this section.

Division 3 Review of work performance matters

122 Definitions for division

In this division—

public sector employee includes a person who was a public sector employee.

work performance information directive means a directive under which a department must give the commission information about work performance matters that are being, or have been, handled by the department.

work performance matter means a matter involving a public sector 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.

123 Commission may conduct review of public sector entity's handling of work performance matters

- (1) This section applies if, on the basis of information received under a work performance information directive, the commissioner considers it may be beneficial to conduct a review to promote—
 - (a) the continuous improvement of a public sector entity'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 entity; or

- (ii) a current work performance matter; and
 - (b) give the chief executive of the entity a report about the review.
- (3) A report under 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 entity’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.
- (4) A function of the commission under this section must be performed—
- (a) by the commissioner; or
 - (b) for the commissioner by—
 - (i) a staff member of the commission to whom the function is delegated under section 283(1); or
 - (ii) an appropriately qualified entity to whom the function is delegated under section 283(2).

- (5) In this section—

current work performance matter means a work performance matter being handled by the public sector entity when the commissioner forms the view mentioned in subsection (1)(b).

124 Commission may conduct review of procedural aspect of public sector entity’s handling of current work performance matters

- (1) This section applies if a public sector employee’s chief executive implements a procedure under a directive about suspension or discipline in relation to the employee for a current work performance matter.

- (2) However, this section does not apply if the matter relates to personal conduct that would, if proved, constitute corrupt conduct under the *Crime and Corruption Act 2001*, section 15.
- (3) The employee may ask the commission to conduct a review of a procedural aspect of the entity's handling of the matter.
- (4) However, the employee may make the request under subsection (3) only if the employee has complied, to the extent possible, with any procedures applying to the employee under a directive about suspension or discipline in relation to the matter.
- (5) On receiving the request, the commission may—
 - (a) conduct a review of a procedural aspect of the matter; and
 - (b) give the chief executive of the entity a report about the review that includes any recommendations and directions about how any defects in the procedural aspects are to be rectified.
- (6) The chief executive of the entity must comply with a direction given in a report under subsection (5)(b) to the extent possible, unless—
 - (a) before the report is given to the chief executive, a decision is made in relation to the matter; and
 - (b) the employee has a right to appeal against the decision under part 10.
- (7) A function of the commission under this section must be performed—
 - (a) by the commissioner; or
 - (b) for the commissioner by a staff member of the commission to whom the function is delegated under section 283(1); or
 - (c) if the function is the giving of a report under subsection (5)(b) that does not include a direction by the

commission—by another appropriately qualified entity to whom the function of giving the report is delegated under section 283(2).

(8) In this section—

current work performance matter means a work performance matter being handled by the public sector entity when the employee makes the request under subsection (3).

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

- (a) a procedure under a directive applying to the matter; or
- (b) the requirements of procedural fairness.

125 Chief executive of public sector entity must provide help for review

- (1) This section applies if the commissioner or another person or entity mentioned in section 123(4)(b) (each a *reviewer*) conducts a review relating to a public sector entity under this division.
- (2) The chief executive of the public sector entity must give the reviewer the help the reviewer reasonably requires to conduct the review.
- (3) The reviewer may ask the chief executive of the public sector entity for information or a document that may be relevant to the review.
- (4) The chief executive of the public sector entity must comply with a request under subsection (3).

126 Exchange of information with external agency

- (1) The commissioner may enter into an agreement (an *information exchange agreement*) with the chief executive officer of an external agency to obtain and give information for the purpose of a review under section 123.

- (2) The information exchange agreement may enable the commissioner to—
 - (a) obtain relevant information from the external agency; and
 - (b) with the consent of the chief executive of the public sector entity to which the review relates, give relevant information to the external agency.
- (3) Also, to help the commissioner perform the commissioner’s functions or exercise the commissioner’s powers under this division, the commissioner 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 by regulation as an external agency for this definition.

relevant information means information about or relevant to—

- (a) a review of a current work performance matter under section 123; or
- (b) an investigation, inquiry or other activity of an external agency relating to the conduct of a public sector employee that is the subject of a review of a current work performance matter under section 123.

127 Protection from liability for giving information

- (1) This section applies to a person who, acting honestly and reasonably, gives information under this division.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) 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.
- (4) Without limiting subsection (2) or (3)—
 - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
 - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
 - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
 - (ii) is not liable to disciplinary action for giving the information.

128 Publication of information about work performance matters

- (1) The commission must publish the following information for each financial year in a publicly accessible way—
 - (a) the number of work performance matters handled by each prescribed entity in the year;
 - (b) the types of work performance matters handled by each prescribed entity in the year;
 - (c) information about how work performance matters were handled by each prescribed entity 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) The information must be published on or before 30 September after the financial year.
- (3) This section applies only in relation to information the commission receives under a work performance information directive or to which the commission otherwise has access.

(4) In this section—

prescribed entity means—

- (a) a department; or
- (b) another public sector entity prescribed by directive for this definition.

Part 10 Appeals

Division 1 Preliminary

129 Definitions for part

In this part—

conversion decision means a decision—

- (a) under section 115 not to convert the employment of a public sector employee mentioned in section 112 to a permanent basis; or
- (b) under section 115 to convert the employment of a public sector employee mentioned in section 112 to a permanent basis in circumstances provided for under a directive made under section 115(8) about the hours of work offered when offering to convert the employment basis to a permanent basis; or
- (c) under section 116 not to convert the employment of a public sector employee mentioned in section 113(1) to a permanent basis, if the employee's right to make the additional request for review under section 116 arose from a decision under section 115; or
- (d) under section 116 to convert the employment of a public sector employee mentioned in section 113(1) to a permanent basis in circumstances provided for under a directive made under section 115(8) about the hours of work offered when offering to convert the employment

basis to a permanent basis, if the employee's right to make the additional request for review under section 116 arose from a decision under section 115; or

- (e) under section 120 or 121 not to employ a public sector employee at a higher classification level, if the employee had been acting at, or seconded to, the higher classification level for a continuous period, as defined for the employee in a directive made under section 120(7), of at least 2 years.

directive decision means a decision to take, or not to take, action under a directive.

disciplinary decision means a decision under a disciplinary law to discipline—

- (a) a person (other than by termination of employment), including the action taken in disciplining the person; or
- (b) a former public sector employee by way of a disciplinary declaration made under section 95, including if the disciplinary action that would have been taken was termination of employment.

fair treatment decision means a decision a public sector employee believes is unfair and unreasonable.

promotion decision means a decision to promote a public sector employee employed on a permanent basis.

suspension without pay decision means a decision to suspend a public sector employee under section 101 without entitlement to normal remuneration.

transfer decision means a decision to transfer—

- (a) a public service officer; or
- (b) a public sector employee, if a regulation has prescribed that the following provisions apply to the employee, without or without modification—
 - (i) chapter 4, part 4, division 3; and

- (ii) this part, in relation to a decision under chapter 4, part 4, division 3.

work performance direction decision means a decision of the commissioner under section 124(5)(b) to give a direction about rectifying a defect in the procedural aspects of the handling of a work performance matter, to the extent the direction affects the employee the subject of the work performance matter.

Division 2 Right of appeal

130 Appeals

A person may appeal against a decision if—

- (a) an appeal may be made against the decision under section 131; and
- (b) the person is entitled to appeal against the decision under section 133.

131 Decisions against which appeals may be made

- (1) An appeal may be made against the following decisions—
 - (a) a conversion decision;
 - (b) a directive decision;
 - (c) a disciplinary decision;
 - (d) a fair treatment decision;
 - (e) a promotion decision;
 - (f) a suspension without pay decision;
 - (g) a transfer decision;
 - (h) a work performance direction decision;
 - (i) a decision about anything else against which another Act allows a person to appeal.

- (2) However, if an appeal may be made under this section against a decision, other than under subsection (1)(d), the appeal can not be made under subsection (1)(d).
- (3) This section is subject to section 132.

132 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 person, including, for example, a person employed on probation;
 - (f) a decision about the classification level of employment, unless the decision is declared under a directive 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, a senior executive or a senior officer;
 - (h) a decision to promote, transfer, redeploy or second a public sector executive, unless the decision is declared under a directive to be a decision against which an appeal may be made;
 - (i) a decision of the commissioner relating to reviewing a procedural aspect of the handling by a public sector entity of a work performance matter at the request of an employee under section 124, other than to the extent allowed under section 131(1)(h);

- (j) a decision under section 114 not to convert the employment of a public sector employee to a permanent basis;
 - (k) a decision under section 120 not to appoint a public sector employee to a position at a higher classification level, if the employee has been acting at, or seconded to, the higher classification level for less than 2 years;
 - (l) 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 sector or the public service or a public sector entity.
- (3) A person can not appeal against a promotion decision if—
- (a) the person employed under the promotion decision had been redeployed within 1 year before the promotion; and
 - (b) the promotion is to a classification level that is not higher than the classification level of the person employed under the promotion decision immediately before the redeployment.
- (4) A person can not appeal against a fair treatment decision—
- (a) made under chapter 3, part 8, division 5; or
 - (b) made under chapter 3, part 8, division 3, other than a finding under section 91 that a disciplinary ground exists for the person; or
 - (c) relating to the recruitment or selection of a public sector 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.
- (5) In this section—

non-appealable appointment means an appointment or employment—

- (a) for which the commissioner is satisfied the principles mentioned in section 44 are sufficiently protected by ways other than an appeal under this part; and
- (b) that the commissioner has declared by gazette notice, or a directive, to be an appointment or employment against which an appeal may not be made.

133 Who may appeal

The following persons may appeal against the following decisions—

- (a) for a conversion decision—the public sector employee the subject of the decision;
- (b) for a directive decision—a public sector employee aggrieved by the decision if the employee is entitled to appeal under a directive;
- (c) for a disciplinary decision—a public sector employee or former public sector employee aggrieved by the decision if the employee is entitled to appeal under a directive;
- (d) for a fair treatment decision—a public sector employee aggrieved by the decision;

- (e) for a promotion decision—a public sector employee employed on a permanent basis who is aggrieved by the decision and is entitled to appeal under a directive;
- (f) for a suspension without pay decision—the public sector employee the subject of the decision;
- (g) for a transfer decision—the public service officer or public sector employee the subject of the decision;
- (h) for a work performance direction decision—the public sector employee the subject of the work performance matter;
- (i) for a decision mentioned in section 131(1)(i)—a person the other Act allows to appeal.

Division 3 Hearing of appeal

134 Appeal to IRC

An appeal under this part is to be heard and decided under the *Industrial Relations Act 2016*, chapter 11 by the IRC.

135 Attendance at appeal part of employee's duties

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

- (a) is a party to the appeal; or
- (b) is requested or required by the IRC to attend the proceeding.

Note—

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

136 Employee's entitlements for attending appeal

- (1) A public sector 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 commissioner.
- (3) However, this section does not apply to a public sector 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.

137 Expenses of persons other than public sector employees

- (1) This section applies if the IRC asks a person, other than a public sector 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 commissioner.
- (4) This section does not apply to a person who is appealing against a disciplinary declaration.

138 Public sector entity must pay costs of appeal and expenses

- (1) The public sector entity whose decision is appealed against must pay—
 - (a) the costs of the appeal, including the IRC's costs incurred for, or attributable to, the appeal; and
 - (b) the travelling expenses and allowances payable under section 136; and

- (c) the amount of any expenses required to be reimbursed under section 137.
- (2) An amount payable for costs under subsection (1)(a) is the amount, not more than the actual costs, the commissioner considers reasonable.
- (3) The chief executive of the public sector entity must ensure subsection (1) is complied with as soon as practicable.

