

(Reprint No. 1)

SOUTH AUSTRALIA

PUBLIC SECTOR MANAGEMENT ACT 1995

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **30 April 1998**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Public Sector Management Act 1995, No. 39 of 1995
[Assented to 4 May 1995]¹

as amended by

Public Sector Management (Incompatible Public Offices) Amendment Act 1998 No. 17 of 1998 [Assented to 2 April 1998]²

¹ Came into operation 17 July 1995: *Gaz.* 13 July 1995, p. 54.

² Came into operation 30 April 1998: *Gaz.* 30 April 1998, p. 2022.

N.B. The amendments effected to this Act by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* have not been brought into operation.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix 1.

An Act to make provision for the Public Service of the State and its management and for certain general public sector management matters; to repeal the Government Management and Employment Act 1985; to amend the Industrial and Employee Relations Act 1994; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Public Sector Management Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**administrative decision**" means—

- (a) a decision; or
- (b) failure or refusal to make a decision,

in the exercise or purported exercise of administrative authority, but does not include a decision or failure or refusal on the part of—

- (c) the Governor; or
- (d) a Minister; or
- (e) the Commissioner when acting under Part 5 or 6; or
- (f) the Disciplinary Appeals Tribunal or the Promotion and Grievance Appeals Tribunal;

"**administrative unit**" means an administrative structure in which persons are or are to be employed, established under this Act as an administrative unit;

"**casual position**" means a position with duties required to be performed—

- (a) for a period not exceeding four weeks; or
- (b) for hours that are not regular or do not exceed 15 hours in a week;

"**Chief Executive**" means a person holding, or acting in, the position of Chief Executive of an administrative unit;

"**the Commissioner**" means the person holding, or acting in, the position of Commissioner for Public Employment;

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"**the Disciplinary Appeals Tribunal**" means the Tribunal of that name established under Schedule 3;

"**effective service**" of an employee means the period of the employee's continuous service in the Public Service subject to any adjustment required to be made to that period under this Act;

"**employee**" means—

- (a) in relation to Part 2—a public sector employee; or
- (b) in relation to the remainder of this Act—a Chief Executive or executive of an administrative unit or any other person appointed to the Public Service;

"**executive**" means an employee occupying a position determined by the Commissioner under Part 6 to be an executive position;

"**merit**", in relation to selection processes, means—

- (a) the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience) and personal qualities relevant to the carrying out of the duties in question; and
- (b) if relevant—
 - (i) the manner in which each of the applicants carried out any previous employment or occupational duties or functions; and
 - (ii) the extent to which each of the applicants has potential for development;

"**the Minister**" means the Minister to whom the administration of this Act is for the time being committed;

"**the Promotion and Grievance Appeals Tribunal**" means the Tribunal of that name established under Schedule 3;

"**the public sector**" means all public sector agencies and public sector employees and the operations and activities carried on by the agencies and employees;

"**public sector agency**" means—

- (a) an administrative unit; or
- (b) an agency or instrumentality of the Crown (including a Minister); or
- (c) a body corporate—
 - (i) comprised of persons, or with a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or

- (ii) subject to control or direction by a Minister; or
- (iii) declared under subsection (2) to be a public sector agency,

but does not include a person or body declared under subsection (2) not to be a public sector agency;

"**public sector employee**" means a person appointed to the Public Service or employed by the Crown or a public sector agency;

"**recognised organisation**" means an association declared to be a recognised organisation by the Commissioner under Part 5;

"**remuneration**" means salary, allowances and other monetary benefits payable to an employee;

"**remuneration level**" of a position in the Public Service means the level fixed for the position in a structure of remuneration levels in accordance with the appropriate determination of the Commissioner under Part 6;

"**selection processes**" means the processes by which applications are sought and applicants selected for the purpose of employment in the public sector;

"**temporary position**" means a position—

- (a) with duties that—
 - (i) are of a temporary nature; or
 - (ii) are required to be performed urgently without the delay involved in conducting selection processes; and
- (b) with a term of employment not exceeding 12 months;

"**total remuneration package value**" of a position under a contract means the sum that results from aggregating—

- (a) the remuneration specified in the contract; and
- (b) the sums specified in the contract as representing the values of the benefits (other than remuneration) to which the employee is entitled under the contract.

(2) The Minister may, by notice published in the *Gazette*—

- (a) declare that a specified person or body is or is not a public sector agency for the purposes of this Act; or
- (b) vary or revoke a notice under this subsection.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

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**PART 2
GENERAL PUBLIC SECTOR AIMS AND STANDARDS**

General management aims

4. (1) Public sector agencies will aim to—

- (a) provide responsive, effective and efficient services to the community and the Government; and
- (b) maintain structures, systems and processes that work without excessive formality and that can adapt quickly to changing demands; and
- (c) recognise the importance of their people through training, ongoing development and appropriate remuneration; and
- (d) manage all resources effectively, prudently and in a fully accountable manner; and
- (e) continuously improve their performance in delivering services.

(2) Public sector agencies must implement all legislative requirements relevant to the agencies.

Personnel management standards

5. In personnel management, public sector agencies will—

- (a) base all selection decisions on a proper assessment of merit; and
- (b) treat employees fairly and consistently and not subject employees to arbitrary or capricious administrative decisions; and
- (c) prevent unlawful discrimination against employees or persons seeking employment in the public sector on the ground of sex, sexuality, marital status, pregnancy, race, physical impairment or any other ground and ensure that no form of unjustifiable discrimination is exercised against employees or persons seeking employment in the public sector; and
- (d) use diversity in their workforces to advantage and afford employees equal opportunities to secure promotion and advancement in their employment; and
- (e) afford employees reasonable avenues of redress against improper or unreasonable administrative decisions; and
- (f) provide safe and healthy working conditions; and
- (g) prevent nepotism and patronage.

Employee conduct standards

6. Public sector employees are expected to—

- (a) treat the public and other employees with respect and courtesy; and
- (b) utilise resources at their disposal in an efficient, responsible and accountable manner; and

- (c) deal with information of which they have knowledge as a result of their work only in accordance with the requirements of their agencies; and
- (d) endeavour to give their best to meet performance standards and other organisational requirements; and
- (e) conduct themselves in public in a manner that will not reflect adversely on the public sector, their agencies and other employees; and
- (f) observe all relevant legislative requirements.

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**PART 3
PUBLIC SERVICE STRUCTURE**

Public Service structure

7. (1) The Public Service consists of administrative units established under this Act.
- (2) The Governor may, by proclamation—
- (a) establish an administrative unit and assign a title to it; and
 - (b) alter the title of an administrative unit; and
 - (c) abolish an administrative unit.
- (3) The Governor may, by the same or a separate proclamation—
- (a) transfer particular employees or classes of employees from an administrative unit to another administrative unit; and
 - (b) incorporate particular public sector employees or classes of public sector employees (not forming part of the Public Service) into an administrative unit; and
 - (c) exclude from the Public Service particular public sector employees or classes of public sector employees previously incorporated into an administrative unit; and
 - (d) make any appointment or transitional or ancillary provision that may be necessary or expedient in the circumstances.
- (4) The Governor may, by proclamation, vary or revoke a proclamation under this section.
- (5) If a proclamation abolishing an administrative unit makes no provision for the transfer of employees in the administrative unit, the employees become employees in an administrative unit designated by the Commissioner.
- (6) Before a recommendation is made to the Governor as to a matter referred to in subsection (3) that will affect a significant number of employees, the Minister must, so far as is practicable—
- (a) give notice of the proposed recommendation—
 - (i) to the employees; and
 - (ii) if a significant number of the members of a recognised organisation will be affected by the proposed recommendation—to the organisation; and
 - (b) hear any representations or argument that representatives of the employees or the organisation may wish to present in relation to the proposed recommendation.
- (7) A proclamation under this section has effect according to its terms and despite any other Act.

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Crown employees to be employed in Public Service

8. Subject to Schedule 1, all persons employed by or on behalf of the Crown must be employed in the Public Service under this Act.

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**PART 4
CHIEF EXECUTIVES**

Administrative units to have Chief Executives

- 9.** (1) There is to be a Chief Executive of each administrative unit.
- (2) A Chief Executive is to be appointed by the Governor.
- (3) The Governor may assign a title to a position of Chief Executive and may subsequently alter the title.
- (4) When—
- (a) there is a temporary vacancy in the position of Chief Executive of an administrative unit; or
 - (b) the Chief Executive is absent from, or unable to discharge, official duties,

the Minister may assign an employee to act in the position or the Minister responsible for the unit may assign an employee in the unit to act in the position.

Conditions of Chief Executive's appointment

- 10.** (1) The conditions of appointment to a position of Chief Executive of an administrative unit are to be subject to a contract made between the Chief Executive and the Premier in consultation with the Minister responsible for the unit.
- (2) The contract must specify—
- (a) that the Chief Executive is appointed for a term not exceeding five years specified in the contract and is eligible for reappointment; and
 - (b) that the Chief Executive is to meet performance standards as set from time to time by the Premier and the Minister responsible for the administrative unit; and
 - (c) that the Chief Executive is entitled to remuneration and other benefits specified in the contract; and
 - (d) the sums representing the values of the benefits (other than remuneration); and
 - (e) the total remuneration package value of the position under the contract.
- (3) The decision whether to reappoint to the position at the end of a term of appointment must be made and notified to the Chief Executive not less than three months before the end of the term.
- (4) If the contract so provides, the Chief Executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) in the event that he or she is not reappointed at the end of a term of appointment or in other circumstances specified in the contract.

Contract overrides other provisions

11. (1) The contract relating to a Chief Executive's appointment may make any other provision considered appropriate, including provision excluding or modifying a provision of this Act (other than this Part).

(2) The contract will prevail, to the extent of any inconsistency, over the provisions of this Act (other than this Part).

Termination of Chief Executive's appointment

12. (1) A Chief Executive's appointment may be terminated by the Governor—

(a) on the ground that the Chief Executive—

(i) has been guilty of misconduct; or

(ii) has been convicted of an offence punishable by imprisonment; or

(iii) has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister responsible for the administrative unit; or

(iv) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(v) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily or to the performance standards specified in the contract relating to his or her appointment; or

(vi) has, for any other reason, in the opinion of the Premier and the Minister responsible for the administrative unit, failed to carry out duties of the position satisfactorily or to the performance standards specified in the contract relating to his or her appointment; or

(b) by not less than three months notice in writing to the Chief Executive.

(2) A Chief Executive's appointment is terminated if the Chief Executive—

(a) becomes a member, or a candidate for election as a member, of the Parliament of the State or the Commonwealth; or

(b) is sentenced to imprisonment for an offence.

(3) A Chief Executive may resign from the position by not less than three months notice in writing to the Minister responsible for the administrative unit (unless notice of a shorter period is accepted by that Minister).

(4) Subject to this section and any provision in the contract relating to the Chief Executive's appointment, if a Chief Executive's appointment is terminated by the Governor by notice under subsection (1)(b), the Chief Executive is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purposes of this subsection under the contract) for each uncompleted year of the term of appointment (with a *pro rata* adjustment in relation to part of a year) up to a maximum of 12 months remuneration (as so determined).

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(5) A Chief Executive is not entitled to a termination payment if the Chief Executive is appointed to some other position in the Public Service in accordance with the contract relating to his or her appointment.

Provision for statutory office holder to have powers, etc., of Chief Executive

13. Despite the preceding provisions of this Part, the Minister may, by notice published in the *Gazette*—

- (a) declare that the person for the time being holding or acting in a specified statutory office established under an Act will have the powers and functions of Chief Executive in relation to an administrative unit; and
- (b) revoke a declaration under this section.

