

Legislative Council—No 65

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South Australia

Public Sector Bill 2008

A BILL FOR

An Act to make provision for employment, management and governance matters relating to the public sector of the State; to repeal the *Public Sector Management Act 1995*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

2—Commencement

- 5 (1) This Act will come into operation on a day to be fixed by proclamation.
 (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to clause 1 of Schedule 3.

3—Interpretation

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

10 *administrative decision* means—

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

in the exercise or purported exercise of administrative authority;

administrative unit means—

- 15 (a) a department; or
 (b) an attached office;

attached office means an attached office established under Part 6 or an administrative unit continued as an attached office under Schedule 3;

20 *casual employee* means a person engaged on the basis that the employment will continue for not more than 4 weeks or will have hours that are irregular or do not exceed 15 hours in a week;

chief executive of an administrative unit means a person employed or assigned to act as the chief executive of the unit under Part 6;

Commissioner means a person appointed or assigned to act as the Commissioner for Public Sector Employment under Part 4;

department means a department established under Part 6 or continued under Schedule 3;

5 **disciplinary action** means action against an employee of a public sector agency on the ground of the employee's misconduct;

employee of a public sector agency—see subsection (2);

employing authority means a person designated as an employing authority, and empowered to employ persons on behalf of the Crown, under an Act;

10 **employment decision** means an administrative decision relating to the employment of a person, including an administrative decision relating to the engagement, promotion, transfer, remuneration, entitlements or termination of employment of a person and a decision to take disciplinary action against a person;

employment opportunity program—see section 64;

15 **executive employee** means—

- (a) a member of SAES; or
- (b) an employee to whom clause 3(3) of Schedule 3 applies and who is not a member of SAES;

20 **Industrial Relations Commission** means the Industrial Relations Commission of South Australia under the *Fair Work Act 1994*;

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
- 25 (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;

30 **misconduct** means—

- (a) a breach of a disciplinary provision of the public sector code of conduct while in employment as a public sector employee; or
- (b) other misconduct while in employment as a public sector employee,

35 the term includes making a false statement in connection with an application for engagement as a public sector employee and being convicted, while in employment as a public sector employee, of an offence punishable by imprisonment;

public sector means the administrative units of the Public Service and all other public sector agencies and public sector employees;

public sector agency means—

- 40 (a) a Minister; or

- (b) a chief executive of an administrative unit; or
- (c) an administrative unit; or
- (d) an employing authority; or
- (e) any other agency or instrumentality of the Crown; or
- 5 (f) 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

10 (g) a person or body declared under subsection (3) to be a public sector agency; or

(h) a subsidiary of a Minister or a person or body referred to in a preceding paragraph,

but does not include—

15 (i) a person or body declared under an Act not to be part of the Crown or not to be an agency or instrumentality of the Crown; or

(j) a person or body declared under subsection (3) not to be a public sector agency;

20 **public sector code of conduct** means the public sector code of conduct issued by the Commissioner under Part 4;

public sector employee means a chief executive of an administrative unit or an employee in an administrative unit or other employee of a public sector agency;

Public Sector Grievance Review Commission—see Schedule 2;

public sector principles means the principles set out in section 5;

25 **public sector representative organisation** means an association registered under the *Fair Work Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth that represents the interests of public sector employees;

Public Service—see Part 6;

30 **remuneration** means salary, allowances or other monetary benefits payable to an employee;

remuneration level means the remuneration level fixed by a public sector agency for an employee of the agency from a classification structure in accordance with the appropriate determination of the Commissioner under Part 4 or, if there is no applicable determination, has the meaning assigned by the regulations;

35 **SAES** means the South Australian Executive Service constituted under Part 5;

SAES charter—see section 22;

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

40 **subsidiary** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

substantive remuneration level of an employee of a public sector agency means the remuneration level determined by the public sector agency in accordance with the regulations to be the employee's substantive remuneration level;

term employee means an employee engaged for a specified term or for the duration of a specified project;

whole-of-Government objectives means objectives for Government that are approved in Cabinet from time to time and relate to the functions or operations of all or various public sector agencies.

(2) For the purposes of this Act and any other Act or law—

- (a) a person employed in, or for the purposes of, an administrative unit is treated as an employee employed by the chief executive (from time to time) of the unit on behalf of the Crown; and
- (b) a person employed or appointed under another Act, on behalf of the Crown, by an unincorporated public sector agency (including a chief executive of an administrative unit) is treated as an employee of the agency (as constituted from time to time); and
- (c) a change in the chief executive of an administrative unit or the person who constitutes an unincorporated public sector agency will not affect the continuity of employment of a person employed in, or for the purposes of, the unit or by the agency.

(3) The Minister may, by notice 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.