Division 4 Exclusion of particular matters from other Acts

139 Definition for division

In this division—

excluded matter see section 140(1).

140 Application of division

- (1) This division applies to the following matters (each an *excluded matter*)—
 - (a) a decision to appoint or employ, or not to appoint or employ, a person under this Act or as a statutory office holder; or
 - (b) the contract of employment of, or the application of this Act or a provision of this Act to, any of the following—
 - (i) a commissioner;
 - (ii) a chief executive;
 - (iii) a senior executive;
 - (iv) a senior officer;
 - (v) a special commissioner;
 - (vi) another public service officer whose employment is on contract for a fixed term.

(2) In this section—

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

141 Excluded matters not industrial matters

(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 155(6); and
- (b) does not apply for a dismissal of a public service officer who is employed on a permanent basis; and
- (c) has no effect on the *Industrial Relations Act 2016*, section 471.

(3) Without limiting subsection (1), an industrial instrument does not apply to a person who holds an office mentioned in section 140(1)(b).

(4) In this section—

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

142 Decisions about excluded matters final

(1) Unless the Supreme Court decides a decision about an excluded matter is affected by jurisdictional error, the decision—

- (a) is final and conclusive; and
- (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (2) However, subsection (1) does not apply to a decision about an excluded matter relating to a senior officer.
- (3) The *Judicial Review Act 1991*, part 5 applies to a decision about an excluded matter to the extent it is affected by jurisdictional error.

Division 5 Miscellaneous

143 Directive about appeals

- (1) The commissioner must make a directive about appeals by public sector employees.
- (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 131(1); and
 - (iii) the directions, if any, the IRC may give under the *Industrial Relations Act 2016*, section 562C(1)(b); and
 - (b) may, for section 132(5), definition *non-appealable appointment*, declare an appointment or employment to be an appointment or employment against which an appeal may not be made.
- (3) However, the directive must not direct, or purport to direct, the IRC or another person to do or not do a thing, or to do or not do a thing in a particular way, in relation to an appeal under this part.

Part 11 Ending of employment

144 Purpose of part

The purpose of this part is to ensure that, despite another provision of this Act, the chief executive of a public sector entity may end the employment of a public sector employee under the common law, or consider that a public sector employee's employment has ended by operation of law, in particular circumstances, including, for example, if the employee has seriously breached the employee's contract of employment.

145 Summary dismissal and ending of employment

Nothing in this Act—

- (a) limits or otherwise affects a right or power, of a chief executive of a public sector entity, under the common law to terminate a public sector employee's employment, including summarily; or

Example of a right or power under the common law to summarily terminate employment—

A chief executive may have a right or power at common law to summarily terminate a public sector employee's employment if the employee has engaged in serious misconduct, including, for example—

- wilful or deliberate behaviour that is inconsistent with the continuation of the employee's employment
- conduct that causes serious and imminent risk to the health or safety of a person
- conduct that causes serious and imminent risk to the reputation of the public sector entity in which the employee is employed.

Example of a right or power under the common law to terminate employment—

A chief executive may have a right or power at common law to terminate a public sector employee's employment for

repudiation of the employment, including, for example, if the employee has abandoned the employment.

- (b) prevents a public sector employee's employment contract from ending by operation of law; or

Example of a public sector employee's employment contract ending by operation of law—

A public sector employee's employment contract may end under the doctrine of frustration, including, for example, if the employee is imprisoned or remanded in custody.

- (c) limits or otherwise affects the contractual rights of the State or a public sector entity as an employer under the common law.

Part 12 Surplus

146 Relationship with Industrial Relations Act 2016

This part does not limit or otherwise affect—

- (a) the *Industrial Relations Act 2016*, chapter 2, part 3, division 13; or
- (b) an industrial instrument.

147 Chief executive's power to take action because of surplus

- (1) This section applies if the chief executive of a public sector entity believes a public sector employee is surplus to the entity's needs because—
 - (a) more employees are employed in the entity 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 may terminate the employee's employment, subject to any directive made under subsection (3).
- (3) The commissioner may make a directive about action, including, for example, termination of employment, that a chief executive of a public sector entity must take if the chief executive believes a public sector employee is surplus to the entity's needs under subsection (1).
- (4) A chief executive exercising a power under this section must act in a way compatible with sections 3 and 4.

Chapter 4 Public service employment framework

Part 1 Preliminary

148 Application of chapter

- (1) This chapter applies only in relation to public service entities.
- (2) However, if the only employee of the public service entity under this Act is the entity's chief executive, this chapter applies only in relation to the employment of the chief executive.

Part 2 **Employment of general employees, fixed term temporary employees and casual employees**

149 **General employees**

- (1) The chief executive of a public service entity may employ a person (a *general employee*) to perform work of a type not ordinarily performed by a public service officer.
- (2) The basis of employment may be—
 - (a) permanent; or
 - (b) temporary for a fixed term; or
 - (c) casual.
- (3) Employment under subsection (2)(a) or (b) may be full-time or part-time.
- (4) A person employed under this section does not, only because of the employment, become a public service officer.

150 **Fixed term temporary employees**

- (1) The chief executive of a public service entity may employ a person on a temporary basis for a fixed term to perform work of a type ordinarily performed by—
 - (a) an officer; or
 - (b) a senior officer.
- (2) However, subsection (1) applies only if employment of a person on a permanent basis is not viable or appropriate, having regard to the planning of human resources carried out by the chief executive under section 177(1)(f).
- (3) The employment may be full-time or part-time.

- (4) A person employed under this section does not, only because of the employment, become a public service officer.

151 Casual employees

- (1) The chief executive of a public service entity may employ a person on a casual basis to perform work of a type ordinarily performed by—
 - (a) an officer; or
 - (b) a senior officer.
- (2) However, subsection (1) applies only if employment of a person on either of the following employment bases is not viable or appropriate—
 - (a) a permanent basis;
 - (b) a temporary basis for a fixed term.
- (3) A person employed under this section does not, only because of the employment, become a public service officer.

Part 3 Employment of public service officers

152 Public service officers

- (1) The chief executive of a public service entity may, by signed notice, employ a person as a public service officer in the entity.
- (2) The basis of employment may be—
 - (a) permanent; or
 - (b) on contract for a fixed term.
- (3) However, subsection (2)(b) applies only if the chief executive of the entity has decided that employment in the position may be on contract for a fixed term.

- (4) The employment may be full-time or part-time.

153 Purposes of senior officer positions

- (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.

154 Role of commissioner in relation to senior officer positions

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

155 Employment of public service officers on contract for fixed term

- (1) This section applies if the chief executive of a public service entity employs a person, on contract for a fixed term, as a public service officer in the entity.
- (2) The person must enter into a written contract of employment with the chief executive.
- (3) However, if the person is employed on a permanent basis in the position immediately before the employment is to be on contract for a fixed term, the person may, but is not required to, enter into a contract with the chief executive relating to the employment.

- (4) If subsection (3) applies and the person decides not to enter into a contract for a fixed term with the chief executive, the person continues to be employed on a permanent basis without change in the conditions of employment.
- (5) The person's overall employment conditions under a contract for a fixed term under this section must not, on balance, be less than the employment conditions to which the person would be entitled if the person were employed on a permanent basis.
- (6) If there is a dispute between the parties to the contract about the application of subsection (5), the IRC may hear and decide the dispute.
- (7) The conditions of the person's employment are governed by this Act, any relevant directive and the contract.

156 Reinstatement of employment on permanent basis if contract ends

- (1) This section applies if—
 - (a) a person mentioned in section 155(1) is employed on contract for a fixed term; and
 - (b) the contract is terminated other than by disciplinary action, or the contract expires and is not renewed or replaced by another contract of employment under this Act; and
 - (c) when the person was first employed under the contract or an earlier continuous contract of employment as a public service officer, the person was employed as a public service officer on a permanent basis.
- (2) The person becomes a public service officer employed—
 - (a) on a permanent basis; and
 - (b) at the classification level at which the person would have been employed if the person had continued in employment as a public service officer on a permanent basis; and

- (c) on the remuneration to which the person would have been entitled if the person had continued in employment as a public service officer on a permanent basis.

157 Termination of contract if person accepts employment on a permanent basis

- (1) This section applies if—
 - (a) a person mentioned in section 155(1) is employed on contract for a fixed term; and
 - (b) the person accepts employment as a public service officer on a permanent basis.
- (2) The contract is taken to be terminated by agreement of the parties.
- (3) Without limiting subsection (2), the person is not entitled to payment under the contract because of the termination.

Part 4 Other employment arrangements

Division 1 Preliminary

158 Application of part

Subject to sections 159 and 164, this part applies to public service officers employed in public service entities.

159 Application of division 2 or 3 by regulation

- (1) A regulation may provide—
 - (a) that division 2 or 3 is to apply to a public sector employee employed in a public sector entity; and

- (b) for the way in which division 2 or 3 is to apply, including, for example, that it applies with or without change.
- (2) If a regulation is made under subsection (1), the regulation must identify each of the following to which the regulation applies—
 - (a) the public sector entity;
 - (b) the head of the entity;
 - (c) the employees of the entity.
- (3) A regulation may prescribe anything necessary or convenient to be prescribed—
 - (a) to enable a regulation under subsection (1) to be made; or
 - (b) to carry out or give effect to the regulation; or
 - (c) because of the making of the regulation, including, for example, the portability of employment rights and entitlements.

Division 2 Secondment

160 Chief executive’s power to second

- (1) The chief executive of a public service entity (the *first entity*) may—
 - (a) second a public service officer of the first entity within the first entity; or
 - (b) with the approval of the chief executive of another entity, second a public service officer of the other entity to the first entity.
- (2) However, if the secondment is to a lower classification level, the secondment may be made only with the public service officer’s consent.

- (3) The chief executive of the first entity may cancel the secondment at any time.

Division 3 Transfer or redeployment

161 Chief executive's power to transfer or redeploy

- (1) The chief executive of a public service entity (the *first entity*) may—
 - (a) transfer or redeploy a public service officer of the first entity within the first entity; or
 - (b) with the approval of the chief executive of another entity, transfer or redeploy a public service officer of the other entity to the first entity.
- (2) However, a redeployment may be made only with the public service officer's consent.
- (3) A 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.

162 Consequence if public service officer refuses transfer

- (1) If a public service officer is transferred under section 161, 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 public service 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 public service 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.

Division 4 Resignation or retirement

163 Resignation

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

164 Voluntary retirement

A public service officer or a 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 officer or employee is 55 years or more; or
- (b) the officer or employee is permitted to retire under a directive.

Chapter 5 Public service chief executives and senior executives

Part 1 Preliminary

165 Application of chapter

- (1) This chapter applies in relation to—
 - (a) chief executives and senior executives in departments; and
 - (b) the commissioner.
- (2) Part 3 also applies to senior executives in public service entities mentioned in section 9(b).

Part 2 Chief executives

Division 1 Chief executive service

166 Service continued

- (1) A chief executive service is continued in the public service.
- (2) The chief executive service consists of—
 - (a) chief executives appointed or declared under division 2; and
 - (b) the commissioner.

167 Purpose of service and 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 in addition to 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.

168 Role of commissioner

To help achieve the purpose of the chief executive service, the commissioner must make and implement arrangements to facilitate the executive development of chief executives.

169 Chief executive service standards

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

Division 2 Appointments

170 Appointment by Governor in Council

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

171 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) Notice of the appointment must be published in the gazette or in another publicly available way the Minister considers appropriate.