Chief Executive's general responsibilities

14. The Chief Executive of an administrative unit is responsible to the Minister responsible for the unit for—

- (a) the effective management of the unit and the general conduct of its employees; and
- (b) the attainment of the performance standards set from time to time under the contract relating to the Chief Executive's appointment; and
- (c) ensuring the observance within the unit of the aims and standards contained in Part 2; and
- (d) ensuring that the unit contributes to the attainment of the Government's overall objectives consistently with legislative requirements.

Extent to which Chief Executive is subject to Ministerial direction

15. (1) Subject to this section, the Chief Executive of an administrative unit is subject to direction by the Minister or by the Minister responsible for the unit.

(2) No Ministerial direction may be given to a Chief Executive relating to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person.

Right of employee representatives and recognised organisations to make representations

16. (1) Before making a decision, or taking action, that will affect a significant number of employees, a Chief Executive must, so far as is practicable—

- (a) give notice of the proposed decision or action—
 - (i) to the employees; and
 - (ii) if a significant number of the members of a recognised organisation will be affected by the proposed decision or action—to the organisation; and
- (b) hear any representations or argument that representatives of the employees or the organisation may wish to present in relation to the proposed decision or action.

(2) Nothing in this section limits or restricts the carrying out of a function or exercise of a power by a Chief Executive under this Act.

Delegation

17. (1) The Chief Executive of an administrative unit may, by instrument in writing, delegate a power or function under this Act—

- (a) to a particular person or committee; or
- (b) to the person for the time being occupying a particular position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act personally in a matter; and
- (c) is revocable at will.

Chief Executive to disclose pecuniary interests

18. (1) The Chief Executive of an administrative unit must—

- (a) on appointment as Chief Executive, disclose his or her pecuniary interests to the Minister responsible for the unit in accordance with the regulations; and
- (b) on acquiring any further pecuniary interest of a kind specified in the regulations, disclose the pecuniary interest to that Minister; and
- (c) if a pecuniary or other personal interest of the Chief Executive conflicts or may conflict with his or her official duties—
 - (i) disclose the nature of the interest and the conflict or potential conflict to that Minister; and
 - (ii) not take action or further action in relation to the matter except as authorised by that Minister.

(2) The Minister responsible for the unit may direct the Chief Executive to resolve a conflict between a pecuniary or other personal interest and an official duty.

(3) Failure to comply with this section or a direction under this section constitutes misconduct unless the failure is due to inadvertence only.

PART 5
COMMISSIONER FOR PUBLIC EMPLOYMENT

Commissioner for Public Employment

- 19.** (1) There is to be a *Commissioner for Public Employment*.
- (2) The Commissioner is to be appointed by the Governor.
- (3) There is to be a *Deputy Commissioner for Public Employment* who is also to be appointed by the Governor.
- (4) The Deputy Commissioner is to act as Commissioner—
- (a) during a vacancy in the position of the Commissioner; or
- (b) when the Commissioner is absent from, or unable to discharge, official duties.

Conditions of Commissioner's appointment

- 20.** (1) The Commissioner is to be appointed for a term not exceeding five years and on conditions determined by the Governor.
- (2) The Commissioner is, at the end of a term of appointment, eligible for reappointment.

Termination of Commissioner's appointment

- 21.** (1) The Commissioner's appointment may be terminated by the Governor on the ground that the Commissioner—
- (a) has been guilty of misconduct; or
- (b) has been convicted of an offence punishable by imprisonment; or
- (c) has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister; or
- (d) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
- (f) is incompetent or has neglected the duties of the position.
- (2) The Commissioner's appointment is terminated if the Commissioner—
- (a) becomes a member, or a candidate for election as a member, of the Parliament of the State or the Commonwealth; or
- (b) is sentenced to imprisonment for an offence.
- (3) The Commissioner may resign from the position by not less than three months notice in writing to the Minister (unless notice of a shorter period is accepted by the Minister).

Functions of Commissioner

22. (1) The functions of the Commissioner are as follows:

- (a) to develop and issue directions and guidelines relating to personnel management matters in the Public Service, including—
 - (i) appointment; and
 - (ii) deployment; and
 - (iii) termination of employment; and
 - (iv) merit and equity; and
 - (v) performance management; and
 - (vi) conduct, discipline and grievances;
- (b) to provide advice on personnel management issues, including—
 - (i) conditions of employment; and
 - (ii) remuneration; and
 - (iii) selection and development of executives;
- (c) to monitor and review personnel management and industrial relations practices, including—
 - (i) observance of the personnel management standards contained in Part 2; and
 - (ii) observance of the directions and guidelines issued by the Commissioner; and
 - (iii) the resolution of grievances in respect of administrative decisions;
- (d) to make binding determinations as to the cases or classes of cases in which selection processes will not be required to be conducted for appointments to positions in the Public Service;
- (e) to conduct reviews of personnel management or industrial relations practices as required by the Minister or on the Commissioner's own initiative;
- (f) to investigate or assist in the investigation of matters in connection with the conduct or discipline of employees;
- (g) to perform any other functions assigned to the Commissioner under this Act or by the Minister.

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(2) The Commissioner's directions—

- (a) may be expressed to apply to all employees or particular employees or classes of employees (including statutory office holders with the powers and functions of a Chief Executive under this Act); and
- (b) are binding on the persons to whom they are expressed to apply.

Extent to which Commissioner is subject to Ministerial direction

23. (1) Subject to this section, the Commissioner is subject to direction by the Minister.

(2) No Ministerial direction may be given to the Commissioner—

- (a) relating to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person; or
- (b) requiring that material be included in, or excluded from, a report that is to be laid before Parliament; or
- (c) requiring the Commissioner to refrain from making a particular review or investigation; or
- (d) requiring the Commissioner to declare, or refrain from declaring, a particular association to be a recognised organisation or to revoke, or refrain from revoking, such a declaration.

(3) A Ministerial direction to the Commissioner—

- (a) must be communicated to the Commissioner in writing; and
- (b) must be included in the annual report of the Commissioner.

Recognised organisations and right of employee representatives and organisations to make representations

24. (1) If the Commissioner is of the opinion that an association registered under the *Industrial and Employee Relations Act 1994* or under the *Industrial Relations Act 1988* of the Commonwealth represents the interests of a significant number of employees, the Commissioner must, by notice published in the *Gazette*, declare the association to be a recognised organisation for the purposes of this Act.

(2) If the Commissioner is of the opinion that a recognised organisation has ceased to represent the interests of a significant number of employees, the Commissioner must, by notice published in the *Gazette*, revoke a declaration under subsection (1).

(3) Before making a decision or determination, or taking action, that will affect a significant number of employees, the Commissioner must, so far as is practicable—

- (a) give notice of the proposed decision, determination or action—
 - (i) to the employees; and

- (ii) if a significant number of the members of a recognised organisation will be affected by the proposed decision, determination or action—to the organisation; and
 - (b) hear any representations or argument that representatives of the employees or the organisation may wish to present in relation to the proposed decision, determination or action.
- (4) Nothing in this section limits or restricts the carrying out of a function or exercise of a power by the Commissioner under this Act.

Investigative powers of Commissioner

- 25.** (1) The powers conferred by this section—
- (a) may be exercised as reasonably required for the purposes of—
 - (i) the Commissioner’s function of reviewing personnel management or industrial relations practices; or
 - (ii) the Commissioner’s function of investigating matters in connection with the conduct or discipline of employees; or
 - (iii) a disciplinary inquiry under Division 8 of Part 8;
 - (b) may (without limiting the Commissioner’s power of delegation) be delegated by the Commissioner to a Chief Executive or a person conducting such a review, investigation or inquiry.
- (2) The Commissioner may—
- (a) by notice in writing—
 - (i) require a public sector employee or former public sector employee to appear at a specified time and place for examination; or
 - (ii) require a public sector employee or former public sector employee to produce a specified record or object that is relevant to the subject matter of the review, investigation or inquiry; and
 - (b) require a public sector employee or former public sector employee to answer truthfully questions that are relevant to the subject matter of the review, investigation or inquiry; and
 - (c) enter and inspect premises occupied by the Crown or a public sector agency.
- (3) A public sector employee or former public sector employee who fails to comply with a requirement under this section or hinders the exercise of powers under this section is—
- (a) in the case of a public sector employee—liable to disciplinary action (whether under this Act or otherwise, as the case requires); or

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- (b) in the case of a former public sector employee—guilty of an offence.

Penalty: Division 7 fine.

(4) A person is not obliged to answer a question or to produce a record or object (other than a record or object of the Government) under this section if to do so would tend to incriminate the person of an offence.

Delegation by Commissioner

26. (1) The Commissioner may, by instrument in writing, delegate a power or function under this Act—

- (a) to a particular person or committee; or
- (b) to the person for the time being occupying a particular position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act personally in a matter; and
- (c) is revocable at will.

Commissioner to disclose pecuniary interests

27. (1) The Commissioner must—

- (a) on appointment as Commissioner, disclose his or her pecuniary interests to the Minister in accordance with the regulations; and
- (b) on acquiring any further pecuniary interest of a kind specified in the regulations, disclose the pecuniary interest to the Minister; and
- (c) if a pecuniary or other personal interest of the Commissioner conflicts or may conflict with his or her official duties—
- (i) disclose the nature of the interest and the conflict or potential conflict to the Minister; and
- (ii) not take action or further action in relation to the matter except as authorised by the Minister.

(2) The Minister may direct the Commissioner to resolve a conflict between a pecuniary or other personal interest and an official duty.

(3) Failure to comply with this section or a direction under this section constitutes misconduct unless the failure is due to inadvertence only.

Annual report

28. (1) The Commissioner must, before 30 September in each year, present a report to the Minister on personnel management and industrial relations in the Public Service during the preceding financial year.

(2) The report must—

(a) describe the extent of observance within the Public Service of—

(i) the personnel management standards contained in Part 2; and

(ii) the personnel management guidelines and directions issued by the Commissioner,

and measures taken to ensure observance of those standards, guidelines and directions; and

(b) describe measures taken to improve personnel management in the various administrative units; and

(c) describe any determinations made by the Commissioner that selection processes are not required to be conducted for appointments to positions in the Public Service; and

(d) describe the extent to which disciplinary procedures were invoked in the Public Service; and

(e) deal with any other matters stipulated by the regulations.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

Special reports

29. (1) The Commissioner may at any time submit a special report to the Minister on matters relating to personnel management or industrial relations in the Public Service or a part of the Public Service.

(2) If the Commissioner becomes aware that significant breaches or evasions of—

(a) the personnel management standards contained in Part 2; or

(b) the personnel management guidelines or directions issued by the Commissioner,

have occurred in an administrative unit, the Commissioner must make a special report to the Minister describing the breaches or evasions.

(3) On receipt of a special report under subsection (2), the Minister must obtain a report from the Minister responsible for the administrative unit dealing with the matters raised by the Commissioner and describing any corrective measures taken by the Chief Executive of the administrative unit.

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(4) The Minister must, within 12 sitting days after receipt of a special report under this section, cause copies of the report (together with any further report obtained under subsection (3)) to be laid before each House of Parliament.

PART 6
GENERAL EMPLOYMENT DETERMINATIONS AND POSITIONS

General employment determinations

30. (1) The Commissioner may determine—

- (a) structures in accordance with which remuneration levels may be fixed for positions in the Public Service; and
- (b) conditions of employment other than remuneration; and
- (c) processes to be followed in fixing remuneration levels and other employment conditions for positions; and
- (d) classes of positions that are to be executive positions for the purposes of this Act; and
- (e) allowances payable to employees and the circumstances in which they are payable; and
- (f) charges payable by employees in respect of accommodation, services, goods or other benefits provided to them in connection with their employment.

(2) A determination by the Commissioner—

- (a) may be varied or revoked by subsequent determination; and
- (b) must be published in accordance with the regulations; and
- (c) is binding on Chief Executives and other employees; and
- (d) has effect from a date fixed by the Commissioner which may be a date earlier than the date of the determination.

Positions

31. (1) The Chief Executive of an administrative unit may fix or vary the duties, titles and remuneration levels of positions in the unit.

(2) The remuneration level of a position may be varied at the initiative of the Chief Executive or on application made in accordance with the regulations by the employee occupying the position.

(3) A variation of the remuneration level of a position has effect from a date determined by the Chief Executive which may be a date earlier than the date of the decision to vary the level.

(4) No position may—

- (a) be abolished while the position is occupied by an employee; or
- (b) have its remuneration level reduced while the position is occupied by an employee except—
 - (i) with the employee's consent; or

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- (ii) in order to correct a clerical error made in the course of the process of fixing or varying the remuneration level of the position.

Review of remuneration level of position

32. (1) The Commissioner may establish review panels for the purposes of this section.

(2) A review panel is to consist of—

- (a) the Commissioner or a delegate of the Commissioner; and
- (b) an employee selected by the Commissioner from a panel of employees nominated by recognised organisations; and
- (c) an employee selected by the Commissioner from a panel of employees nominated by the Commissioner.

(3) The Minister may from time to time invite the recognised organisations to nominate employees to constitute the panel referred to in subsection (2)(b).

(4) If a recognised organisation fails to make a nomination in response to an invitation under subsection (3) within the time allowed in the invitation, the Minister may choose employees instead of nominees of the recognised organisation and any employees so chosen are to be taken to have been nominated to the relevant panel.

(5) A person ceases to be a member of a panel if the person—

- (a) ceases to be an employee; or
- (b) resigns by notice in writing addressed to the Minister; or
- (c) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties; or
- (d) has completed a period of two years as a member of the panel since being nominated, or last renominated, as a member of the panel, and is not renominated to the panel.

(6) Subject to subsection (7), an employee who—

- (a) has made an application under this Part for variation of the remuneration level of the employee's position; and
- (b) is dissatisfied with the decision on the application,

may, within 30 days after receiving notice of the decision, apply to the Commissioner for a review of the remuneration level of the employee's position.

(7) An application for review may not be made—

- (a) by an executive or any employee whose employment is subject to a contract under Part 7; or
- (b) in a case of a kind excluded by the regulations.

(8) On an application for review, the Commissioner must refer the application to a review panel.

(9) A review panel to which an application for review is referred must afford—

(a) the applicant; and

(b) the Chief Executive, or a nominee of the Chief Executive of the administrative unit in which the applicant is employed,

a reasonable opportunity to make submissions orally or in writing to the panel on the questions raised by the application.

(10) If an applicant wishes to make oral submissions, the applicant may appear before the panel personally or by a representative (who may not be a legal practitioner).

(11) On completion of a review, the review panel may—

(a) confirm the existing remuneration level of the applicant's position; or

(b) determine that the remuneration level of the position should be varied with effect from a date determined by the panel (which may not be earlier than the date of the application for review nor later than three months from the date of that application).

(13) A decision in which any two or more members of a review panel concur is a decision of the panel.

(14) If a review panel determines that the remuneration level of a position should be varied, the Chief Executive must vary the remuneration level of the position in accordance with the determination.

PART 7
PUBLIC SERVICE APPOINTMENTS (APART FROM CHIEF EXECUTIVES)

DIVISION 1—EXECUTIVE POSITIONS

Appointment of executives

33. (1) The Chief Executive of an administrative unit may appoint persons as executives of the unit.

(2) Subject to a determination of the Commissioner under Part 5, an appointment to an executive position may only be made as a consequence of selection processes conducted on the basis of merit in accordance with the regulations.

Conditions of executive's employment

34. (1) The conditions of employment in an executive position are to be subject to a contract made between the executive and the Chief Executive.

(2) The contract must specify—

- (a) that the executive is employed for a term not exceeding five years specified in the contract and is eligible for reappointment to the position; and
- (b) that the executive is to meet performance standards as set from time to time by the Chief Executive; and
- (c) that the executive is entitled to remuneration and other benefits specified in the contract; and
- (d) the sums representing the values of the benefits (other than remuneration); and
- (e) the total remuneration package value of the position under the contract; and
- (f) that the executive may resign from the Public Service by not less than three months notice in writing to the Chief Executive (unless notice of a shorter period is accepted by the Chief Executive).

(3) The decision whether to reappoint to the position at the end of a term of employment must be made and notified to the executive not less than three months before the end of the term.

(4) If the contract so provides, the executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) in the event that he or she is not reappointed to the position at the end of a term of employment or in other circumstances specified in the contract.

(5) If—

- (a) the executive is not reappointed to the position at the end of a term of employment; and
- (b) the contract does not provide that he or she is entitled to some other specified appointment in that event; and

- (c) immediately before the executive was first appointed to any executive position under this Act, he or she was employed in the Public Service (but not under a contract for a fixed term with no entitlement to employment in another position at the end of the fixed term); and
- (d) the contract does not exclude the operation of this subsection,

the executive is entitled to be appointed (without any requirement for selection processes to be conducted) to a position in the Public Service with a remuneration level the same as, or at least equivalent to, that of the position he or she occupied immediately before the commencement of his or her first term of employment in the position to which he or she is not being reappointed.

(6) If an employee is appointed as required by subsection (5) to a position that is an executive position, the conditions of his or her employment will not be required to be subject to a contract under this section (except in the event that he or she is appointed to another executive position).

(7) This section does not apply to an employee who is an executive as a result of assignment from a position other than an executive position.

Contract overrides other provisions

35. (1) The contract relating to an executive's employment may make any other provision considered appropriate, including provision excluding or modifying a provision of this Act (other than this Division).

(2) The contract will prevail, to the extent of any inconsistency, over the provisions of this Act (other than Part 2 and this Division).

Termination of executive's employment by notice

36. (1) This section applies only to an executive whose conditions of employment are subject to a contract under this Division.

(2) The Chief Executive of the administrative unit in which an executive is employed may, with the approval of the Commissioner, terminate the executive's employment by not less than three months notice in writing to the executive.

(3) If an executive's employment is terminated by the Chief Executive by notice under this section, the following provisions apply:

- (a) if—
 - (i) the contract relating to the executive's employment does not provide that he or she is entitled to some other specified appointment in the event of such termination; and
 - (ii) immediately before the executive was first appointed to any executive position under this Act, he or she was employed in the Public Service (but not under a contract for a fixed term containing provision for termination of his or her employment by notice in writing of a specified period); and

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(iii) the contract does not exclude the operation of this paragraph,

the executive is entitled to be appointed (without any requirement for selection processes to be conducted) to a position in the Public Service with a remuneration level the same as, or at least equivalent to, that of the position he or she occupied immediately before the commencement of his or her first term of employment in the position occupied at the time of termination;

(b) in any other case—the executive is, subject to any provision in the contract, entitled to a termination payment of an amount equal to three months remuneration (as determined for the purposes of this subsection under the contract) for each uncompleted year of the term of employment (with a *pro rata* adjustment in relation to part of a year) up to a maximum of 12 months remuneration (as so determined).

(4) If an employee is appointed as required by subsection (3)(a) to a position that is an executive position, the conditions of his or her employment will not be required to be subject to a contract under this Division (except in the event that he or she is appointed to another executive position).

(5) Nothing in this section prevents termination of an executive's employment by a shorter period of notice than three months provided that a payment is made to the executive in lieu of notice of an amount equal to the salary and allowances (if any) that the executive would have been entitled to receive during the balance of the period of three months less, in the case of an executive appointed to another position under subsection (3)(a), the salary and allowances (if any) payable in respect of employment in that position during the balance of the period of three months.

(6) The provisions of Part 8 relating to termination of an employee's employment apply to an executive in addition to this section but subject to any provision in the contract relating to the executive's employment.

Executive's general responsibilities

37. An executive is responsible to the Chief Executive of the administrative unit in which he or she is employed for—

- (a) the efficient and effective management of the resources under his or her control; and
- (b) the attainment of the performance standards set from time to time under the contract relating to his or her employment; and
- (c) ensuring the observance within the areas under his or her control of the aims and standards contained in Part 2; and
- (d) contributing to the attainment of the Government's overall objectives consistently with legislative requirements.

DIVISION 2—OTHER POSITIONS**Division applies to positions other than executive positions**

38. This Division applies to positions other than executive positions.

Appointment

39. (1) The Chief Executive of an administrative unit may appoint a person to a position in the unit.

(2) Subject to a determination of the Commissioner under Part 5 and except in the case of appointment to a temporary or casual position, an appointment may only be made as a consequence of selection processes conducted on the basis of merit in accordance with the regulations.

Conditions of employment

40. (1) The conditions of an employee's employment in a position in an administrative unit may—

- (a) be left to be governed by the provisions of this Act; or
- (b) subject to this section, be made subject to a contract between the employee and the Chief Executive of the administrative unit.

(2) A contract may do one or more of the following:

- (a) provide that the employee is employed for a term of not less than 12 months (except in the case of a casual or temporary position) and not exceeding five years specified in the contract;
- (b) provide that the employee is, at the end of a term of employment specified under paragraph (a), eligible for reappointment, or entitled to some other appointment in the Public Service, without any requirement for selection processes to be conducted;
- (c) provide that the employee is entitled to remuneration and other benefits specified in the contract;
- (d) in the case of a temporary or casual position, provide that the Chief Executive may terminate the employee's employment at any time;
- (e) make any other provision that the Chief Executive considers appropriate, including provision excluding or modifying a provision of this Act.

(3) A contract will prevail, to the extent of any inconsistency, over the provisions of this Act (other than Part 2).

(4) Conditions of employment may not be made subject to a contract under this section except—

- (a) in the case of a temporary or casual position; or
- (b) with the Commissioner's approval—
 - (i) in the case of a position required for the carrying out of a project of a duration not exceeding five years; or

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- (ii) where special conditions need to be offered in respect of a position to secure or retain the services of a suitable person; or
- (iii) in other cases of a special or exceptional kind prescribed by regulation.

(5) The term of an employee's employment in a temporary position may be extended from time to time and an employee may be reappointed to a temporary position, but the aggregate period for which an employee continues in a temporary position may not exceed two years.

(6) The Commissioner may give a general approval that will be sufficient for the purposes of subsection (4)(b) in relation to a class of positions that the Commissioner is satisfied are required for the carrying out of projects of a duration not exceeding five years.

Probation

41. (1) Unless the Chief Executive otherwise determines, a person who is not already employed in the Public Service is when appointed to a position in an administrative unit at first on probation.

(2) The appointment of an employee who is on probation may be terminated by the Chief Executive at any time.

(3) If an employee has been on probation for six months or more, the Chief Executive may confirm the appointment and, in that event, the employee ceases to be on probation.

(4) Unless the appointment is sooner confirmed or terminated, the employee ceases to be on probation at the end of a period of 12 months probationary service.

(5) For the purposes of this section, probationary service does not include a period for which the employee has been absent on leave without pay.

**DIVISION 3—APPOINTMENT PROCEDURES AND PROMOTION
APPEALS**

Appointment procedures

42. (1) This section applies to an appointment to a position that is required to be made as a consequence of selection procedures conducted on the basis of merit.

(2) A Chief Executive may, for the purpose of filling a position—

- (a) cause applications to be sought and an applicant selected on the basis of merit in accordance with the regulations; or
- (b) if a pool of applicants has been established under subsection (3) for the purpose of filling positions of a class to which the position belongs—cause an applicant to be selected on the basis of merit in accordance with the regulations from amongst applicants in the pool.

(3) A Chief Executive may, with the approval of the Commissioner, for the purpose of filling positions of a class prescribed by regulation—

- (a) cause applications to be sought in accordance with the regulations; and

- (b) cause selections to be made on the basis of merit in accordance with the regulations for the purpose of establishing a pool of applicants from which further selections may be made to fill positions of that class as from time to time required.

(4) If an applicant selected for a position is not an employee, the Chief Executive may proceed directly to appoint the person to the position.