172 Acting chief executive

- (1) The Minister administering a department may appoint a person to act as the department's 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 discharge the responsibilities of chief executive.
- (2) It does not matter whether the appointee is or is not already a public service officer.

173 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 appointed to a stated department.
- (2) This Act does not apply to an appointment to the stated office.

174 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 and the contract.

175 Term of appointment

- (1) The term of a chief executive's appointment must be—
 - (a) 5 years; or
 - (b) if the person has requested a shorter period—the shorter period.
- (2) If a chief executive is reappointed, the term of the appointment can not be more than 5 years.
- (3) A chief executive may resign by signed notice given to the Minister at least 1 month before the notice is to take effect.
- (4) An appointment and contract of employment as a chief executive may be terminated by the Governor in Council by signed notice given by the Minister to the appointee at least 1 month before the notice is to take effect.

Division 3 Functions

176 Definition for division

In this division—

Minister, of a chief executive of a department, means the Minister administering the department.

177 Functions and responsibilities of chief executive

- (1) A chief executive of a department has the following functions and responsibilities in relation to the 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 while ensuring appropriate accountability for ethical standards and effective management and leadership of human resources;
- (c) managing the following matters for departmental employees—
 - (i) the total number;
 - (ii) types of positions;
 - (iii) roles associated with positions;
 - (iv) classification levels;
 - (v) designation of roles;
- (d) pro-actively managing the work performance and personal conduct of departmental employees;
- (e) establishing and implementing workforce and human resources planning and practices, including, for example, ensuring the employment in the department of persons on a temporary basis for a fixed term or on a casual basis happens only if there is a reason for the basis of employment under this Act;
- (f) adopting management practices that are responsive to government policies and priorities;
- (g) 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;
- (h) ensuring compliance with the obligations under chapter 2 relating to equity, diversity, respect and inclusion;
- (i) 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) Also, a chief executive is responsible for the following matters—
- (a) providing stewardship of the public sector by actively participating in collective and collaborative leadership and implementing public sector-wide policies decided by the Minister and the council;
 - (b) acting as the primary policy adviser to the chief executive’s Minister about significant issues relating to the department and the public sector, including, for example—
 - (i) providing expert, impartial, coordinated and comprehensive policy advice; and
 - (ii) providing integrated advice about how all aspects of the department and the public sector align with the policy intent of government; and
 - (iii) providing policy coordination by building and managing relationships with public sector entities to ensure integrated policy development; and
 - (iv) facilitating and supporting relationships between Ministers and public sector entities.
- (3) The chief executive’s responsibilities under this Act are in addition to the chief executive’s responsibilities under another Act.

Example—

A chief executive is an accountable officer under the *Financial Accountability Act 2009* and has a responsibility to develop the strategic plan and operational plan under the *Financial and Performance Management Standard 2019*, section 8.

Note—

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

- the integrity commissioner, deputy integrity commissioner and members of the staff of the integrity office (see the *Integrity Act 2009*)
- the information commissioner and staff of the office of the information commissioner (see the *Right to Information Act 2009*, sections 126, 146 and 149, and the *Information Privacy Act 2009*, sections 140 and 143)

(4) 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 the organisational location of the role within a department.

178 Extent of chief executive’s autonomy

(1) A chief executive of a department is subject to the directions of the chief executive’s Minister in managing the department, other than to the extent—

- (a) the chief executive is making decisions about particular individuals; or
- (b) another Act—
 - (i) provides that the chief executive is not subject to the directions of the chief executive’s Minister about particular matters; or
 - (ii) limits the extent to which, or circumstances in which, the chief executive is subject to the directions of the chief executive’s Minister.

(2) In making decisions about particular individuals, the chief executive—

- (a) is subject to any direction given by the commission in a report about a procedural aspect of a current work performance matter under section 124; and

- (b) must otherwise act independently, impartially and fairly;
and
- (c) is not subject to direction by a Minister.

179 References in Act to chief executive of a chief executive are to Minister

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

Division 4 Conflicts of interest

180 Definition for division

In this division—

Minister, of a chief executive of a department, means the Minister responsible for administering the department.

181 Meaning of *interest*

A reference to an *interest* or to a *conflict of interest* in this division 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.

182 Declaration of interests—chief executive of department

- (1) This section applies to a person appointed as chief executive of a department.

Note—

Appointment includes reappointment. See the *Acts Interpretation Act 1954*, schedule 1, definition *appoint*.

- (2) The chief executive must, within 1 month after the appointment, give each designated person for the chief executive a statement about the chief executive's interests.
- (3) The statement must include the information required under a directive made by the commissioner.
- (4) Subsection (5) applies 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 made by the commissioner.
- (5) The chief executive must give each designated person for the chief executive a revised version of the statement, including the change, as soon as possible after the relevant facts about the change come to the chief executive's knowledge.
- (6) When giving the commissioner a statement under subsection (2) or (5), the chief executive must also give the commissioner written advice that the chief executive has given the statement to the chief executive's Minister.
- (7) In this section—

designated person, for a chief executive, means—

 - (a) the chief executive's Minister; or
 - (b) the commissioner.

183 Conflicts of interest—chief executive of department

- (1) This section applies to a person appointed as chief executive of a department.
- (2) If the 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 chief executive's 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 chief executive's Minister.
- (3) The chief executive's Minister may direct the chief executive of the entity to resolve a conflict or possible conflict between an interest of the chief executive and the chief executive's responsibilities.

Part 3 Senior executives

Division 1 Senior executive service

184 Senior executive service continued

A senior executive service is continued in the public service.

185 Purpose of service and achievement

- (1) The purpose of the senior executive service is 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) provide strategic leadership to deliver government objectives; and
 - (b) provide high quality, impartial advice to chief executives and executive government; and
 - (c) champion the public sector principles in all aspects of their leadership and in discharging their responsibilities; and

- (d) develop a public service-wide perspective and participate in collaborative and collective leadership to achieve outcomes across the public sector; and
 - (e) continue their executive development through ongoing learning; and
 - (f) develop their skills through deployment within the public service and in other entities.
- (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.

186 Role of commissioner

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

187 Composition

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

Division 2 Employment

188 Employment

- (1) The chief executive of a public service entity may, on behalf of the State, employ a senior executive in the public service entity.
- (2) However, the chief executive must not employ the senior executive unless the employment is approved by the commissioner under a directive.

189 Acting senior executive

- (1) The chief executive of a public service entity may employ a person to act in the office of a senior executive in the entity 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 discharge the responsibilities of the office.
- (2) It does not matter whether the person employed to act in the office is or is not already a public service officer.

190 Contractual basis of employment for senior executives

- (1) Each senior executive must enter into a written contract of employment with the senior executive's chief executive.
- (2) 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 employment as senior executive, a further contract of employment may be entered into under this section.
- (3) The entry into a further contract of employment as mentioned in subsection (2) extends the person's employment by the further term stated in the contract.
- (4) An extension of employment under subsection (2) and (3) may happen as occasion requires.
- (5) The senior executive's conditions of employment are governed by this Act, any relevant directives and the contract.
- (6) The employment may be full-time or part-time.

191 Term of contract

- (1) The term of a senior executive's contract, or an extension of the senior executive's employment in the way provided for under section 190(2) and (3), can not be more than 5 years.

- (2) A senior executive may resign by signed notice given to the senior executive's chief executive at least 1 month before the notice is to take effect.
- (3) A senior executive's contract of employment may be terminated by the senior executive's chief executive by signed notice given to the senior executive at least 1 month before the notice is to take effect.

Chapter 6 Governance of public sector

Part 1 The Minister

192 Functions

- (1) The main function of the Minister is to promote the overall effectiveness and efficiency of the public sector.
- (2) Without limiting subsection (1), the Minister has the following functions—
 - (a) to assess the appropriateness, effectiveness and efficiency of public sector management;
 - (b) to recommend the appointment of, and employment arrangements for—
 - (i) chief executives of departments; and
 - (ii) the commissioner; and
 - (iii) each special commissioner;
 - (c) to monitor the performance of the commission's functions, chief executives of departments and the commissioner;

- (d) to authorise performance reviews of chief executives of departments and the commissioner;
 - (e) to request public sector reviews;
 - (f) to advise Ministers administering departments about steps that should be taken to improve the public sector's effectiveness and efficiency.
- (3) The Minister also has the functions given to the Minister under this Act or another Act.
- (4) To remove any doubt, it is declared that the Minister's functions do not include a function relating to any of the following entities—
- (a) the Crime and Corruption Commission;
 - (b) the Office of the Information Commissioner under the *Right to Information Act 2009*;
 - (c) the integrity office;
 - (d) the Office of the Ombudsman established under the *Ombudsman Act 2001*;
 - (e) another entity prescribed by regulation for this paragraph.

193 Giving direction

- (1) The Minister may give a direction to any of the following entities—
- (a) the commissioner;
 - (b) the council;
 - (c) the chairperson of the council.
- (2) The direction may require the entity to give the Minister a report about the performance of the entity's functions or any matter relating to public sector employment the Minister considers appropriate.

- (3) If the direction requires the entity to give the Minister a report as mentioned in subsection (2), the direction must—
 - (a) be in writing; and
 - (b) state the reasonable period within which the entity must comply with the direction.
- (4) The direction may be as general or as specific as the Minister considers appropriate.

194 Making performance framework

- (1) The Minister may make a framework (the *performance framework*) about the way the Minister expects chief executives of departments to perform their functions.
- (2) Without limiting subsection (1), the performance framework may provide for competencies expected of, and ethical standards for, chief executives mentioned in subsection (1).
- (3) The Minister must publish the performance framework—
 - (a) on a Queensland Government website; or
 - (b) in another publicly available way the Minister considers appropriate.
- (4) The performance framework does not limit or otherwise affect the obligations that a chief executive has under the *Public Sector Ethics Act 1994*.

195 Establishing taskforce

- (1) The Minister may establish a taskforce consisting of 2 or more chief executives of public service entities, appointed by the Minister, who have responsibilities relating to a particular matter common to the public service entities.
- (2) The chief executives have a shared responsibility in relation to the taskforce.
- (3) The Minister must appoint 1 of the chief executives of the public service entities to be the chairperson of the taskforce.

- (4) The Minister must decide the public service entity to which the taskforce belongs.

196 Taskforce's functions and staffing arrangements

- (1) The main function of a taskforce established under section 195(1) is to deal with complex issues relating to the particular matter common to the public service entities in relation to which the taskforce is established.
- (2) Without limiting subsection (1), the chief executives of the public service entities may discharge the main function of the taskforce by—
 - (a) coordinating strategic policy and planning activities for the particular matter; and
 - (b) supporting the delivery of initiatives that are common to the public service entities.
- (3) The Minister must decide—
 - (a) the terms of reference of the taskforce, including, for example, how the taskforce must operate in performing its functions; and
 - (b) the governance and administration arrangements of the taskforce; and
 - (c) the monitoring and reporting arrangements for the taskforce; and
 - (d) the allocation of resources to the taskforce.
- (4) The chief executives of the public service entities have the power to do anything necessary or convenient to be done for the performance of the taskforce's functions.
- (5) However, the chief executive of the public service entity to which the taskforce belongs is responsible for matters relating to the staffing of the taskforce and may, for the performance of the taskforce's functions—

- (a) make an arrangement under section 82 or 160 for a person to perform work for or in, or duties in, the entity; or
- (b) employ, under chapter 4 or 5, a person in the entity.

Part 2 **Departments of government**

197 **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 of government by the Governor in Council by gazette notice.

198 **Changes relating to departments or other government entities**

The Governor in Council may, by gazette notice—

- (a) establish a department or another government entity; or
- (b) amalgamate departments or other 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.

199 **Declaration of functions**

The Governor in Council may, by gazette notice, declare—

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

200 Changes relating to functions

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.

201 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 part 2 gazette notice; or
 - (b) for carrying out or giving effect to a part 2 gazette notice; or
 - (c) because of the making of a part 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 part 2 gazette notice; or
 - (b) to carry out or give effect to a part 2 gazette notice; or
 - (c) because of the making of a part 2 gazette notice.

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

transferring public service employees from a department to another department

- (3) In this section—

part 2 gazette notice means a gazette notice under this part, other than under this section.

202 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 in the first department, or the part of the first department, become employed in the other department unless the Governor in Council decides otherwise.
- (3) The following apply for each of the public service employees—
 - (a) the employee retains and is entitled to all rights, benefits and entitlements that have accrued to the person because of the person's previous employment in the first department, including, for example, accrued leave;
 - (b) the employee's continuity of service is not interrupted, provided that the employee is not entitled to claim a right, benefit or entitlement more than once in relation to the same period of service;
 - (c) the employee's employment in the other department does not constitute a termination of employment or a retrenchment or redundancy;
 - (d) the employee is not entitled to a payment or other benefit because the employee is no longer employed in the first department.

203 Existence of separate government entities not affected

- (1) This section applies if another Act establishes a 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 part does not have any effect on the government entity's separate existence.

Part 3 Public Sector Commission

204 Continuation of commission

The Public Service Commission established under the repealed *Public Service Act 2008* is continued in existence under the name Public Sector Commission (the *commission*).

205 Membership

The commission consists of the following persons—

- (a) the commissioner;
- (b) each special commissioner;
- (c) the staff members of the commission.

206 Commission represents State

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

207 Functions

- (1) The main function of the commission is to support the implementation and consistent application of this Act.
- (2) Without limiting subsection (1), the commission has the following functions—
 - (a) to provide system leadership and stewardship of the public sector;

- (b) to build and maintain the capability and capacity of the public sector, including, for example, the capability of human resource management in the public sector;
- (c) to promote equity, diversity, respect and inclusion in the public sector;
- (d) to enhance and promote a culture of integrity and ethical behaviour and decision-making across the public sector;
- (e) to promote a culture of continuous improvement and support to public sector entities to identify and manage workforce issues;
- (f) to build leadership capability and facilitate the development of a highly skilled chief executive service and senior executive service, including, for example, through the use of mobility arrangements;
- (g) to support agencies to develop the capability of the public sector to serve the people of Queensland and the State government efficiently and effectively;
- (h) to promote the public sector principles;
- (i) to report, at least annually, to the Minister on the application of the public sector principles within public service entities, including to report on the following—
 - (i) the application of the principles, as a whole, within public service entities as a whole;
 - (ii) the application of only 1 or more of the principles within public service entities 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) to enhance the public sector's leadership and management capabilities in relation to disciplinary matters;

- (k) to facilitate the purposes of the chief executive service, and the purposes of the senior executive service and senior officer positions;
 - (l) to support the council to perform its functions under this Act;
 - (m) to monitor, and report to the council about, the workforce profile of the public service.
- (3) The commission also has the functions given to it under this Act or another Act.

208 Powers

- (1) The commission has the power to do anything necessary or convenient to be done for the performance of the commission's functions.
- (2) The commission also has the powers given to the commission under this Act or another Act.

209 Staff members of commission

The commissioner may employ, under chapter 4 or 5, the persons the commissioner considers necessary to perform the commission's functions.

210 Staff member subject to direction by commissioner

A staff member of the commission is subject to the direction of the commissioner relating to the performance of the commission's functions.

211 Agents

- (1) To meet temporary circumstances, the commissioner may engage suitably qualified persons to provide the commission with services, information and advice.

- (2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the commissioner and not under this Act.

Part 4 Public Sector Commissioner

212 Appointment

- (1) The Governor in Council may, on the recommendation of the Minister, appoint an appropriately qualified person as the Public Sector Commissioner (the *commissioner*).
- (2) The commissioner is the chief executive of the commission.

213 Disqualification as commissioner

A person is disqualified from being appointed, or continuing as, the commissioner if the person is a disqualified person.

214 Term

- (1) The commissioner holds office for the term stated in the commissioner's instrument of appointment.
- (2) The stated term must not be more than 5 years.
- (3) The commissioner may be reappointed.

215 Remuneration and conditions

- (1) A person appointed as the commissioner must enter into a written contract of employment with the Minister.
- (2) Without limiting subsection (1), the contract may provide for—
 - (a) the commissioner to meet performance standards set by the Minister; and
 - (b) the remuneration and allowances of the commissioner.

- (3) The appointment and contract of employment may be terminated by the Governor in Council by signed notice given by the Minister to the commissioner at least 1 month before the notice is to take effect.
- (4) The remuneration to which the commissioner is entitled must not be reduced during the commissioner's term of office without the commissioner's written consent.
- (5) The commissioner holds office on the terms and conditions, not provided for by this Act, that are approved by the Minister.

216 Vacancy in office

The office of the commissioner becomes vacant if—

- (a) the commissioner—
 - (i) completes a term of office and is not reappointed; or
 - (ii) resigns by signed notice, giving at least 1 month's notice, given to the Minister; or
 - (iii) becomes a disqualified person; or
- (b) the appointment and contract of employment of the commissioner is terminated under section 215(3).

217 Functions and responsibilities of commissioner

- (1) The main function of the commissioner is to ensure the effective and efficient administration and operation of the commission and the performance of its functions.
- (2) Without limiting subsection (1), the commissioner has the following functions—
 - (a) to provide stewardship of the public sector's workforce;
 - (b) to make directives;

- (c) to support the council to perform its functions under this Act;
- (d) to approve the initial appointment of senior executives;
- (e) to support the development of senior executives and senior officers;
- (f) to conduct public sector reviews;
- (g) to establish and implement goals and objectives in accordance with government policies and priorities;
- (h) to manage the commission in a way that promotes the effective, efficient and appropriate management of public resources while ensuring appropriate accountability for ethical standards and effective management and leadership of human resources;
- (i) to manage the following matters for staff members of the commission—
 - (i) the total number;
 - (ii) types of positions;
 - (iii) roles associated with positions;
 - (iv) classification levels;
 - (v) designation of roles;
- (j) to manage workforce and human resources planning and practices;
- (k) to adopt management practices that are responsive to government policies and priorities;
- (l) to pro-actively manage the work performance and personal conduct of staff members of the commission;
- (m) to implement 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;

- (n) to perform functions under chapter 2 relating to equity, diversity, respect and inclusion;
 - (o) to perform other functions as directed by the Minister.
- (3) The commissioner also has the functions given to the commissioner under this Act or another Act.

218 Powers

- (1) The commissioner has the power to do anything necessary or convenient to be done for the performance of the commissioner's functions.
- (2) The commissioner also has the powers given to the commissioner under this Act or another Act.

219 Acting as commissioner

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

220 Preservation of rights

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

- (3) At the end of the person's term of office or on resignation as the commissioner, the person's service as the commissioner is taken to be service of a like nature in the public service for deciding the person's rights and entitlements as a public service officer.

Part 5 Directives

221 Directive binding

- (1) A directive binds each person to whom the directive applies.
- (2) Subsection (1) is not limited by, and does not limit, another provision of this Act that provides a person must comply with a particular directive.

222 Making of directive—commissioner

- (1) The commissioner may make a directive about—
- (a) a matter mentioned in section 4, 207 or 217; or
- Examples of matters a directive may be about—*
- a matter relating to equity, diversity, respect or inclusion under chapter 2
 - a matter relating to the employment arrangements of public sector employees under chapter 3
 - a matter relating to the employment of public service employees under chapter 4 or 5
- (b) the overall employment conditions of the following types of public service employees—
- (i) an officer employed on a contract for a fixed term whose remuneration is at least the remuneration payable to a senior officer;
- (ii) a senior officer;
- (iii) a senior executive;
- (iv) a chief executive; or

- (c) the overall employment conditions of a public sector executive; or
 - (d) any other matter for which this Act expressly provides.
- (2) However, the commissioner can not make a directive about the overall employment conditions of a public sector employee who is covered by an industrial instrument.
- (3) After the commissioner makes a directive, the commissioner must publish the directive on a Queensland government website.

223 Making of directive—industrial relations Minister

- (1) The industrial relations Minister may make a directive about the overall employment conditions of public sector employees.
- (2) However, the industrial relations Minister can not make a directive about the overall employment conditions of a public sector employee mentioned in section 222(1)(b) or (c).
- (3) After the industrial relations Minister makes a directive, the industrial relations Minister must publish the directive on a Queensland government website.
- (4) To remove any doubt, it is declared that the industrial relations Minister can make a directive about the overall employment conditions of a public sector employee who is covered by an industrial instrument.

224 Consultation for directives

- (1) This section applies if the commissioner or the industrial relations Minister proposes to make a directive that affects—
- (a) a public sector entity; or
 - (b) public sector employees who are entitled to be represented by an employee organisation.

- (2) The commissioner or the industrial relations Minister must consult with the following entities about the making of the proposed directive—
 - (a) for subsection (1)(a)—the public sector entity;
 - (b) for subsection (1)(b)—the employee organisation.
- (3) A failure to comply with subsection (2) does not invalidate or otherwise affect the directive, if the commissioner or industrial relations Minister made a reasonable attempt to comply with the subsection.

225 Advice about making directive

In making a directive, the commissioner or the industrial relations Minister must consider any advice given to the other about improving the public sector's effectiveness and efficiency.

226 Joint directives

Nothing in this Act or the *Industrial Relations Act 2016* prevents the commissioner and the industrial relations Minister from making a joint directive.

227 Directive may apply Act to public sector employees

- (1) A directive may apply a provision of this Act to a public sector 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 commissioner.
- (2) 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.

228 Relationship with legislation

- (1) If a directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails over the directive to the extent of any inconsistency.
- (2) For subsection (1), a directive is not inconsistent with an Act or subordinate legislation to the extent the directive is at least as favourable as the Act or subordinate legislation.

229 Relationship with industrial instrument

- (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.
- (3) For subsection (2), a directive is not inconsistent with an industrial instrument to the extent the overall employment conditions provided for in the directive are at least as favourable as the overall employment conditions provided for in the industrial instrument.
- (4) In this section—
directive includes a decision made in the exercise of a discretion under a directive.

Part 6 Special commissioners

230 **Appointment**

The Governor in Council may, on the recommendation of the Minister, appoint an appropriately qualified person as a special commissioner.

231 **Disqualification as special commissioner**

A person is disqualified from being appointed, or continuing as, a special commissioner if the person is a disqualified person.

232 **Term**

- (1) A special commissioner holds office for the term stated in the special commissioner's instrument of appointment.
- (2) The stated term must not be more than 5 years.
- (3) A special commissioner may be reappointed.

233 **Remuneration and conditions**

- (1) A person appointed as a special commissioner must enter into a written contract of employment with the Minister.
- (2) A special commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (3) The appointment and contract of employment may be terminated by the Governor in Council by signed notice given by the Minister to the special commissioner at least 1 month before the notice is to take effect.
- (4) The remuneration to which a special commissioner is entitled must not be reduced during the special commissioner's term of office without the special commissioner's written consent.