(5) If an applicant selected for a position is an employee, then—

- (a) in a case where no other employee applied for the position or the Chief Executive is authorised by the regulations to do so—the Chief Executive may proceed directly to appoint the person to the position;

- (b) in any other case—the Chief Executive must first nominate the person for appointment to the position.

(6) The Chief Executive may withdraw a nomination for appointment to a position at any time before appointment of the nominee if—

- (a) the nominee requests in writing that the nomination be withdrawn; or

- (b) the Commissioner approves withdrawal of the nomination,

and, in the event of such withdrawal, another applicant may be selected for appointment to the position.

Promotion appeals

43. (1) Where an employee has been nominated for appointment to a position, any other employee who applied for the position and is eligible for appointment to the position may, within seven days after the publication of the notice of nomination, appeal to the Promotion and Grievance Appeals Tribunal against the nomination.

(2) An appeal against a nomination may only be made on one or more of the following grounds:

- (a) that the employee nominated is not eligible for appointment to the position; or

- (b) that the selection processes leading to the nomination were affected by nepotism or patronage or were otherwise not properly based on assessment of the respective merits of the applicants; or

- (c) that there was some other serious irregularity in the selection processes,

and may not be made merely on the basis that the Tribunal should redetermine the respective merits of the appellant and the employee nominated.

(3) The Tribunal may, if of the opinion that an appeal is frivolous or vexatious, decline to entertain the appeal.

(4) Where, on an appeal under this section, the Tribunal is satisfied that there has been some serious irregularity in the selection processes leading to the nomination such that it would be unreasonable for the nomination to stand, the Tribunal may—

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- (a) set aside the nomination; and
 - (b) order that the selection processes be recommenced from the beginning or some later stage specified by the Tribunal.
- (5) For the purposes of this section—
- (a) a person is not eligible for appointment to a position if the person does not have qualifications determined by the Commissioner to be essential in respect of the position; and
 - (b) a determination by the Chief Executive seeking to fill a position that specific qualifications, experience or other attributes are essential or desirable in respect of the position will be binding on the Tribunal.
- (6) Where an employee has been nominated for appointment to a position and no other employee is entitled to appeal or successfully appeals against the nomination, the nominee must be appointed to the position.
- (7) The regulations may make provision with respect to entitlement to appeal against a nomination under this section.
- (8) Nothing in this section prevents a Chief Executive or the Commissioner from attempting to resolve by conciliation a matter the subject of an appeal under this section prior to the commencement of the hearing of the appeal.

PART 8
GENERAL PUBLIC SERVICE EMPLOYMENT PROVISIONS

DIVISION 1—ASSIGNMENT BETWEEN POSITIONS

Assignment

44. (1) Subject to this section, the Chief Executive of an administrative unit may assign an employee from one position in the unit to another position in the unit.

(2) Subject to this section, an employee may be assigned from a position in one administrative unit to a position in another administrative unit by the Commissioner in consultation with the Chief Executives of the units.

(3) Promotion of an employee to a higher remuneration level through assignment under this section—

- (a) may be made only subject to conditions determined by the Commissioner; and
- (b) may continue only for up to 12 months or such longer period not exceeding three years as the Commissioner may allow in a particular case.

(4) An employee may not be assigned from a position to another position with a lower remuneration level except—

- (a) with the employee's consent; or
- (b) in order to return an employee to his or her former remuneration level as required for compliance with subsection (3).

(5) If an employee whose employment is subject to a contract is assigned to another position, the provisions of the contract continue to apply in relation to the employee's employment in the new position subject to any necessary modifications or further agreement between the employee and the Chief Executive.

DIVISION 2—REMUNERATION

Remuneration

45. (1) Subject to this Act, an employee is entitled to remuneration at the rate appropriate to the remuneration level of the position occupied by the employee.

(2) A deduction may be made from an employee's remuneration for any charge payable by the employee under a determination of the Commissioner under Part 6 in respect of accommodation, services, goods or any other benefit provided to the employee in connection with his or her employment.

Additional duties allowance

46. (1) The Chief Executive of an administrative unit may direct an employee in the unit to perform specified duties in addition to those on which the remuneration level of the employee's position is based.

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(2) If an employee performs duties in accordance with a direction under this section for a continuous period of more than one week, the Chief Executive may authorise payment to the employee of an allowance appropriate to the duties being performed.

Reduction in salary arising from refusal or failure to carry out duties

47. (1) If, in consequence or furtherance of industrial action, an employee refuses or fails to carry out duties that the employee has been lawfully instructed to perform, the employee must not, if the Commissioner so directs, be paid salary for any day (or part of a day) on which the employee refuses or fails to carry out those duties.

(2) A direction under this section is effective to prevent payment of salary to an employee despite the fact that, on any day (or part of a day) to which the direction relates, the employee performs some (but not all) of the duties that the employee has been lawfully instructed to perform.

Payment of remuneration on death

48. On the death of an employee, the Commissioner may, if of the opinion that it is appropriate to do so, direct that an amount payable in respect of the employee's remuneration be paid to dependants of the employee and not to the personal representative.

DIVISION 3—HOURS OF DUTY AND LEAVE

Hours of duty and leave

49. The hours of duty of an employee and the rights of an employee to holidays and leave are governed by Schedule 2.

DIVISION 4—EXCESS EMPLOYEES

Excess employees

50. (1) If the Chief Executive of an administrative unit is satisfied—

(a) that—

- (i) the services of an employee have become underutilised; or
- (ii) an employee is no longer required to perform, or cannot perform, the duties of his or her position,

because of—

- (iii) changes in technology or work methods or in the organisation or nature or extent of operations of the administrative unit; or
- (iv) loss of a qualification that is necessary for the performance or proper performance of the duties; and

(b) that it is not practicable to assign the employee under Division 1 to another position in the administrative unit,

the Chief Executive must refer the matter to the Commissioner.

(2) If a matter is referred to the Commissioner under subsection (1) and the Commissioner is satisfied—

- (a) as to the matters referred to in subsection (1)(a); and
- (b) that all reasonable endeavours have been made to assign the employee under Division 1 to another position in the Public Service (whether in the same or another administrative unit) but that it is not practicable to do so in the circumstances of the case; and
- (c) that reasonable consultations have taken place with the appropriate recognised organisation,

the Commissioner may—

- (d) transfer the employee to another position in the Public Service with a lower remuneration level; or
- (e) recommend to the Governor that the employee's employment in the Public Service be terminated.

(3) The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

(4) If an employee is transferred under this section to a position with a lower remuneration level, the employee is entitled to supplementation of the employee's remuneration in accordance with the relevant provisions of an award or enterprise or industrial agreement or, if there is no award or enterprise or industrial agreement covering the matter, in accordance with a scheme prescribed by the regulations.

DIVISION 5—MENTAL OR PHYSICAL INCAPACITY

Mental or physical incapacity

51. (1) If—

- (a) the Chief Executive of an administrative unit is satisfied that an employee in the unit is not performing duties of his or her position satisfactorily; and
- (b) it appears to the Chief Executive that the employee's unsatisfactory performance is caused by mental or physical illness or disability,

the Chief Executive may require the employee to undergo a medical examination by a medical practitioner selected by the employee from a panel of medical practitioners nominated by the Chief Executive.

(2) If an employee refuses or fails, without reasonable excuse, to submit to a medical examination as required under subsection (1), the Chief Executive may suspend the employee from duty in the Public Service (without remuneration and, as the Chief Executive thinks fit, with or without accrual of rights in respect of recreation leave and long service leave) until the employee submits to a medical examination as required by the Chief Executive.

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(3) The Chief Executive must—

- (a) furnish the employee with a copy of any report on the results of a medical examination required under this section; and
- (b) before considering the report under subsection (4), allow the employee a period of not less than 14 days from the date of the employee's receipt of the report to furnish the Chief Executive with any medical reports obtained by the employee on his or her mental or physical condition.

(4) If the Chief Executive of an administrative unit is satisfied, after consideration of all relevant medical reports, that—

- (a) an employee in the unit is not performing duties of his or her position satisfactorily; and
- (b) the employee's unsatisfactory performance is caused by mental or physical illness or disability; and
- (c) it is not practicable to assign the employee under Division 1 to another position (whether in the same or another administrative unit) with duties within the employee's capacity,

the Chief Executive must consult with the Commissioner about the matter.

(5) If the Commissioner and the Chief Executive are both satisfied that it is not practicable to assign the employee under Division 1 to another position (whether in the same or another administrative unit), the following provisions apply:

- (a) the Commissioner and the Chief Executive must examine whether it is practicable to transfer the employee to another position with a lower remuneration level (whether in the same or another administrative unit);
- (b) if it is practicable to do so, the employee may be transferred by the Chief Executive to another position with a lower remuneration level in the same unit, or may be transferred to a position with a lower remuneration level in another unit by the Commissioner in consultation with the Chief Executive of the other unit;
- (c) if the Commissioner and the Chief Executive are satisfied that it is not practicable to so transfer the employee, the Commissioner may recommend to the Governor that the employee's employment in the Public Service be terminated.

(6) The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

(7) The termination of an employee's employment under this section may, with the consent of the employee, have effect from a date earlier than the date of the decision to terminate the employee's employment.

(8) In this section—

"**relevant medical report**" means—

- (a) if a medical examination is required by the Chief Executive under subsection (1)—
 - (i) the report on the results of that examination; and
 - (ii) any medical reports furnished to the Chief Executive by the employee before or within the period allowed under subsection (3); or
- (b) in any other case—any medical report furnished to the Chief Executive by the employee.

DIVISION 6—UNSATISFACTORY PERFORMANCE

Unsatisfactory performance

52. (1) If the Chief Executive of an administrative unit is satisfied that—

- (a) an employee in the unit is not performing duties of his or her position satisfactorily or to performance standards specified in a contract relating to his or her employment; and
- (b) it is not practicable to assign the employee under Division 1 to another position (whether in the same or another administrative unit) with duties suited to the employee's capabilities or qualifications,

the Chief Executive must consult with the Commissioner about the matter.

(2) If the Commissioner and the Chief Executive are both satisfied that it is not practicable to assign the employee under Division 1 to another position (whether in the same or another administrative unit), the following provisions apply:

- (a) the Commissioner and the Chief Executive must examine whether it is practicable to transfer the employee to another position with a lower remuneration level (whether in the same or another administrative unit);
- (b) if it is practicable to do so, the employee may be transferred by the Chief Executive to another position with a lower remuneration level in the same unit, or may be transferred to a position with a lower remuneration level in another unit by the Commissioner in consultation with the Chief Executive of the other unit;
- (c) if the Commissioner and the Chief Executive are satisfied that it is not practicable to so transfer the employee, the Commissioner may recommend to the Governor that the employee's employment in the Public Service be terminated.

(3) The Chief Executive may not take action under this section on the ground that an employee is not performing duties satisfactorily or to applicable performance standards unless the employee has first been advised of his or her unsatisfactory performance and allowed a reasonable opportunity to improve.

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(4) An employee must be given not less than 14 days notice in writing of a decision to transfer the employee or recommend that the employee's employment in the Public Service be terminated under this section.

(5) If, within the period referred to in subsection (4), the employee appeals to the Promotion and Grievance Appeals Tribunal against the decision, the decision is suspended until the determination of the appeal.

(6) The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

(7) This section does not apply if an employee's unsatisfactory performance is due to mental or physical illness or disability.

DIVISION 7—RESIGNATION AND RETIREMENT

Resignation

53. (1) An employee may resign from the Public Service by not less than 14 days notice in writing to the Chief Executive of the administrative unit in which the employee is employed (unless notice of a shorter period is accepted by the Chief Executive).

(2) If an employee—

- (a) is absent, without authority, from employment in the Public Service for a period of 10 working days; and
- (b) gives no proper written explanation or excuse for the absence to the Chief Executive of the administrative unit in which the employee is employed before the end of that period,

the employee will, if the Chief Executive so determines, be taken to have resigned from the Public Service.