- (5) A special commissioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

234 Vacancy in office

The office of a special commissioner becomes vacant if—

- (a) the special commissioner—
- (i) completes a term of office and is not reappointed; or
 - (ii) resigns by signed notice, giving at least 1 month's notice, given to the Minister; or
 - (iii) becomes a disqualified person; or
- (b) the appointment and contract of employment of the special commissioner is terminated under section 233(3).

235 Conflicts of interest

- (1) If a special commissioner has an interest that conflicts or may conflict with the discharge of the special commissioner's responsibilities, the special commissioner—
- (a) must disclose the nature of the interest and conflict to the Minister as soon as practicable after the relevant facts come to the special commissioner'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 Minister.
- (2) The Minister may direct a special commissioner to resolve a conflict or possible conflict between an interest of the special commissioner and the special commissioner's responsibilities.

236 Functions

- (1) The main functions of a special commissioner are—
 - (a) to give advice to the Minister about an area of public sector administration stated in the special commissioner's instrument of appointment; and
 - (b) to promote and develop the effectiveness and efficiency of the public sector by facilitating the development and implementation of public sector-wide policies; and
 - (c) to conduct public sector reviews.
- (2) A special commissioner also has the functions given to the special commissioner under this Act or another Act.

237 Powers

- (1) A special commissioner has the power to do anything necessary or convenient to be done for the performance of the special commissioner's functions.
- (2) A special commissioner also has the powers given to the special commissioner under this Act or another Act.

238 Preservation of rights

- (1) This section applies if a public service officer is appointed as a special commissioner.
- (2) The person keeps all rights and entitlements accrued or accruing to the person as a public service officer as if service as a special commissioner were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation as a special commissioner, the person's service as a special commissioner is taken to be service of a like nature in the public service for deciding the person's rights and entitlements as a public service officer.

239 Special commissioner subject to direction of chairperson of council

- (1) A special commissioner is subject to the direction of the chairperson of the council.
- (2) For this Act, a special commissioner's chief executive is the chairperson of the council.

Part 7 Public Sector Governance Council

240 Establishment

The Public Sector Governance Council (the *council*) is established.

241 Membership

The council consists of the following persons (each a *member*)—

- (a) the commissioner;
- (b) the chief executive of the department in which the *Parliament of Queensland Act 2001* is administered;
- (c) the chief executive of the department in which the *Financial Accountability Act 2009* is administered;
- (d) any chief executives or special commissioners appointed under section 246(3);
- (e) 2 persons appointed under section 242 as community representatives.

242 Community representatives

- (1) The Governor in Council may, on the recommendation of the Minister, appoint 2 persons who are not public sector employees as community representatives.

- (2) A person appointed as a community representative holds office for the term stated in the person's instrument of appointment.
- (3) The stated term must not be more than 3 years.
- (4) The person may be reappointed.
- (5) The person is to be paid the remuneration and allowances, and holds office on the terms and conditions, decided by the Governor in Council.
- (6) The appointment may be terminated by the Governor in Council by signed notice given by the Minister to the community representative at least 1 month before the notice is to take effect.

243 Disqualification as community representative

A person is disqualified from being appointed, or continuing as, a community representative if the person is a disqualified person.

244 Vacancy in office

The office of a community representative becomes vacant if—

- (a) the community representative—
 - (i) completes a term of office and is not reappointed; or
 - (ii) resigns by signed notice, giving at least 1 month's notice, given to the Minister; or
 - (iii) becomes a disqualified person; or
- (b) the appointment of the community representative is terminated under section 242(6).

245 Council represents State

- (1) The council represents the State.

- (2) Without limiting subsection (1), the council has the privileges and immunities of the State.

246 Chairperson

- (1) The chairperson of the council is the chief executive of the department in which the *Parliament of Queensland Act 2001* is administered.
- (2) The chairperson may appoint another member to act as chairperson in the chairperson's absence.
- (3) The chairperson may appoint 1 or more chief executives or special commissioners as members for a period decided by the council.

247 Functions

- (1) The main functions of the council are to provide system leadership and stewardship of the public sector and to oversee public sector governance.
- (2) Without limiting subsection (1), the council has the following functions—
 - (a) to monitor, and advise the Minister on, the performance of the public sector and matters relating to public sector administration and workforce management;
 - (b) to foster and recognise excellence, innovation and high performance of public sector employees and work teams;
 - (c) to foster a culture of integrity within the public sector;
 - (d) to oversee the implementation of policies and programs across the public sector;
 - (e) to monitor, and report to the Minister about, the workforce profile of the public sector;
 - (f) to promote seamless and integrated policy advice and policy implementation, including, for example,

establishing ways for public sector entities to collaborate;

- (g) to oversee the implementation of changes to the machinery of government and resourcing decisions related to the changes;
 - (h) to set work programs for each special commissioner;
 - (i) to request public sector reviews.
- (3) The council also has the functions given to it under this Act or another Act.
- (4) In this section—

workforce profile means the demographic categories and other characteristics of a workforce.

248 Powers

- (1) The council has the power to do anything necessary or convenient to be done for the performance of the council's functions.
- (2) The council also has the powers given to the council under this Act or another Act.

249 Number and classification levels of senior executive roles

The council may fix the maximum number, and classification levels, of full-time senior executive roles in a public service entity.

250 Head of practice area

- (1) The council may, for a practice area in the public sector, give a public sector employee for a stated period—
 - (a) the title of head of the practice area; and

- (b) the function of developing networks of practitioners, and excellence in performance, in the practice area throughout the public sector.
- (2) However, the council may act under subsection (1) only if the public sector employee's chief executive consents to the action.
- (3) Also, an action under subsection (1) does not affect the public sector employee's rights or entitlements as a public sector employee.
- (4) In this section—
practice area includes—
 - (a) change management; and
 - (b) community engagement; and
 - (c) financial management; and
 - (d) evaluation; and
 - (e) human resource management; and
 - (f) reframing of the State government's relationship with Aboriginal peoples and Torres Strait Islander peoples; and
 - (g) dispute resolution; and
 - (h) industrial relations; and
 - (i) information and communication technology procurement; and
 - (j) policy implementation.

251 Conduct of business

- (1) Subject to subsection (2), the council may conduct its business, including its meetings, in the way it considers appropriate.
- (2) The council must hold at least 4 meetings a year.

Part 8 Public sector reviews

Division 1 Preliminary

252 Definitions for part

In this part—

disclose includes give access to.

public sector entity includes the police service.

public sector review see section 253.

referring entity, for a public sector review, see section 254(1).

reviewing entity means the commissioner, a special commissioner or another appropriately qualified person.

253 What is a *public sector review*

A *public sector review*—

- (a) is a review about any matter or aspect of public administration, or of public sector management, relating to the main purpose of this Act; and
- (b) includes a review about the effectiveness, efficiency, functions or activities of a public sector entity.

Division 2 Initiating public sector review

254 Minister or council may ask for public sector review

- (1) The Minister or the council (each a *referring entity*) may, by signed notice, ask a reviewing entity to conduct a public sector review.
- (2) However, a referring entity can not ask for a public sector review about any of the following entities—

- (a) the Crime and Corruption Commission;
 - (b) the Office of the Information Commissioner established under the *Right to Information Act 2009*;
 - (c) the integrity office;
 - (d) the Office of the Ombudsman established under the *Ombudsman Act 2001*;
 - (ea) the Electoral Commission of Queensland established under the *Electoral Act 1992*;
 - (eb) the Queensland Human Rights Commission established under the *Anti-Discrimination Act 1991*;
 - (e) another entity prescribed by regulation for this paragraph.
- (3) Also, a referring entity can not ask for a public sector review about an individual.
- (4) The notice under subsection (1) must state the terms of reference for the public sector review, including the timeframe within which the review is to be completed.
- (5) If the reviewing entity is an appropriately qualified person other than the commissioner or a special commissioner, the reviewing entity may delegate a function relating to the conduct of the review to another appropriately qualified person.

Note—

See also sections 283 and 284.

255 Public sector review about public sector entity

- (1) This section applies if a public sector entity is the subject of a public sector review.
- (2) Before asking a reviewing entity to conduct the public sector review, the referring entity for the review must—

- (a) consult with, and have regard to the views of, the chief executive of the public sector entity about the proposed terms of reference for the review; and
 - (b) inform the Minister administering the public sector entity, and the chief executive of the public sector entity, about the review; and
 - (c) give the chief executive of the public sector entity an opportunity to nominate a stated number of employees who are employed in the entity to take part in the review.
- (3) Nothing in this section prevents—
- (a) the Minister asking a reviewing entity to conduct a public sector review about a public sector entity administered by the Minister; or
 - (b) the council asking a reviewing entity to conduct a public sector review about a public sector entity for which a member of the council is the chief executive.

Division 3 Functions and powers of reviewing entity

256 How reviewing entity's functions may be performed

The functions of the reviewing entity for a public sector review must be performed consistently with the referring entity's terms of reference for the review.

Note—

See also sections 217 and 236.

257 Powers for conducting public sector review

- (1) The reviewing entity for a public sector review may take any action reasonably required to conduct the review.
- (2) Without limiting subsection (1), the reviewing entity may do any of the following—

- (a) enter official premises of a public sector entity at a reasonable time;
- (b) require the production of, examine, copy, or take an extract from, any official document in the possession of a public sector entity;
- (c) interview employees of a public sector entity;
- (d) interview anyone else who can provide information relevant to the public sector review.

Example for paragraph (d)—
employee organisations

- (3) The chief executive of a public sector entity, and each other person employed in the public sector entity, must provide the assistance reasonably required by the reviewing entity to conduct the public sector review, including, for example, giving the reviewing entity an official document required under subsection (2)(b).
- (4) However, an individual need not answer a question asked by, or give information to, the reviewing entity if answering the question or giving the information might tend to incriminate the individual or expose the individual to a penalty.
- (5) In this section—

official document, in the possession of a public sector entity, includes an official document—

- (a) under the control of the public sector entity, or that the entity is entitled to access, whether or not created in the entity; and
- (b) in the possession, or under the control, of a person employed in the public sector entity in the person's official capacity.

Division 4 Conduct of review

258 Referring entity to be kept informed

A reviewing entity must keep the referring entity for a public sector review informed of the progress of the review.

259 Referring entity may obtain information

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

260 Disclosure of documents or information

A person may disclose a document or information to the reviewing entity for a public sector review for the purpose of the review.

261 Reviewing entity to prepare report

- (1) The reviewing entity must prepare a report for a public sector review.
- (2) The report must include—
 - (a) a consideration of relevant viewpoints and options to address the issues covered by the report; and
 - (b) the reviewing entity's findings and recommendations relating to the issues; and

- (c) details of the how the review was conducted, including, for example, details of consultation undertaken during the review; and
 - (d) details of how the reviewing entity kept the referring entity informed of the progress of the review.
- (3) Subsection (4) applies if—
- (a) the reviewing entity is the commissioner or a special commissioner; and
 - (b) the reviewing entity delegates the reviewing entity’s function under subsection (1) to an appropriately qualified staff member of the commission.
- (4) The reviewing entity must approve the report for the public sector review.

262 Procedure for reporting sensitive information

- (1) This section applies if the reviewing entity for a public sector review considers that information that would, apart from this section, be included in a report for the review is sensitive information.
- (2) The reviewing entity need not include the information in the report.
- (3) The reviewing entity may include the information in a separate document given to the referring entity.
- (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 an entity’s commercial interests.
- 2 The disclosure would reveal trade secrets.

- 3 The disclosure would cause damage to relations between the State government and another government.
- (b) for which, in any judicial proceeding, the State would have a basis for claiming that disclosure should not be permitted.