Reappointment of employee who resigns to contest election

54. (1) If—

- (a) an employee resigns from the Public Service for the purpose of standing as a candidate for election to the Parliament of the State or the Commonwealth; and
- (b) the resignation takes effect not more than one month before the issue of the writ for the election; and
- (c) the former employee is not elected and applies for reappointment to the Public Service within two months after the return of the writ for the election,

the employee must be reappointed (without any requirement for selection processes and without probation) to his or her former position in the Public Service or a position with the same remuneration level as that position.

(2) For the purpose of determining the rights of an employee who is reappointed to the Public Service under this section, the period between the resignation and reappointment is to be taken to be leave without pay granted under this Act.

Retirement

55. An employee who has attained the age of 55 years is entitled to retire from the Public Service.

DIVISION 8—CONDUCT AND DISCIPLINE

Conflict of interest

56. (1) If—

- (a) an employee has a pecuniary or other personal interest in a matter; and
- (b) the interest conflicts or may conflict with the employee's official duties,

the employee must disclose the nature of the interest to the Chief Executive of the administrative unit in which the employee is employed.

(2) The Chief Executive of an administrative unit may direct an employee employed in the unit to resolve a conflict between a pecuniary or other personal interest and a duty as an employee.

General rules of conduct

57. An employee is liable to disciplinary action if the employee—

- (a) contravenes or fails to comply with—
 - (i) a provision of this Act; or
 - (ii) a direction given to the person as an employee by a person with authority to give that direction (whether the authority derives from this Act or otherwise);
or
- (b) is negligent or indolent in the discharge of the duties of the employee's position; or
- (c) is absent from duty without reasonable excuse (proof of which lies on the employee); or
- (d) is guilty of disgraceful or improper conduct in an official capacity, or is guilty in a private capacity of disgraceful or improper conduct that reflects seriously and adversely on the Public Service; or
- (e) makes improper use of property of the Crown; or
- (f) except as authorised under the regulations, engages in any remunerative employment, occupation or business outside the Public Service; or
- (g) except as authorised under the regulations, discloses information gained in the employee's official capacity, or comments on any matter affecting the Public Service or the business of the Public Service.

Inquiries and disciplinary action

58. (1) If the Chief Executive of an administrative unit suspects on reasonable grounds that an employee in the unit may be liable to disciplinary action, the Chief Executive may hold an inquiry to determine whether the employee is liable to disciplinary action.

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(2) Notice in writing of an inquiry under this section setting out the grounds on which the employee is suspected of being liable to disciplinary action must be given to the employee.

(3) Nothing in this section prevents the making of any preliminary investigations prior to the holding of an inquiry or the giving of a notice of inquiry under this section.

(4) The employee affected by an inquiry under this section—

(a) may be assisted or represented in the inquiry by another person; and

(b) must be afforded a reasonable opportunity—

(i) to be present throughout the course of the inquiry; and

(ii) to question persons making allegations against the employee or providing information in support of the allegations; and

(iii) to bring persons or documents before the Chief Executive to provide information in support of the employee; and

(iv) to make statements and representations to the Chief Executive.

(5) If, on an inquiry under this section, the Chief Executive is satisfied on the balance of probabilities that the employee is liable to disciplinary action, then the Chief Executive may do one or more of the following:

(a) reprimand the employee;

(b) order that the leave entitlement of the employee be reduced by a specified amount;

(c) order that the employee be suspended from duty in the Public Service for a specified period with or without remuneration and, as the Chief Executive thinks fit, with or without accrual of rights in respect of recreation leave and long service leave;

(d) order that the salary of the employee be reduced by a specified amount for a specified period;

(e) recommend to the Governor—

(i) that the employee be transferred to some other position in the Public Service with a lower remuneration level; or

(ii) that the employee's employment in the Public Service be terminated.

(6) For the purposes of subsection (5), a period of suspension may, if the Chief Executive thinks fit to so order, be comprised of or include the whole or part of any period for which the employee has been suspended without remuneration under another power conferred by this Division.

(7) The Chief Executive may, if he or she thinks fit, suspend an order under subsection (5) subject to compliance by the employee with conditions specified by the Chief Executive.

(8) Before taking or recommending disciplinary action in respect of an employee under subsection (5), the Chief Executive must give the employee at least 14 days notice in writing of his or her findings and of the disciplinary action (if any) that he or she proposes to take or recommend.

(9) The holding of an inquiry under this section in respect of an employee must, if the employee is charged with an offence relating to a matter to which the inquiry relates, be suspended pending the determination of the proceedings in respect of the offence.

(10) The Governor may, on the recommendation of the Chief Executive under this section—

- (a) transfer an employee to some other position in the Public Service with a lower remuneration level; or
- (b) terminate an employee's employment in the Public Service.

Suspension or transfer where disciplinary inquiry or serious offence charged

59. (1) If an employee—

- (a) is charged with an offence punishable by imprisonment; or
- (b) is given notice of a disciplinary inquiry under this Division,

the Chief Executive of the administrative unit in which the employee is employed may—

- (c) suspend the employee from duty in the Public Service (with or without remuneration and, as the Chief Executive thinks fit, with or without accrual of rights in respect of recreation leave and long service leave); or
- (d) transfer the employee from his or her position to some other position in the administrative unit with the same remuneration level; or
- (e) recommend to the Commissioner that the employee be transferred to a position in another administrative unit with the same remuneration level.

(2) An employee who is charged with an offence punishable by imprisonment must, as soon as practicable, notify the Chief Executive of the administrative unit in which he or she is employed of that fact.

(3) The Commissioner may, on the recommendation of the Chief Executive under this section, transfer an employee to a position in another administrative unit with the same remuneration level.

(4) A suspension or transfer imposed under this section is revocable at any time and must be revoked by the Chief Executive—

- (a) where the employee has been both charged with an offence (whether or not punishable by imprisonment) and given notice of a disciplinary inquiry under this Division relating to a matter to which the charge relates—if the employee is both acquitted of the charge and found not liable to disciplinary action on the inquiry; or

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(b) in any other case—if the employee is acquitted of the charge, or found not liable to disciplinary action on the inquiry, in relation to which the suspension or transfer was imposed.

(5) For the purposes of subsection (4), if a charge against an employee is dismissed, lapses or is withdrawn, the employee will be taken to have been acquitted of the charge.

(6) If a suspension imposed under this section is revoked, the employee is, subject to subsection (7), entitled to any remuneration and accrual of leave rights withheld in consequence of the suspension and any additional payment approved by the Commissioner.

(7) If a suspension imposed under this section is revoked on the employee being convicted of an offence punishable by imprisonment or being found liable to disciplinary action, the employee will not, unless the Chief Executive so determines, be entitled to any remuneration or accrual of leave rights withheld in consequence of the suspension.

(8) If a transfer imposed under this section is revoked, the employee must be transferred back to the employee's former position or, if that position is no longer available, to a position with the same remuneration level as the employee's former position.

(9) Subject to subsection (10), a decision to suspend or transfer an employee under this section is not subject to appeal or review under this Act or any other law.

(10) A decision that remuneration be withheld from a person suspended under this section may be the subject of an appeal under this Act.

Disciplinary action on conviction of serious offence

60. (1) If an employee is convicted of an offence punishable by imprisonment, the Chief Executive of the administrative unit in which the employee is employed may recommend to the Governor—

(a) that the employee be transferred to some other position in the Public Service with a lower remuneration level; or

(b) that the employee's employment in the Public Service be terminated.

(2) The Chief Executive must, before recommending any disciplinary action under subsection (1) because an employee has been convicted of a summary offence, give the employee at least 14 days notice in writing of the disciplinary action that the Chief Executive proposes to recommend.

(3) Disciplinary action must not be taken under this section on the basis of a conviction that is under appeal, or against which a right of appeal still lies.

(4) The Governor may, on the recommendation of the Chief Executive under this section—

(a) transfer an employee to some other position in the Public Service with a lower remuneration level; or

(b) terminate an employee's employment in the Public Service.

Disciplinary appeals

61. (1) An employee may, within 14 days after receiving notice of a decision that the employee is liable to disciplinary action or a decision as to disciplinary action to be taken or recommended in respect of the employee under this Division, appeal to the Disciplinary Appeals Tribunal against the decision.

(2) The Tribunal may, on an appeal under this section—

- (a) affirm the decision subject to the appeal;
- (b) set aside the decision subject to the appeal and substitute a decision that should have been made in the first instance;
- (c) make any consequential or ancillary orders.

(3) If an appellant succeeds in an appeal under this section, the Tribunal may order costs against the Crown.

(4) An employee does not have a right of appeal under this section against a decision recommending disciplinary action because the employee has been convicted of an indictable offence.

Payments where employee has liability to Crown

62. If an employee or former employee is alleged to have misappropriated or damaged property of the Crown or to have incurred any other liability to the Crown, a payment that would otherwise be required to be made to the person in respect of his or her employment in the Public Service—

- (a) may be withheld pending the determination of criminal or other proceedings in respect of the matter; and
- (b) may be applied in or towards satisfaction of any liability of the person to the Crown.

DIVISION 9—APPEAL AGAINST ADMINISTRATIVE DECISIONS

Chief Executive's responsibility to conciliate grievances

63. Despite the provisions of this Division, the Chief Executive of an administrative unit is required to endeavour to resolve by conciliation any grievance that an employee in the unit may have in respect of his or her employment.

Grievance appeals

64. (1) An employee who is aggrieved by an administrative decision that directly affects the employee may appeal to the Promotion and Grievance Appeals Tribunal against the decision.

(2) Nothing in this section prevents a Chief Executive or the Commissioner from attempting to resolve by conciliation a matter the subject of an appeal under this section prior to the commencement of the hearing of the appeal.

(3) The Tribunal may, if of the opinion—

- (a) that an appeal is frivolous or vexatious; or

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- (b) that an appellant has not fully explored avenues for review or redress available within the administrative unit in which the appellant is employed,

decline to entertain the appeal.

- (4) The Tribunal may, on an appeal under this section—

- (a) affirm the decision subject to the appeal; or
- (b) give any directions that are, in the opinion of the Tribunal, necessary or desirable to redress the grievance.

- (5) An employee does not have a right of appeal under this section against a decision—

- (a) that is appealable under some other provision of this Act; or
- (b) that is of a class excluded by regulation from appeal under this section.

**PART 9
MISCELLANEOUS**

Preservation of powers of Governor to appoint, transfer and dismiss

65. (1) Nothing in this Act is to be taken to abrogate or restrict a right or power that the Governor may otherwise have to appoint a person to, or dismiss a person from, a position in the Public Service.

(2) The Governor may transfer an employee from a position in the Public Service to any other position in the Public Service with the same or a higher remuneration level.

(3) An employee may be transferred to a position for a specified term and, in that event, the employee must, at the end of the term—

- (a) be transferred back to the employee's former position; or
- (b) if that position is no longer available—be transferred to some other position with the same remuneration level as, or a higher remuneration level than, that of the employee's former position.

Annual reports by public sector agencies

66. (1) Each public sector agency must, once in each year, present a report to the Minister responsible for the agency on the operations of the agency.

(2) The report must contain information required by the regulations.

(3) Subject to this section, the report must be related to a financial year and must be presented within three months after the end of the financial year to which it relates.

(4) If a public sector agency is under some other statutory obligation to make an annual report to the Minister responsible for the agency—

- (a) the report required by this section may be incorporated with that other report; and
- (b) the period to which the report relates must be the same as for that other report; and
- (c) the report must be presented within three months after the end of the reporting period referred to above.

(5) A Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

Equal employment opportunity programs

67. (1) The Minister may publish in the *Gazette* equal employment opportunity programs designed to ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class.