263 Reporting to referring entity

- (1) As soon as practicable after preparing a report for a public sector review, the reviewing entity for the review must give the referring entity the report.
- (2) The referring entity must give a copy of the report to—
 - (a) if a public sector entity is the subject of the public sector review—
 - (i) the Minister administering the public sector entity; and
 - (ii) the chief executive of the public sector entity; and
 - (b) anyone else the referring entity considers appropriate.
- (3) If the referring entity is the Minister, the Minister—
 - (a) must table the report in the Legislative Assembly; and
 - (b) may publish the report in the way the Minister considers appropriate.
- (4) If the referring entity is the council, the council may publish the report, or a part of the report, including any recommendations, in the way the council considers appropriate.
- (5) However, the referring entity must remove any confidential information from the report before the report is tabled or published under subsection (3) or (4).
- (6) In this section—

confidential information—

 - (a) means personal information; but

- (b) does not include information that is publicly available unless further disclosure of the information is prohibited by law.

Part 9

Complaints management system

264 Public sector entity must have complaints management system

- (1) A public sector entity must establish and implement a system for dealing with customer complaints.
- (2) The system must—
 - (a) provide for the public sector entity to take responsibility for managing the receipt, processing and outcome of customer complaints; 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 customer complaints to the complainant, unless the complaint was made anonymously.
- (3) The chief executive of the public sector entity must, before 30 September after the end of each financial year, publish the following information for the financial year on the entity's website—
 - (a) the number of customer complaints received by the entity in the year;
 - (b) the number of complaints mentioned in paragraph (a) resulting in further action;
 - (c) the number of complaints mentioned in paragraph (a) resulting in no further action.

Note—

Details of customer complaints that are human rights complaints must, under the *Human Rights Act 2019*, section 97, be included in the annual reports of particular public sector entities.

(4) In this section—

customer complaint means a complaint about the service or action of a public sector entity, or its staff, by a person who is apparently directly affected by the service or action.

Examples—

- 1 a complaint about a decision made, or a failure to make a decision, by a public sector employee of the public sector entity
- 2 a complaint about an act, or failure to act, of the public sector entity
- 3 a complaint about the formulation of a proposal or intention of the public sector entity
- 4 a complaint about the making of a recommendation by the public sector entity
- 5 a complaint about the customer service provided by a public sector employee of the public sector entity

Part 10 Miscellaneous

265 **Criminal history checks to confirm suitability for appointment**

- (1) To help decide whether a person is suitable to be recommended for appointment as the commissioner, a special commissioner or a community representative, 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 police commissioner has access.
- (5) If the criminal history of the person includes a conviction recorded against the person, the police commissioner's report must be in writing.
- (6) The Minister must destroy the report as soon as practicable after the decision has been made.

Chapter 7 Matters applying to public service employees and other individuals

Part 1 Protection from civil liability

266 Main purpose of part

- (1) The main purpose of this part is to give public service employees protection from civil liability for engaging in conduct in an official capacity.
- (2) This part also gives particular persons other than public service employees protection from civil liability for engaging in conduct in an official capacity.

267 Definition for part

In this part—

prescribed person see section 268(1) and (2).

268 Application of part

- (1) This part applies to each of the following persons (each a *prescribed person*)—
 - (a) a public service employee;
 - (b) a person employed as an associate to a Supreme Court judge, District Court judge, commissioner under the *Industrial Relations Act 2016*, or judge or member of another court of record;
 - (c) a person employed as a ministerial staff member under the *Ministerial and Other Office Holder Staff Act 2010*;
 - (d) a person appointed under another 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 who is not a public service employee but to whom a function or power of a person mentioned in paragraph (a), (d) or (e) is delegated under an Act;
 - (g) a person prescribed by regulation for this section to be a prescribed person.
- (2) Also, this part applies to a person (also a *prescribed person*) who was a person of a type mentioned in subsection (1) at the time the person engaged in conduct in an official capacity.
- (3) However, none of the following is a prescribed person—
 - (a) a person appointed to an office if—
 - (i) the appointment to the office is made by the Governor alone; or
 - (ii) 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

- (iii) the office is a particular office established by an Act that expressly provides for the appointment of the holder of an office mentioned in subparagraph (ii); or
 - (iv) the office is honorary;
- (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* prescribed 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) a person prescribed by regulation for this section not to be a prescribed person.

269 Civil liability of prescribed person for engaging in conduct in official capacity

- (1) A prescribed person does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity.
- (2) If subsection (1) prevents liability attaching to a prescribed person, the liability attaches instead as follows—
 - (a) if paragraph (b) does not apply—to the State;
 - (b) if, at the time the prescribed person 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 or appointed by, or a delegate of, a body corporate—the body corporate.

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- (3) If liability attaches to the State under subsection (2)(a), the State may recover contribution from the prescribed person 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 prescribed person 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 prescribed person 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 prescribed person 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 prescribed person.

Examples of types of liability—

- 1 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
- 2 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 prescribed person, including, for example, engage in conduct under or purportedly under an Act.

Example of a prescribed person engaging in conduct in an official capacity—

a prescribed person making a decision in relation to an application for a licence

270 Civil liability of prescribed person if another Act provides for protection from civil liability

- (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 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 prescribed person who would not, under section 269, 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 269 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.

Part 2 Right to reappointment after candidature in election

271 Definitions for part

In this part—

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

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

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

272 Right of 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 the former office to become a candidate for election as any of the following—
 - (i) a member of the Legislative Assembly;
 - (ii) a senator or a member of the House of Representatives of the Commonwealth Parliament;
 - (iii) a member of a house of Parliament of another State; and

- (c) the person was a defeated candidate at the election.
- (2) If the person resigned within 6 months before the day the period for nomination of candidates in the election ended, the person is entitled to be—
- (a) reappointed to the former office; or
 - (b) appointed to another permanent office, whether of the same classification level or a lower classification level as the former office, within—
 - (i) the entity in which the person held the former office; or
 - (ii) another entity that performs substantially similar functions to the entity mentioned in subparagraph (i).
- (3) However, the reappointment or appointment may only be made if the person, within 2 months after the return of the writ for the election, notifies the chief executive responsible for the former office, or the chief executive of the entity mentioned in subsection (2)(b), that the person intends to exercise the person's right to reappointment or appointment under this section.
- (4) The chief executive mentioned in subsection (3) must reappoint or appoint the person within 3 months after the return of the writ for the election.
- (5) Despite this Act or another Act, the recruitment and selection provisions do not apply for the reappointment or appointment.
- (6) However, subsection (5) does not prevent matters mentioned in the recruitment and selection provisions from being considered in making a decision on the reappointment or appointment.
- (7) In this section—
- appoint* includes employ.
 - classification* includes rank or grade.
 - reappoint* includes re-employ.

recruitment and selection provisions means—

- (a) chapter 3, part 3; or
- (b) if the former office of the person was as a police officer—the *Police Service Administration Act 1990*, section 5.2.

273 Continuity of employment

- (1) This section applies if a person is appointed or reappointed under section 272.
- (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.

Chapter 8 General

Part 1 Application of other Acts to particular public service entities

274 Other Acts apply to particular public service entities as if entities were departments

- (1) Another Act applies to a public service entity mentioned in section 9(b) and its public service employees as if—
 - (a) the entity were a department; and

- (b) the head of the entity were the department's chief executive.
- (2) Without limiting subsection (1), the head of the entity has, for the entity's public service employees, all of a chief executive's functions and powers.
- (3) 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.

Part 2 Government entities

275 Purpose of part

The purpose of this part is to assist in the transition to a simplified public sector framework by providing for—

- (a) existing references to government entities in other Acts; and
- (b) references to government entities in chapter 6, part 2 and chapter 7, part 1.

276 What is a *government entity*

- (1) An entity is a *government entity* if it is—
 - (a) a public service entity or part of a public service entity; or
 - (b) 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
 - (c) a part of an entity mentioned in paragraph (b); or
 - (d) another entity, or part of another entity, prescribed by regulation to be a government entity; or

- (e) a registry or other administrative office of a court of the State.
- (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 established under the *Parliamentary Service Act 1988*;
 - (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;
 - (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 co-operative under the Co-operatives National Law (Queensland) 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, prescribed by regulation not to be a government entity.

Part 3 Confidentiality

277 Definitions for part

In this part—

confidential information—

- (a) means personal information about an individual but does not include—
 - (i) statistical or other information that could not reasonably be expected to result in the identification of the individual; or
 - (ii) information that is publicly available; and
- (b) for a reviewing entity—includes protected information.

disclose includes give access to.

protected information means information about an entity, other than information about an individual, that is obtained for a public sector review and is not publicly available.

278 Duty of confidentiality

- (1) This section applies to a person who—
 - (a) is, or has been, any of the following persons performing functions under or relating to the administration of this Act—
 - (i) a public sector employee;
 - (ii) a staff member of the commission;
 - (iii) a person to whom a function of the commission under section 123 or 124 is delegated by the commissioner;
 - (iv) a reviewing entity;
 - (v) a selection panel member; and

- (b) in that capacity, acquired confidential information or has access to, or custody of, confidential information.
- (2) The person must not use or disclose the confidential information to anyone else, other than under this part.

Maximum penalty—100 penalty units.

- (3) In this section—

selection panel member means a member of a panel formed to make a recommendation to the chief executive of a public sector entity about employing a person under chapter 3, part 3 in the entity.

279 Use or disclosure for authorised purpose

The person may use or disclose the confidential information as follows—

- (a) to the extent the use or disclosure is required or permitted under this Act or another Act or is necessary to perform the person's functions under this Act or another Act;
- (b) if the person to whom the information relates is an adult—with the person's consent;
- (c) if the person to whom the information relates is a child—with the consent of a parent of the child;
- (d) if the information is protected information—with the consent of the entity to which the information relates;
- (e) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal;
- (f) if otherwise required or permitted under another law.

Part 4 Delegation

280 Definition for part

In this part—
function includes power.

281 Delegation of Minister's functions

- (1) The Minister may delegate the Minister's functions under section 192 to the chairperson of the council.
- (2) A function delegated under subsection (1) may not be subdelegated.

282 Delegation of chief executive's functions

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

283 Delegation of commissioner's functions

- (1) The commissioner may delegate the commissioner's functions under this Act to an appropriately qualified staff member of the commission.
- (2) The commissioner may also delegate the following functions to an appropriately qualified entity—

- (a) a function under section 123;
 - (b) a function under section 124, other than the giving of a report under section 124(5)(b) that includes a direction.
- (3) Despite subsections (1) and (2), the commissioner can not delegate the following functions—
- (a) making a directive;
 - (b) approving a report for a public sector review.

284 Delegation of special commissioner's functions

- (1) A special commissioner may delegate the special commissioner's functions under this Act to an appropriately qualified staff member of the commission.
- (2) Despite subsection (1), a special commissioner can not delegate the function of approving a report for a public sector review.

Part 5 Miscellaneous

285 Effect of Act on 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 is not abrogated or restricted by any provision of this Act.

Note—

See chapter 3, part 11 for summary dismissal and ending of employment.

286 Approved forms

The commissioner may approve forms for use under this Act.

287 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 a public sector entity; or
 - (b) the entitlements, responsibilities, functions, powers or liabilities of public sector employees; or
 - (c) any matter that is permitted under this Act to be provided for by a directive.
- (3) To the extent this section permits the making of a regulation for remuneration and conditions of employment, the section is to be administered by the industrial relations Minister.
- (4) A regulation may provide for administration of the regulation by a Minister other than the Minister.