(2) The Minister may, in an equal employment opportunity program, make special provision—

- (a) to assist persons of a defined class disproportionately represented amongst the unemployed to gain employment in the public sector; or

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- (b) to assist persons of a defined class employed in the public sector to compete for other positions or pursue careers in the public sector as effectively as persons not of that class,

and any such special provision will, despite the provisions of this or any other Act, be lawful.

(3) The Minister may, by notice published in the *Gazette*, vary or revoke an equal employment opportunity program.

Transfers of employees within public sector

68. (1) If an employee is liable to be transferred under Part 8 to another position in the Public Service, the Commissioner may instead, if the Commissioner thinks fit, transfer the employee to a position in the employment of a public sector agency outside the Public Service.

(2) If a public sector agency outside the Public Service determines that—

- (a) a person employed by the agency is no longer required to perform the duties of his or her position, or cannot or is not performing the duties satisfactorily for health or other reasons; and
- (b) it is not practicable to transfer the person to some other position in the employment of the agency,

the Commissioner may, if the Commissioner thinks fit, transfer the person to a position in the Public Service or in the employment of another public sector agency.

(3) A transfer under this section may be made on conditions as to—

- (a) maintenance (whether complete or partial) of the person's remuneration and accrued and accruing rights in respect of superannuation; and
- (b) maintenance of the person's accrued and accruing leave rights; and
- (c) transfer of the person back to the person's former position or an equivalent position,

as determined by the Commissioner.

(4) Conditions determined by the Commissioner under subsection (3) will have effect according to their terms and despite the provisions of this or any other Act.

Appointment of Ministerial staff

69. (1) The Premier may appoint a person as a member of a Minister's personal staff on conditions determined by the Premier.

(2) A person appointed under this section is not an employee in the Public Service.

(3) Appointments may not be made under this section so that at any time the number of persons so employed exceeds one per cent of all employees in the Public Service.

(4) An appointment to a Minister's personal staff continues while the Minister continues to be a Minister (whether or not in the same Ministerial office) unless it sooner expires or is terminated under the conditions of appointment.

(5) The Premier must cause a report to be prepared not less frequently than once every 12 months setting out with respect to each Minister—

- (a) details of all appointments made to the Minister's personal staff under this section (other than those described in previous reports under this section); and
- (b) the number of persons for the time being employed on the Minister's personal staff under this section; and
- (c) the remuneration and other conditions of appointment of each person for the time being employed on the Minister's personal staff under this section.

(6) A report under subsection (5) must—

- (a) be published in the *Gazette* next issued after preparation of the report; and
- (b) be laid before each House of Parliament within six sitting days after preparation of the report.

Minister may approve arrangements for multiple appointments, etc.

70. The Commissioner may approve, on conditions determined by the Commissioner, arrangements under which—

- (a) a person may be appointed to and employed in the Public Service for a period during which the person continues to hold or remains in some other office or employment outside the Public Service; or
- (b) a person who is employed in the Public Service may remain in that employment for a period during which the person holds or is engaged in some other office or employment outside the Public Service,

and any such arrangements will have effect according to their terms and despite the provisions of this or any other Act.

Incompatible public offices

70A. (1) If a person holding an office is or has been appointed to a further office, he or she is not to be taken to have vacated the firstmentioned office or to have been invalidly appointed to the further office because—

- (a) the potential exists or has existed for the duties of the offices to be in conflict; or
- (b) the duties of either one or more of the offices require, by implication, the person's full time attention.

(2) The Governor may give directions in relation to an actual or potential conflict of duty and duty between offices held concurrently, or in relation to some other incompatibility between offices held concurrently, and, if the office holder concerned complies with those directions, he or she is excused from any breach that would otherwise have occurred.

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(3) In this section—

"office" means—

- (a) a public office; or
- (b) any position or employment in the public sector.

Extension of operation of certain provisions of Act

71. (1) The Governor may, by proclamation—

- (a) extend the operation of specified provisions of this Act, subject to such modifications (if any) as may be specified in the proclamation, to any specified class of public sector employees to whom those provisions do not apply of their own force; or
- (b) vary or revoke a proclamation previously made under this subsection.

(2) Subject to subsection (3), the provisions of Schedule 2 relating to long service leave apply to all public sector employees who—

- (a) are remunerated at hourly, daily, weekly or fortnightly rates of payment; and
- (b) are assigned to duties that form part of the operations of an administrative unit; and
- (c) are, in the performance of the duties, subject to direction by the Chief Executive of the administrative unit.

(3) The Governor may, by proclamation—

- (a) declare that the provisions of Schedule 2 relating to long service leave do not apply to a class of employees referred to in subsection (2); or
- (b) vary or revoke a proclamation previously made under this subsection.

(4) A proclamation under this section may, if it so provides, have effect from a date specified in the proclamation that is earlier than the date of the proclamation.

Operation of Industrial and Employee Relations Act

72. A determination or decision under this Act affecting remuneration or conditions of employment is subject to an award, determination or enterprise or industrial agreement in force under the *Industrial and Employee Relations Act 1994*.

Freedom of association for employees

73. (1) No employee may be compelled to become, or remain, a member of an industrial or professional association.

(2) No employee who is eligible for membership of an industrial or professional association may be prevented (except by the association itself acting in accordance with its rules) from becoming or remaining a member of the association.

Immunity from civil liability

74. (1) Subject to subsection (3), no civil liability attaches to an employee or other person holding an office or position under this Act for an act or omission in the exercise or purported exercise of official powers or functions.

(2) An action that would, but for subsection (1), lie against an employee or other person lies instead against the Crown.

(3) This section does not prejudice rights of action of the Crown itself in respect of an act or omission not in good faith.

Temporary exercise of statutory powers

75. (1) If—

(a) a statutory power or function is exercisable by an employee in an administrative unit; and

(b) the employee is absent or is for any reason unable to exercise the power or function,

the power or function may be exercised by the Chief Executive of the administrative unit or some other employee nominated by the Chief Executive by instrument in writing.

(2) An apparently genuine document purporting to be a copy of an instrument of nomination under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof that the employee referred to as the nominee was duly authorised to exercise the power or function referred to in the instrument.

Obsolete references

76. (1) If the title of an administrative unit or position in the Public Service is altered, a reference in an Act or statutory instrument to the administrative unit or position under an earlier title is, unless the contrary intention appears, to be read as a reference to the administrative unit or position under its new title.

(2) The Governor may, by proclamation, direct that a reference in an Act or statutory instrument to an administrative unit or position in the Public Service be read as a reference to some other administrative unit or position in the Public Service.

(3) In subsection (2)—

"**administrative unit**" includes an administrative unit or department established under a repealed Act;

"**position**" includes a position or office in the Public Service created under a repealed Act.

(4) The Governor may, by proclamation, vary or revoke a proclamation under this section.

Evidentiary provision

77. (1) A certificate signed by the Commissioner certifying—

(a) that an administrative unit referred to in the certificate existed as an administrative unit of the Public Service at a time or over a period referred to in the certificate; or

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- (b) that a person named in the certificate occupied a specified position in the Public Service at a time or over a period referred to in the certificate,

will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

(2) An apparently genuine document purporting to be a certificate under this section will be accepted in any legal proceedings, in the absence of proof to the contrary, as such a certificate.

War Service (Preference in Employment) Act

78. Nothing in this Act derogates from the *War Service (Preference in Employment) Act 1943*.

Service of notices

79. A notice or document required or authorised by this Act to be given to or served on an employee may be given to or served on the employee personally or by post addressed to the employee at the address last notified by the employee in accordance with the regulations.

Regulations

80. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) A regulation—

- (a) may be of general or limited application and may vary in operation according to factors stated in the regulation; and
- (b) may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner or a Chief Executive, either generally or in particular case or class of cases; and
- (c) may impose a penalty not exceeding a Division 8 fine for contravention of, or non-compliance with, the regulation.

SCHEDULE 1

Persons Excluded from Public Service

1. (1) The following persons are excluded from the Public Service:
- (a) members of the judiciary;
 - (b) members of the police force;
 - (c) the Auditor-General;
 - (d) the Ombudsman;
 - (e) the Police Complaints Authority;
 - (f) the Electoral Commissioner and the Deputy Electoral Commissioner;
 - (g) an officer of either House of Parliament or a person under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or a member of the joint parliamentary service;
 - (h) the Commissioner;
 - (i) an officer or employee appointed by the Minister under the *Education Act 1972*;
 - (j) an officer or employee appointed by the Minister under the *Technical and Further Education Act 1975*;
 - (k) a person appointed by the Premier to a Minister's personal staff under Part 9;
 - (l) subject to a proclamation under Part 3—
 - (i) an officer or employee who is remunerated solely by fees, allowances or commission;
 - (ii) an employee who is remunerated at hourly, daily, weekly or piece-work rates of payment (other than a person appointed under Part 7 to a casual position);
 - (iii) an officer or employee who is excluded under any other Act from the Public Service or whose terms and conditions of appointment are under another Act to be determined by the Governor, a Minister or any specified person or body;
 - (m) an officer or employee excluded from the Public Service by proclamation under subclause (2).
- (2) The Governor may, by proclamation—
- (a) exclude an officer or employee or class of officers or employees from the Public Service; or
 - (b) vary or revoke a proclamation under this subclause.

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SCHEDULE 2

Hours of Attendance, Holidays and Leave of Absence

Hours of Attendance

Hours of attendance

1. (1) Subject to this clause and any direction of the Chief Executive of the relevant administrative unit, an employee is obliged to attend at the employee's place of employment throughout the hours fixed by the regulations as ordinary business hours in relation to the Public Service.

(2) The Chief Executive of an administrative unit may, at the request and with the consent of an employee occupying a position in the unit, determine that the duties of the position be performed on a part-time basis, and, in that event, the employee is not required to attend at his or her place of employment except according to the basis determined by the Chief Executive.

(3) An employee is entitled to be absent from the employee's place of employment if the absence is authorised by or under a flexi-time scheme adopted by the Chief Executive of the relevant administrative unit.

Directions relating to part-time employment

2. (1) The Commissioner may issue directions with respect to employment in the Public Service on a part-time basis.

(2) The directions issued by the Commissioner under this section will have effect according to their terms and despite the other provisions of this Act.

Holidays and Closure of Offices

Public Service holidays

3. (1) Subject to subclause (2), the following days are to be observed as holidays in the Public Service:

(a) all public holidays;

(b) any other days declared by proclamation to be holidays in the Public Service.

(2) The Chief Executive of an administrative unit may require employees employed in that administrative unit to attend for duty on a holiday.

Closure of offices, etc.

4. (1) The Minister may direct—

(a) that all or any of the offices of an administrative unit be closed; and

(b) that specified classes of employees be not required to work,

on a specified day or days.

(2) If an employee is not required to work on a particular day because of a direction under subclause (1) then, subject to subclause (3), the employee is to be taken to have been granted recreation leave on that day or those days.

(3) An employee who is not required to work on a day by reason of a direction under subclause (1) must if, the employee would, but for subclause (2), have been entitled to sick leave on that day, be granted the sick leave, and, in that event, the employee is to be taken not to have been granted recreation leave on that day.

Recreation Leave

Recreation leave

5. (1) Subject to this clause and the regulations, an employee is entitled to 1 $\frac{2}{3}$ days recreation leave for each completed month of the employee's service.

(2) If an employee performs the duties of a position on a part-time basis, the period of the employee's service for the purposes of this clause is to be determined in accordance with the regulations and any directions of the Commissioner.

(3) The Commissioner may, in appropriate cases, increase the entitlement to recreation leave of a particular employee or employees of a particular class.

(4) Recreation leave must be granted by the Chief Executive in accordance with the regulations and any directions of the Commissioner.

(5) Recreation leave may, in accordance with the regulations and any directions of the Commissioner, be taken in anticipation of the entitlement to that recreation leave accruing to the employee.