288 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire on the day that is 2 years after the day this section commences.

(5) In this section—

repealed Act means the repealed *Public Service Act 2008*.

Chapter 9 Repeal, savings and transitional provisions

Part 1 Repeal

289 Repeal

The Public Service Act 2008, No. 38 is repealed.

Part 2 Savings and transitional provisions

Division 1 Preliminary

290 Definitions for part

In this part—

repealed Act means the repealed *Public Service Act 2008*.

repealed regulation means the repealed *Public Service Regulation 2018*.

291 Words have meanings given by repealed Act

Words defined in the repealed Act immediately before its repeal and used in this part have the same meanings as they had under the repealed Act.

Division 2 Savings provisions

292 Definitions for division

In this division—

corresponding provision, for a repealed provision, means a provision of this Act that is substantially the same as or equivalent to the repealed provision.

repealed provision means a provision of the repealed Act.

293 Express references to principles of natural justice

- (1) This section applies if a provision of the repealed Act expressly provided for an obligation to comply with the principles of natural justice.
- (2) To remove any doubt, it is declared that, if there is a corresponding provision for the repealed provision, the omission of an express reference to the principles of natural justice in the corresponding provision does not limit or otherwise affect an obligation under the corresponding provision to comply with procedural fairness implied under the general law.

294 Express references to reasonably performing function or reasonably exercising power

- (1) This section applies if a provision of the repealed Act expressly provided for a function to be performed reasonably or a power to be exercised reasonably.

- (2) To remove any doubt, it is declared that, if there is a corresponding provision for the repealed provision, the omission of an express reference to an obligation to perform the function reasonably or exercise the power reasonably does not limit or otherwise affect an obligation under the corresponding provision to perform the function reasonably or exercise the power reasonably implied under the general law.

Division 3 Public service employees

295 Existing public service employees

- (1) This section applies to a person who, immediately before the commencement, held an appointment or employment as a public service employee.
- (2) The person continues to be a public service employee under this Act on the same terms of appointment or employment that applied to the person immediately before the commencement.
- (3) If there is doubt about whether a person is an existing public service employee, a chief executive may, if the person asks, declare the person to be an existing public service employee.
- (4) On the making of the declaration, subsections (1) and (2) are taken to have always applied to the person.

296 Existing public service officers

- (1) This section applies to a person who, immediately before the commencement, held an appointment or employment as a public service officer.
- (2) The person continues to be a public service officer under this Act on the same terms of appointment or employment that applied to the person immediately before the commencement.
- (3) If there is doubt about whether a person is an existing public service officer, a chief executive may, if the person asks, declare the person to be an existing public service officer.

- (4) On the making of the declaration, subsections (1) and (2) are taken to have always applied to the person.

297 Existing chief executives

- (1) This section applies to a person who, immediately before the commencement, held an appointment as a chief executive.
- (2) The person continues to be a chief executive under this Act on the same terms of appointment that applied to the person immediately before the commencement.

298 Existing commission chief executive

- (1) This section applies to the person who, immediately before the commencement, held appointment as the commission chief executive.
- (2) From the commencement, the person is taken to hold appointment as the commissioner under this Act on the same terms of appointment as the commission chief executive that applied to the person immediately before the commencement.

299 Existing secondments, transfers or redeployments

- (1) This section applies to a person who, immediately before the commencement, was subject to a secondment, transfer or redeployment.
- (2) The secondment, transfer or redeployment continues under this Act on the same terms that applied to the person immediately before the commencement.

300 Existing requirements to disclose previous history of serious disciplinary action

- (1) This section applies if, before the commencement—

- (a) a chief executive of a department proposed to appoint or second a person to, or employ a person in, the department; and
 - (b) the chief executive required the person, under the repealed Act, section 179A, to disclose to the chief executive particulars of any serious disciplinary action taken against the person; and
 - (c) the chief executive had not decided whether to appoint, second or employ the person.
- (2) From the commencement—
- (a) the repealed Act, section 179A, as in force immediately before the commencement, continues to apply in relation to the requirement despite the repeal of that section by this Act; and
 - (b) the chief executive may use the information disclosed under the requirement in making an assessment about the person's suitability for the appointment, secondment or employment.

301 Existing work performance arrangements

- (1) This section applies to a person who, immediately before the commencement, was subject to a work performance arrangement made under the repealed Act, section 183.
- (2) From the commencement, the work performance arrangement is taken to be a mobility arrangement made under section 82.

302 Existing interchange arrangements

- (1) This section applies to a person who, immediately before the commencement, was subject to an interchange arrangement made under the repealed Act, section 184.
- (2) From the commencement, the interchange arrangement is taken to be a mobility arrangement made under section 82.

303 Existing consents to obtain criminal history

- (1) This section applies if—
 - (a) before the commencement, a person gave written consent to a chief executive to obtain the person's criminal history; and
 - (b) immediately before the commencement, the chief executive had not asked the police commissioner for a written report about the person's criminal history.
- (2) From the commencement, the person is taken to have given the person's consent to obtain the person's criminal history under section 52 or 66.

304 Existing declarations of interest by chief executives

- (1) This section applies if—
 - (a) before the commencement, a chief executive gave a statement about the chief executive's interests under the repealed Act, section 101; and
 - (b) immediately before the commencement, the statement was still in effect.
- (2) From the commencement, the chief executive is taken to have given the statement under section 182.

305 Existing declarations of interest by persons

- (1) This section applies if—
 - (a) before the commencement, a person gave a statement about the person's interests under the repealed Act, section 185; and
 - (b) immediately before the commencement, the statement was still in effect.
- (2) From the commencement, the person is taken to have given the statement under section 88.

306 Existing requirements to attend medical examination

- (1) This section applies if, before the commencement, a chief executive required a person to submit to a medical examination under the repealed Act, section 175.
- (2) From the commencement, the requirement is taken to have been made under section 104.
- (3) To remove any doubt, it is declared that chapter 3, part 8, division 5 applies in relation to the person and the requirement.

Division 4 Directives

307 Existing directives by commission chief executive

- (1) This section applies to a directive (a *continued directive*) made by the commission chief executive that was in force under the repealed Act immediately before the commencement.
- (2) The continued directive—
 - (a) is taken to be a directive made by the commissioner under this Act; and
 - (b) may be read with the changes necessary to give effect to paragraph (a); and
 - (c) may be amended or repealed by the commissioner under this Act.
- (3) Despite subsection (2)(a) and (b), a continued directive taken to be a directive made by the commissioner under this Act applies only in relation to entities and individuals to whom the continued directive applied before the commencement.
- (4) To remove any doubt, it is declared that, if a continued directive was in force as an applied ruling within the meaning of the repealed regulation, section 3(1)(b)(iv), the continued directive applies only in relation to entities and individuals to

whom the continued directive applied under the repealed regulation before the commencement.

308 Existing directives by industrial relations Minister

- (1) This section applies to a directive (a *continued directive*) made by the industrial relations Minister that was in force under the repealed Act immediately before the commencement.
- (2) The continued directive—
 - (a) is taken to be a directive made by the industrial relations Minister under this Act; and
 - (b) may be read with the changes necessary to give effect to paragraph (a); and
 - (c) may be amended or repealed by the industrial relations Minister under this Act.
- (3) Despite subsection (2)(a) and (b), a continued directive taken to be a directive made by the industrial relations Minister under this Act applies only in relation to entities and individuals to whom the continued directive applied before the commencement.
- (4) To remove any doubt, it is declared that, if a continued directive was in force as an applied ruling within the meaning of the repealed regulation, section 3(1)(b)(iv), the continued directive applies only in relation to entities and individuals to whom the continued directive applied under the repealed regulation before the commencement.

309 References to existing directives

A reference in another Act or a document to a directive made under the repealed Act may, if the context permits, be taken to be a reference to a directive made under this Act.

Division 5 Delegations

310 Existing delegations by chief executives

- (1) This section applies if—
 - (a) immediately before the commencement, a delegation of a function or power by a chief executive was in effect under the repealed Act; and
 - (b) under this Act, the chief executive may delegate the function or power to the person.
- (2) From the commencement, the delegation continues to have effect as if it had been made under this Act.

311 Existing delegations by commission chief executive

- (1) This section applies if—
 - (a) immediately before the commencement, a delegation of a function or power by the commission chief executive was in effect under the repealed Act; and
 - (b) under this Act, the commissioner may delegate the function or power to the person.
- (2) From the commencement, the delegation continues to have effect as if it had been made by the commissioner under this Act.

Division 6 Disciplinary action and suspension

312 Existing disciplinary action

- (1) This section applies if—
 - (a) before the commencement, a chief executive started to take disciplinary action against a public service employee under the repealed Act; and

- (b) immediately before the commencement, the disciplinary action had not been completed.
- (2) From the commencement, the disciplinary action continues under this Act.

313 Existing disciplinary finding

- (1) This section applies if—
 - (a) before the commencement, a chief executive made a disciplinary finding against a public service employee under the repealed Act; and
 - (b) immediately before the commencement, any disciplinary action in relation to the disciplinary finding had not been completed.
- (2) From the commencement, the disciplinary finding is taken to be a disciplinary finding under this Act.

314 Disciplinary ground arising before commencement

Chapter 3, part 8, division 3 applies in relation to a disciplinary ground whether the disciplinary ground arises before or after the commencement.

315 Existing suspensions

- (1) This section applies to a person who, immediately before the commencement, was subject to a suspension imposed under the repealed Act, section 137.
- (2) From the commencement, the suspension continues under this Act on the same terms that applied to the person immediately before the commencement.

316 Reason for suspension arising before commencement

A suspension may be imposed under section 101 after the commencement whether the reason for suspension arises before or after the commencement.

Division 7 Reviews and appeals

317 Existing request to review employment status

- (1) This section applies if—
 - (a) before the commencement, a person asked a chief executive for a review of the person’s employment status under the repealed Act, section 149; and
 - (b) immediately before the commencement, the review had not been decided.
- (2) From the commencement—
 - (a) the person is taken to have made the request under section 113; and
 - (b) the chief executive must decide the request under section 114.

318 Existing review by chief executive of employment status

- (1) This section applies if—
 - (a) before the commencement, the chief executive started to review a person’s employment status under the repealed Act, section 149B; and
 - (b) immediately before the commencement, the review had not been completed.
- (2) From the commencement, the chief executive must complete the review under section 115.

319 Existing request to employ person at higher classification level

- (1) This section applies if—
 - (a) before the commencement, a person asked a chief executive to appoint the person to a position at a higher classification level as a general employee on tenure or as a public service officer under the repealed Act, section 149C; and
 - (b) immediately before the commencement, the request had not been decided.
- (2) From the commencement—
 - (a) the person is taken to have made the request under section 120(1); and
 - (b) the chief executive must decide the request under section 120.

320 Existing review by commission of department's handling of work performance matters

- (1) This section applies if—
 - (a) before the commencement, the commission started to conduct a review mentioned in the repealed Act, section 88I(2); and
 - (b) immediately before the commencement, the review had not been completed.
- (2) From the commencement, the commission must complete the review under section 123.

321 Reason for review of work performance matter arising before commencement

The commission may, after the commencement, conduct a review under section 123 in relation to a public sector entity's handling of a work performance matter whether the reason for the review arises before or after the commencement.

322 Existing review by commission of procedural aspect of department's handling of current work performance matter

- (1) This section applies if—
 - (a) before the commencement, the commission started to conduct a review mentioned in the repealed Act, section 88IA(4)(a); and
 - (b) immediately before the commencement, the review had not been completed.
- (2) From the commencement, the commission must complete the review under section 124.