(6) If an employee who is entitled to recreation leave dies or ceases for any reason to be an employee, the employee, or the employee's personal representative, as the case requires, must, unless the Commissioner otherwise directs, be paid a sum calculated in accordance with the directions of the Commissioner as being the monetary value of the leave.

(7) If—

(a) an employee has taken recreation leave in anticipation of the entitlement to that leave accruing to the employee; and

(b) before the entitlement to the leave accrues to the employee, the employee ceases for any reason to be an employee,

then, unless the Commissioner otherwise directs, a sum equal to the sum paid to the employee in respect of that leave is payable to the Treasurer as a debt by the employee.

(8) This clause does not apply to an employee employed in a casual position.

Sick Leave

Sick leave, etc.

6. (1) An employee is, subject to the regulations, entitled to take sick leave not exceeding the amount of sick leave standing to the credit of the employee.

(2) Sick leave must be credited to an employee as follows:

(a) on the commencement of the employee's employment, six days sick leave must be credited to the employee;

(b) if an employee's employment commenced after 30 June in any year but before 1 January in the next year, then on 1 January a further six days sick leave must be credited to the employee;

(c) on 1 July after the commencement of an employee's employment and on each succeeding 1 July, a further 12 days sick leave must be credited to the employee.

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- (3) Despite the other provisions of this clause—
- (a) an employee is not entitled to take—
- (i) more than six days sick leave during the first six months of the employee's employment; or
- (ii) more than 12 days sick leave during the first 12 months of the employee's employment; and
- (b) the sick leave to be credited to an employee must—
- (i) if an employee is employed on a part-time basis for any period; or
- (ii) if an employee is absent for any period on leave without pay,
- be reduced in accordance with the regulations and any directions of the Commissioner; and
- (c) the Commissioner may, in appropriate cases, increase the entitlement to sick leave of a particular employee or employees of a particular class; and
- (d) the Commissioner may approve a scheme in relation to a class of employees under which this clause will apply in a modified way in relation to employees of that class who individually apply to come under the scheme.
- (4) This clause does not apply to an employee employed in a casual position.

*Special Leave***Special leave**

7. (1) Special leave with pay may be granted for purposes prescribed by regulation.
- (2) The Chief Executive of the administrative unit in which an employee is employed may, subject to the directions of the Commissioner, grant to the employee special leave with pay—
- (a) for a period determined in accordance with the regulations and the directions of the Commissioner in relation to the purpose for which special leave is to be taken; or
- (b) for such other period as may be authorised, in the particular circumstances, by the Minister.
- (3) The Chief Executive of the administrative unit in which an employee is employed—
- (a) must, subject to the directions of the Commissioner, grant to the employee special leave without pay for a period determined in accordance with the regulations and the directions of the Commissioner if the employee applies for special leave on the ground that—
- (i) the employee is pregnant; or
- (ii) the employee requires the leave to undertake the care of a young child not of school age of whom the employee is a parent; and
- (b) may, subject to the directions of the Commissioner, grant to the employee special leave without pay for such other reason and such period as appears to the Chief Executive to be reasonable in the particular circumstances.
- (4) The granting of special leave under this clause is to be on such conditions as the Chief Executive may, subject to the directions of the Commissioner, determine.

(5) The Chief Executive must, subject to the directions of the Commissioner, determine for what purposes (if any) and to what extent (if any) special leave without pay granted by the Chief Executive is to be counted as service or effective service for the purposes of this Act.

Long Service Leave

Long service leave

8. (1) An employee who has 10 years or more effective service is entitled to the following long service leave:

- (a) 90 days in respect of the first 10 years of effective service;
- (b) nine days in respect of each subsequent year of effective service;
- (c) 15 days in respect of the sixteenth and each subsequent year of effective service.

(2) If an employee performs the duties of a position on a part-time basis, the employee's effective service is to be determined in accordance with the regulations and any directions of the Commissioner.

(3) Every day occurring during a period of long service leave is (whether it is a working day or not) to be regarded as a day of that leave.

(4) Where long service leave has been taken by an employee or a payment in lieu of long service leave has been made to an employee (either before or after the commencement of this Act), the employee's entitlement to long service leave is reduced accordingly.

Time and manner in which long service leave is to be taken

9. (1) Subject to the regulations and the directions of the Commissioner, long service leave must be taken at times and for periods agreed on by the employee entitled to the leave and the Chief Executive of the administrative unit in which the employee is employed.

(2) Subject to the regulations, the Chief Executive may permit an employee who has not less than seven years effective service to take *pro rata* long service leave in respect of that effective service.

Long service leave to be on full pay

10. (1) Subject to this clause, the salary to which an employee is entitled during long service leave is—

- (a) the salary appropriate to the remuneration level of the employee's position during that leave; and
- (b) subject to the regulations, if the employee was employed at a higher remuneration level (either before or after the commencement of this Act) during part of the employee's effective service, additional salary as determined by the Commissioner.

(2) If the effective service of an employee consists in whole or in part of part-time service or service in a casual position, the salary to which the employee is entitled during long service leave is to be as determined by the Commissioner by reference to the rate of remuneration applying to the employee's position during the period of the leave and the extent to which the employee's effective service was part-time or in a casual position.

(3) An employee may elect to take long service leave on half salary, and in that event—

- (a) the period of leave is to be twice the period to which the employee would otherwise have been entitled; and
- (b) the first half of the leave is to be on full pay; and
- (c) the second half of the leave is to be taken to be leave without pay.

Public Sector Management Act 1995

(4) An employee is, while on long service leave, entitled to receive, in addition to salary, the allowances (if any) determined by the Commissioner.

Payment in lieu of long service leave

11. (1) The Minister may, on application by a Chief Executive, and the Chief Executive of an administrative unit may, on application by an executive in the unit, authorise that the Chief Executive or executive be paid, in lieu of a period of long service leave to which the person has accrued an entitlement, an amount equal to the salary and allowances (if any) that the person would have been entitled to receive during such a period of leave.

(2) If an employee—

(a) who is entitled to long service leave; or

(b) to whom *pro rata* long service leave could have been granted,

dies or ceases for any reason to be an employee, then—

(c) in the case of death—the employee's personal representative; or

(d) in the case of cessation of service for any other reason—the employee,

must be paid a sum determined as follows:

(e) in the case of an employee who was entitled to long service leave—the salary that would have been payable if the long service leave had commenced on the day of cessation of service;

(f) in the case of an employee to whom *pro rata* long service leave could have been granted—the salary that would have been payable if *pro rata* long service leave had been granted in respect of all the employee's effective service and that leave had commenced on the day of cessation of service;

(g) in either case—

(i) if the employee's service ceases during a year of service—a sum that bears to the salary that would have been payable in respect of long service leave for that year of service if it had been completed the same proportion as the number of complete months served in that year bears to 12; and

(ii) the allowances (if any) determined by the Commissioner.

(3) In determining a sum payable under this clause, no allowance may be made for an increase in salary granted or payable after the date of the payment.

*Adjustment to Leave Rights based on Prior Service***Adjustment to leave rights based on prior service**

12. If a person becomes an employee within three months after ceasing to be—

(a) an officer or employee of the Crown in right of this State, the Commonwealth or another State or Territory of the Commonwealth; or

(b) an officer or employee of a prescribed class,

then, for the purpose of determining the person's entitlement to recreation leave, sick leave or long service leave, the period of the person's service in that capacity is, to the extent determined by the Commissioner and subject to the conditions (if any) imposed by the Commissioner, to be counted as service or effective service for the purposes of this Act.

Payments on Death

Payment in respect of leave on death

13. Despite any other provisions of this schedule, the Chief Executive of an administrative unit may, if of the opinion that it is appropriate to do so, direct that a sum payable in respect of leave on the death of an employee in the unit be paid to dependants of the employee and not to the personal representative.

Public Sector Management Act 1995

SCHEDULE 3

Promotion and Grievance Appeals Tribunal and Disciplinary Appeals Tribunal

Promotion and Grievance Appeals Tribunal and Disciplinary Appeals Tribunal

1. (1) The following Tribunals are established:

(a) the *Promotion and Grievance Appeals Tribunal*; and

(b) the *Disciplinary Appeals Tribunal*.

(2) Except where the contrary intention appears, the remaining provisions of this schedule apply in relation to both the Promotion and Grievance Appeals Tribunal and the Disciplinary Appeals Tribunal.

Appointment of Presiding Officer and Deputy Presiding Officer

2. (1) The Governor may appoint—

(a) a suitable person to be Presiding Officer of the Tribunal; and

(b) a suitable person to be Deputy Presiding Officer of the Tribunal.

(2) Before the Governor makes an appointment under subclause (1), the Minister must invite representations from recognised organisations on the proposed appointment.

(3) A person is not eligible to be appointed as Presiding Officer or Deputy Presiding Officer of the Disciplinary Appeals Tribunal unless that person is a member or a former member of the judiciary of the State or the Commonwealth.

(4) A person is not eligible to be appointed as Presiding Officer or Deputy Presiding Officer of the Promotion and Grievance Appeals Tribunal—

(a) if the person is an employee; or

(b) unless the person has, in the opinion of the Governor, appropriate knowledge and experience of principles and practices of personnel management in the public sector.

(5) In the absence of the Presiding Officer of the Tribunal, or if there is temporarily no Presiding Officer of the Tribunal, the Deputy Presiding Officer has all the powers and functions of the Presiding Officer.

(6) A Presiding Officer or Deputy Presiding Officer of the Tribunal is to be appointed for a term of office (not exceeding five years) determined by the Governor and specified in the instrument of appointment and, at the end of a term of office, is eligible for reappointment.

(7) A person ceases to be Presiding Officer or Deputy Presiding Officer of the Promotion and Grievance Appeals Tribunal if the person—

(a) completes a term of office and is not reappointed; or

(b) resigns by written notice addressed to the Minister; or

(c) is removed from office by the Governor on the ground of—

(i) misconduct; or

(ii) neglect of duties; or

(iii) incompetence; or

- (iv) mental or physical incapacity to carry out official duties; or
- (d) is convicted of an offence punishable by imprisonment; or
- (e) becomes a member, or a candidate for election as a member, of the Parliament of the State or the Commonwealth.

(8) A person ceases to be Presiding Officer or Deputy Presiding Officer of the Disciplinary Appeals Tribunal if the person—

- (a) completes a term of office and is not reappointed; or
- (b) resigns by written notice addressed to the Minister; or
- (c) ceases to be a member of the judiciary.

(9) A person who ceases to be Presiding Officer or Deputy Presiding Officer of the Tribunal on completion of a term of office, on resignation under this clause, or on retirement or resignation as a member of the judiciary, may continue to act in the relevant office for the purpose of completing the hearing and determination of proceedings part-heard at the completion of the term of office, or at the time of the retirement or resignation.

Panels of nominees

3. (1) For the purpose of constituting the Tribunal there is to be—

- (a) a panel of employees nominated by the Commissioner; and
- (b) a panel of employees nominated by recognised organisations.

(2) The Minister may from time to time invite the recognised organisations to nominate employees to constitute the panel referred to in subclause (1)(b).

(3) If a recognised organisation fails to make a nomination in response to an invitation under subclause (2) within the time allowed in the invitation, the Minister may choose employees instead of nominees of the recognised organisation and any employees so chosen are to be taken to have been nominated to the relevant panel.

(4) A person ceases to be a member of a panel if the person—

- (a) ceases to be an employee; or
- (b) resigns by notice in writing addressed to the Minister; or
- (c) is removed from the panel by the Minister on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties; or
- (d) has completed a period of two years as a member of the panel since being nominated, or last renominated, as a member of the panel, and is not renominated to the panel.

(5) A person who ceases to be a member of a panel on retirement or resignation from the Public Service, on resignation under this clause, or on completion of a period of two years as a member of the panel, may continue as a member of the panel for the purpose of completing the hearing and determination of proceedings of the Tribunal part-heard at the completion of the period as a member, or at the time of the retirement or resignation.

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Constitution of Tribunal and divisions of Tribunal

4. (1) For the purpose of hearing and determining any proceedings, the Tribunal is to be constituted of—

- (a) the Presiding Officer or Deputy Presiding Officer of the Tribunal; and
- (b) a member of the panel of nominees of the Commissioner selected by the Presiding Officer for the purpose of those proceedings; and
- (c) a member of the panel of nominees of recognised organisations selected for the purpose of those proceedings—
 - (i) by the appellant; or
 - (ii) if there are two or more appellants and they do not agree on the selection of a nominee—by the Presiding Officer.

(2) The Presiding Officer, if of the opinion that it is expedient that separate divisions of the Tribunal should be constituted, may direct that the Tribunal sit in separate divisions.

(3) A division of the Tribunal is to be constituted in accordance with subclause (1).

(4) Separate divisions of the Tribunal may sit contemporaneously to hear separate proceedings.

Procedure at meetings of Tribunal

5. (1) The Presiding Officer or Deputy Presiding Officer of the Tribunal must preside at the hearing of any proceedings by the Tribunal.

(2) The Presiding Officer or Deputy Presiding Officer of the Disciplinary Appeals Tribunal must decide any question of law arising in proceedings before that Tribunal but any other decision in which any two or more members of the Tribunal concur is a decision of the Tribunal.

(3) A decision in which any two or more members of the Promotion and Grievance Appeals Tribunal concur is a decision of that Tribunal.

Employee not subject to direction

6. A member of the Tribunal who is an employee is not subject to direction as an employee in respect of the performance of duties as a member of the Tribunal.

Secretary to Tribunal

7. There is to be a Secretary to the Tribunal.

Principles on which Promotion and Grievance Appeals Tribunal is to act

8. In proceedings under this Act, the Promotion and Grievance Appeals Tribunal—

- (a) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Notice of proceedings, etc.

9. (1) The Presiding Officer or the Secretary to the Tribunal must give a party to proceedings before the Tribunal reasonable notice of the time and place at which the Tribunal is to hear those proceedings.

(2) The Commissioner is to be treated as a party to all proceedings before the Tribunal.

(3) A party must be afforded a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(4) If a party does not attend at the time and place fixed by the notice, the Tribunal may hear the proceedings in the absence of that party.

Representation

10. (1) Subject to subclause (2), a person is entitled to appear personally, or by representative, in proceedings before the Tribunal.

(2) A person is not entitled to be represented by a legal practitioner except in proceedings before the Disciplinary Appeals Tribunal.

Powers of Tribunal

11. (1) In the exercise of its powers or functions under this Act, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, or the Secretary to the Tribunal, require the attendance before the Tribunal of any person; and
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, or the Secretary to the Tribunal, require the production of any record or object; and
- (c) require a person to make an oath or affirmation to answer truthfully all questions put by the Tribunal, or a person appearing before the Tribunal; and
- (d) require a person appearing before the Tribunal to answer relevant questions put by a member of the Tribunal or by a person appearing before the Tribunal.

(2) Subject to subclause (3), if a person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons; or
- (b) who has been served with a summons to produce a record or object fails without reasonable excuse to comply with the summons; or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal,

the person is guilty of an offence.

Penalty: Division 6 fine.

(3) A person is not obliged to answer a question or to produce a record or object (other than a record or object of the Government) under this clause if to do so would tend to incriminate the person of an offence.

(4) In the course of proceedings, the Tribunal may—

- (a) receive in evidence a transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from the evidence that it considers proper; or
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

Witness fees

12. A person who appears as a witness in proceedings before the Tribunal is entitled to reimbursement of expenses in accordance with the regulations.

Public Sector Management Act 1995

Reasons for decision

13. At the conclusion of an appeal, the Tribunal must, at the request of a party to the appeal, furnish the party with a statement of the reasons for the Tribunal's decision on the appeal.

Report on proceedings of Tribunal

14. (1) The Presiding Officer of the Tribunal must, within three months after the end of each financial year, report to the Minister on the work of the Tribunal during that financial year.

(2) The Minister must, within 12 sitting days after receipt of a report under this clause, cause copies of the report to be laid before each House of Parliament.

SCHEDULE 4

Repeal and Transitional Provisions

Repeal

1. The *Government Management and Employment Act 1985* is repealed.

Commissioner

2. (1) The person holding office as Commissioner under the repealed Act immediately before the commencement of this Act continues as the Commissioner subject to this Act.

(2) Any entitlement of the Commissioner under the repealed Act to employment in a position in the Public Service at the end of a term of appointment continues to apply subject to any agreement made between the Commissioner and the Minister after the commencement of this Act.

Administrative units continued

3. The administrative units of the Public Service in existence under the repealed Act immediately before the commencement of this Act continue in existence subject to this Act.

Positions continued

4. (1) The Public Service positions in existence under the repealed Act immediately before the commencement of this Act continue in existence as positions in the same administrative units subject to this Act.

(2) A position classified as a senior position under the repealed Act immediately before the commencement of this Act continues as an executive position subject to this Act.

Employees continued in positions

5. The persons employed in the Public Service under the repealed Act immediately before the commencement of this Act continue to be employed in the same positions in the Public Service subject to this Act.

Basis of employment

6. (1) A person employed on probation under the repealed Act immediately before the commencement of this Act continues to be employed on probation subject to this Act.

(2) A person employed in the Public Service on a temporary basis under the repealed Act immediately before the commencement of this Act is to be taken to be employed subject to a contract (which may be modified by agreement) between the employee and the relevant Chief Executive under which the employee's employment may be terminated by the Chief Executive at any time.

(3) A person employed in the Public Service on a casual basis under the repealed Act immediately before the commencement of this Act is to be taken to be employed subject to a contract (which may be modified by agreement) between the employee and the relevant Chief Executive under which—

- (a) the same conditions continue to apply in relation to the employment; and
- (b) the employee's employment may be terminated by the Chief Executive at any time.

(4) A person employed in the Public Service for a fixed term under the repealed Act immediately before the commencement of this Act is to be taken to be employed subject to a contract (which may be modified by agreement) between the employee and the relevant Chief Executive under which—

- (a) the same fixed term continues to apply in relation to the employment; and
- (b) any entitlement of the employee under the repealed Act to employment in another position in the Public Service at the end of the fixed term continues to apply in relation to the employment.

Public Sector Management Act 1995

(5) A person employed in the Public Service for a fixed term and subject to negotiated conditions under the repealed Act immediately before the commencement of this Act is to be taken to be employed subject to a contract (which may be modified by agreement) between the employee and the relevant Chief Executive under which the same fixed term and conditions continue to apply in relation to the employment.

Executives

7. (1) The following provisions apply to an employee occupying a senior position under the repealed Act immediately before the commencement of this Act:

- (a) despite Division 1 of Part 7, the conditions of the person's employment as an executive need not, but may, if the parties so choose, be made subject to a contract under that Division between the employee and the relevant Chief Executive;
- (b) paragraph (a) ceases to apply to the employee—
 - (i) if the employee applies for and is appointed to an executive position; or
 - (ii) once the employee becomes a party to a contract under Division 1 of Part 7 governing the conditions of his or her employment as an executive.

(2) The remuneration and other benefits, or limits of remuneration and other benefits, that may be determined by the Commissioner under Part 6 in relation to executive positions at a particular remuneration level may vary according to whether the conditions of a person's employment in such a position are or are not subject to a contract under Division 1 of Part 7.

Chief Executives

8. The following provisions apply to a Chief Executive occupying a position of Chief Executive Officer of an administrative unit under the repealed Act immediately before the commencement of this Act:

- (a) the conditions of appointment to the Chief Executive's position are to be taken to be subject to a contract under Part 4;
- (b) the contract is to be taken to provide that—
 - (i) the Chief Executive's appointment is for the same term as applied to his or her appointment under the repealed Act; and
 - (ii) the Chief Executive is to meet performance standards as set from time to time by the Premier and the Minister responsible for the administrative unit; and
 - (iii) the Chief Executive is entitled to the same remuneration and other benefits as applied to his or her appointment under the repealed Act; and
 - (iv) any entitlement of the Chief Executive under the repealed Act to subsequent employment in a position in the Public Service continues to apply to his or her appointment in the event that—
 - (A) the Chief Executive is not reappointed at the end of a term of appointment; or
 - (B) the Chief Executive ceases to occupy the position before the end of a term of appointment otherwise than as a result of—
 - resignation or retirement; or
 - termination by the Governor on the ground that the Chief Executive has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily or to the performance standards specified under the contract; or

- termination by the Governor on the ground that the Chief Executive has been guilty of misconduct; or
 - termination by the Governor on the ground that the Chief Executive has been convicted of an offence punishable by imprisonment; or
 - termination by the Governor on the ground that the Chief Executive has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister responsible for the administrative unit; or
 - termination by the Governor on the ground that the Chief Executive has become bankrupt or applied to take the benefit of a law for the relief of insolvent debtors; or
 - termination because the Chief Executive becomes a member of the Parliament of the State or the Commonwealth or is sentenced to imprisonment for an offence;
- (c) the contract is subject to modification by agreement;
- (d) the provisions of Part 4, including the provisions for termination by not less than three months notice and for a resulting termination payment, apply in relation to the Chief Executive;
- (e) the Chief Executive is not entitled to any payment as provided by section 37(1)(d)(ii) of the repealed Act.

Temporary promotional reassignments

9. An employee occupying a position as a result of a temporary promotional reassignment under the repealed Act continues to occupy the position subject to the requirement that the employee must, within three years from the date of the temporary promotional reassignment, be assigned back to the employee's former position or, if that position is no longer available, to a position with a remuneration level that corresponds to the classification level of the employee's former position.

Classification and remuneration levels of positions

10. The classification levels of positions in the Public Service under the repealed Act immediately before the commencement of this Act continue as the remuneration levels of the positions subject to this Act.

Tribunals continued

11. The Disciplinary Appeals Tribunal and the Promotion and Grievance Appeals Tribunal as constituted under the repealed Act immediately before the commencement of this Act continue as the same Tribunals subject to this Act.

Leave rights

12. Subject to this Act, existing and accruing rights in respect of leave of employees continued in employment under this Act remain in full force and effect.

Directions, etc., continued

13. A direction, instruction, determination or decision issued or made under a provision of the repealed Act and in force under the repealed Act immediately before the commencement of this Act continues in force subject to this Act as if issued or made under the corresponding provision of this Act.

Acts Interpretation Act applies

14. The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this schedule, to the repeal effected by this Act.

Public Sector Management Act 1995

Interaction with Superannuation legislation

15. (1) Termination of an employee's employment in the Public Service under Division 4 of Part 8 is to be taken to constitute retrenchment for the purposes of the *Superannuation Act 1988*, the *Superannuation (Benefit Scheme) Act 1992* and the *Southern State Superannuation Act 1994*.

(2) Termination of an employee's employment in the Public Service under Division 5 of Part 8 is to be taken to constitute termination on account of or on the ground of invalidity for the purposes of the *Superannuation Act 1988*, the *Superannuation (Benefit Scheme) Act 1992* and the *Southern State Superannuation Act 1994*.

(3) Termination of employee's employment in the Public Service under Division 6 of Part 8 is to be taken to constitute termination on the ground of incompetence for the purposes of the *Superannuation Act 1988*.

SCHEDULE 5

Amendment of Industrial and Employee Relations Act 1994

The *Industrial and Employee Relations Act 1994* is amended by striking out paragraph (a) of the definition of "employer" in section 4(1) and substituting the following paragraph:

- (a) for public employees—the body or person (not being a Minister) declared by regulation to be the employer of the employees;

Public Sector Management Act 1995

APPENDIX 1

LEGISLATIVE HISTORY

Section 70A:

inserted by 17, 1998, s. 3

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25