323 Reason for review of procedural aspect of public sector entity's handling of current work performance matter arising before commencement

The commission may, after the commencement, conduct a review under section 124 in relation to a procedural aspect of a public sector entity's handling of a current work performance matter whether the reason for the review arises before or after the commencement.

324 Existing appeal

- (1) This section applies if—
 - (a) before the commencement, a person appealed against a decision under the repealed Act, section 194; and
 - (b) immediately before the commencement, the appeal had not been decided.
- (2) From the commencement, the appeal must be heard and decided under chapter 3, part 10.

Division 8 Miscellaneous

325 Application of transitional provisions in relation to provisions applied to public service offices

- (1) This section applies if a provision of the repealed regulation provided that particular provisions of the repealed Act (the *applied provisions*) applied to a public service office, or person employed in the public service office, as mentioned in section 23 of the repealed Act.
- (2) To remove any doubt, it is declared that a provision of this part relating to an applied provision applies in relation to the entity, or person employed in the entity.

326 References to repealed Act

A reference in an Act or a document to the repealed Act may, if the context permits, be taken to be a reference to this Act.

Schedule 1 Public service entities under section 9(b)

section 9(b)

Public service entity	Head
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
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>	commissioner under the <i>Family Responsibilities Commission Act 2008</i>
Gasfields Commission	chief executive officer under the <i>Gasfields Commission Act 2013</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>
Health and Wellbeing Queensland under the <i>Health and Wellbeing Queensland Act 2019</i>	chief executive officer under the <i>Health and Wellbeing Queensland Act 2019</i>
Industrial Registry under the <i>Industrial Relations Act 2016</i>	registrar
integrity office	integrity commissioner
Land Tribunal under the <i>Aboriginal Land Act 1991</i>	chairperson of the tribunal

Public service entity	Head
Mental Health Review Tribunal under the <i>Mental Health Act 2016</i>	president of the tribunal
Office of the Commissioner under the <i>Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020</i>	commissioner under the <i>Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020</i>
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
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 Land Access Ombudsman under the <i>Land Access Ombudsman Act 2017</i>	land access ombudsman
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

Public service entity	Head
Office of the Queensland College of Teachers under the <i>Education (Queensland College of Teachers) Act 2005</i>	director of the office
Office of the Queensland Parliamentary Counsel under the <i>Legislative Standards Act 1992</i>	parliamentary counsel
Office of the training ombudsman under the <i>Further Education and Training Act 2014</i>	training ombudsman
Office of the WHS Prosecutor under the <i>Work Health and Safety Act 2011</i>	Work Health and Safety Prosecutor
Public Sector Commission	Public Sector Commissioner
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 Human Rights Commission under the <i>Anti-Discrimination Act 1991</i>	Human Rights Commissioner
Queensland Mental Health Commission under the <i>Queensland Mental Health Commission Act 2013</i>	Mental Health Commissioner
Queensland Racing Integrity Commission under the <i>Racing Integrity Act 2016</i>	Racing Integrity Commissioner

Public service entity

Head

Queensland Reconstruction Authority
under the *Queensland Reconstruction
Authority Act 2011*

chief executive officer

Resources Safety and Health
Queensland employing office under the
*Resources Safety and Health
Queensland Act 2020*

executive officer of the
Resources Safety and
Health Queensland
employing office under the
*Resources Safety and
Health Queensland Act
2020*

Schedule 2 Dictionary

section 6

approved form see section 286.

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

casual employee means—

- (a) a person employed on a casual basis under section 149(2)(c); or
- (b) a person employed under section 151.

CCC employee means—

- (a) a senior executive officer employed under the *Crime and Corruption Act 2001*, section 245; or
- (b) a person employed under the *Crime and Corruption Act 2001*, section 254 or seconded under the *Crime and Corruption Act 2001*, section 255; or
- (c) a person engaged under the *Crime and Corruption Act 2001*, section 256.

chapter 2 special commissioner, for chapter 2, see section 25.

chief executive—

- (a) in relation to a public sector entity, generally—see section 16; and
- (b) of a public sector employee—see section 17; and
- (c) of a prescribed entity, for chapter 2—see section 25.

child-related duty see section 57.

commission see section 204.

commissioner see section 212(1).

community representative means a person appointed under section 242.

confidential information, for chapter 8, part 3, see section 277.

continuously employed, for chapter 3, part 9, division 1, see section 111.

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.

conversion decision, for chapter 3, part 10, see section 129.

council see section 240.

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

cultural capability, for chapter 1, part 3, see section 20.

culture of respect and inclusion, for chapter 2, in relation to a prescribed entity's workplace, see section 32.

department see section 10.

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

directive means a directive made under section 222 or 223.

directive decision, for chapter 3, part 10, see section 129.

disciplinary action see section 92.

disciplinary decision, for chapter 3, part 10, see section 129.

disciplinary declaration—

- (a) for a disciplinary declaration made under a public sector disciplinary law, means—
 - (i) a disciplinary declaration made under—
 - (A) section 95(7); or
 - (B) the *Police Service Administration Act 1990*, section 7A.2(2); or
 - (C) the repealed *Misconduct Tribunals Act 1997* or the QCAT Act; or

- (D) the *Crime and Corruption Act 2001*, section 273D; 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 95(7).

disciplinary finding see section 90.

disciplinary ground see section 90.

disciplinary law means—

- (a) this Act; or
- (b) a disciplinary provision of an industrial instrument; or
- (c) for a public sector employee mentioned in section 12(1)(b)—another Act or law under which the employee may be disciplined; or
- (d) another Act or law prescribed by regulation.

disclose—

- (a) for chapter 6, part 8, see section 252; or
- (b) for chapter 8, part 3, see section 277.

disqualified person means a person who—

- (a) holds office as any of the following—
- (i) the Queensland Auditor-General under the *Auditor-General Act 2009*;
- (ii) the ombudsman;
- (iii) the integrity commissioner;
- (iv) any commission officer under the *Crime and Corruption Act 2001*;
- (v) the information commissioner under the *Right to Information Act 2009*;

- (vi) the RTI commissioner under the *Right to Information Act 2009*;
- (vii) the privacy commissioner under the *Information Privacy Act 2009*; or
- (b) has a conviction, other than a spent conviction, for an indictable offence; or
- (c) is an insolvent under administration; or
- (d) is disqualified from managing corporations because of the Corporations Act, part 2D.6.

diversity target group see section 25.

employ, a person as a public sector employee—

- (a) generally—includes—
 - (i) for a public sector employee—appoint the employee; and
 - (ii) for a public service officer—promote, transfer or redeploy the officer; and
- (b) for chapter 3, part 3, see section 42.

employee, for chapter 2, see section 25.

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

engage, a person as a public sector employee, for chapter 3, part 5, see section 48.

equity and diversity audit, for chapter 2, see section 29(1).

equity and diversity plan, for chapter 2, see section 28(1).

equity and diversity report, for chapter 2, see section 29(3).

excluded matter, for chapter 3, part 10, division 4, see section 140(1).

fair treatment decision, for chapter 3, part 10, see section 129.

fixed term temporary employee means—

-
- (a) a person employed on a temporary basis for a fixed term under section 149(2)(b); or
- (b) a person employed under section 150.

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

function, for chapter 8, part 4, see section 280.

general employee see section 149(1).

government entity see section 276.

head, of a public service entity mentioned in section 9(b), means the head of the entity mentioned in schedule 1.

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

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

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

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

integrity office means the Office of the Queensland Integrity Commissioner under the *Integrity Act 2009*.

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

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

member, of the council, see section 241.

Minister, of a chief executive of a department—

- (a) for chapter 5, part 2, division 3, see section 176; or
- (b) for chapter 5, part 2, division 4, see section 180.

mobility arrangement see section 82.

negative notice, for chapter 3, part 5, division 3, see section 56.

non-industrial instrument employee means a person who works as a public sector employee other than under an industrial instrument.

non-permanent basis, in relation to employment, means a basis other than permanent, including, for example, casual or temporary.

normal remuneration, for a public sector employee, means all of the remuneration and other entitlements, other than overtime, to which the employee is or would be entitled, worked out on the basis of—

- (a) the ordinary working hours worked by the employee; and
- (b) the amounts payable to the employee for the ordinary working hours worked by the employee, including, for example, allowances, loadings and penalties; and
- (c) any other amounts payable under the employee's employment contract.

notice means written notice.

overall employment conditions means remuneration and conditions of employment.

permanent basis, in relation to employment, includes employment on tenure.

personal information see the *Information Privacy Act 2009*, section 12.

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

positive performance management principles see section 85(1).

prescribed duty, for chapter 3, part 5, division 4, see section 63.

prescribed entity—

- (a) for chapter 1, part 3, division 3, see section 22; or
- (b) for chapter 2, see section 25.

prescribed person, for chapter 7, part 1, see section 268(1) and (2).

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

promotion decision, for chapter 3, part 10, see section 129.

protected information, for chapter 8, part 3, see section 277.

public sector see section 7.

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 repealed *Misconduct Tribunals Act 1997* or the QCAT Act; or
- (d) the *Crime and Corruption Act 2001*; or
- (e) a disciplinary provision of an industrial instrument; or
- (f) for a public sector employee mentioned in section 12(1)(b)—another Act or law under which the employee may be disciplined; or
- (g) another Act or law prescribed by regulation.

public sector employee—

- (a) generally—see section 12; and
- (b) for chapter 3, part 9, division 3, see section 122.

public sector entity—

- (a) generally—see section 8; and
- (b) for chapter 6, part 8, see section 252.

public sector executive means a public sector employee mentioned in section 12(1)(b) whose remuneration is at least the remuneration of a senior officer and who is a non-industrial instrument employee.

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

public sector principles see section 39.

public sector review see section 253.

public service see section 11.

public service employee see section 13.

public service entity see section 9.

public service officer see section 14.

redeploy, a public sector employee, means employ the employee at a lower classification level, whether or not on different duties or at a different location, other than temporarily.

referring entity, for a public sector review, for chapter 6, part 8, see section 254(1).

reframing entity, for chapter 1, part 3, see section 20.

registered teacher, for chapter 3, part 5, division 3, see section 56.

regulated employment see the *Working with Children (Risk Management and Screening) Act 2000*, section 156.

relevant duty see section 50.

remuneration includes salary.

reviewing entity see section 252.

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

second—

- (a) a public sector employee, means temporarily employ the employee—
 - (i) on different duties at the same classification level; or
 - (ii) at a higher classification level or lower classification level; and

(b) a public sector employee, for chapter 3, part 9, division 2, see section 118.

senior executive means a person employed under section 188 as a senior executive.

senior officer means a person employed under section 152 as a senior officer.

serious disciplinary action see section 70.

service with the State, for chapter 7, part 2, see section 271.

special commissioner means a person appointed under section 230.

staff member, of the commission, means a person employed by the commissioner as mentioned in section 209.

suitability directive, for chapter 3, part 5, see section 48.

suspension without pay decision, for chapter 3, part 10, see section 129.

take, disciplinary action, for chapter 3, part 8, division 3, see section 90.

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

the State, for chapter 7, part 2, see section 271.

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

transfer decision, for chapter 3, part 10, see section 129.

unlawful discrimination, for chapter 2, see section 25.

work performance and personal conduct principles see section 40.

work performance direction decision, for chapter 3, part 10, see section 129.

work performance information directive, for chapter 3, part 9, division 3, see section 122.

work performance matter, for chapter 3, part 9, division 3,
see section 122.