(4) For the purposes of this Act, in determining whether a company is a subsidiary of a public sector agency, any shares held, or powers exercisable by, the agency or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the agency is an instrumentality of the Crown or holds its property on behalf of the Crown.

Part 2—Objects of Act

4—Objects of Act

The objects of this Act are as follows:

- (a) to promote a high performing public sector that—
 - focuses on the delivery of services to the public; and
 - is responsive to Government priorities;
- (b) to establish—
 - general principles to guide public sector operations; and
 - a code of conduct to enforce ethical behaviour and professional integrity in the public sector;
- (c) to ensure the public sector is viewed as an employer of choice;

- (d) to encourage public sector agencies and employees to apply a public sector-wide perspective in the performance of their functions;
- (e) to make performance management and development a priority in the public sector;
- 5 (f) to ensure accountability in the public sector;
- (g) to facilitate the integration of employment and management practices across the public sector;
- (h) to promote uniformity and transparency in governance arrangements for the public sector;
- 10 (i) to provide the framework for the State's Public Service and the effective and fair employment and management of Public Service and other public sector employees.

Part 3—Public sector principles and practices

5—Public sector principles

15 (1) **Public focus**

The public sector is to—

- focus on the provision of services to the public;
 - recognise the diversity of public needs and respond to changing needs;
 - consult and involve the public, where appropriate, to improve services and outcomes on an ongoing basis.
- 20

(2) **Responsiveness**

The public sector is to—

- implement the Government's policies in a timely manner and regardless of the political party forming Government;
 - provide accurate, timely and comprehensive advice;
 - align structures and systems to achieve major strategies while continuing to deliver core services.
- 25

(3) **Collaboration**

The public sector is to—

- ensure there is ongoing collaboration between public sector agencies;
 - focus on whole-of-Government, as well as agency-specific, services and outcomes.
- 30

(4) **Excellence**

The public sector is to—

- provide services with a high level of efficiency and effectiveness;
 - move resources rapidly in response to changing needs;
 - devolve decision-making authority to the lowest appropriate level;
- 35

- manage resources effectively, prudently and in a fully accountable manner;
- maintain and enhance the value of public assets.

(5) Employer of choice

Public sector agencies are to—

- 5 • treat public sector employees fairly, justly and reasonably;
- prevent unlawful discrimination against public sector employees or persons seeking employment in the public sector;
- ensure that public sector employees may give frank advice without fear of reprisal;
- 10 • encourage public sector employees to undertake professional development and to pursue opportunities throughout the public sector;
- set clear objectives for public sector employees and make them known;
- acknowledge employee successes and achievements and address under performance;
- 15 • ensure that public sector employees may join, or choose not to join, organisations that represent their interests;
- consult public sector employees and public sector representative organisations on matters that affect public sector employment.

(6) Ethical behaviour and professional integrity

Public sector employees are to—

- 20 • be honest;
- promptly report and deal with improper conduct;
- avoid conflicts of interest, nepotism and patronage;
- treat the public and public sector employees with respect and courtesy;
- 25 • make decisions and provide advice fairly and without bias, caprice, favouritism or self interest;
- deal with agency information in accordance with law and agency requirements;
- avoid conduct that will reflect adversely on the public sector;
- 30 • accept responsibility for decisions and actions;
- submit to appropriate scrutiny.

(7) Legal requirements

Public sector agencies are to—

- 35 • implement all legislative requirements relevant to the agencies;
- properly administer and keep under review legislation for which the agencies are responsible.

6—Public sector code of conduct

Public sector employees must observe the public sector code of conduct.

7—Public sector performance management and development

- 5
- (1) Each public sector agency must establish and administer effective performance management and development systems in respect of the employees of the agency.
- (2) Performance management and development must be directed towards advancement of the objects of this Act and observance of the public sector principles and code of conduct.
- 10
- (3) Performance management and development must be integrated with the agency's employment practices and inform its employment decisions relating to particular employees.
- (4) Each public sector agency must make information about its performance management and development system available to employees of the agency.

8—Flexible arrangements for transfer within public sector

- 15
- (1) The Premier may, in order to reorganise public sector operations, by notice in the Gazette—
- (a) transfer employees within the public sector; and
- (b) make transitional or ancillary provisions that may be necessary or expedient in the circumstances.
- 20
- (2) A notice under subsection (1) has effect according to its terms and despite any other Act.
- (3) A public sector agency may transfer an employee of the agency to other employment within the public sector, on conditions that maintain the substantive remuneration level of the employee or are agreed to by the employee.
- 25
- (4) A public sector agency is not to transfer employees under this section except with the agreement of any other public sector agency directly affected by the transfer.
- (5) The regulations may prescribe rules relating to the movement of employees within the public sector, including movement initiated by employees.
- 30
- (6) A transfer of an employee under this section does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

9—Agencies to pursue whole-of-Government objectives

- 35
- (1) The Premier may give directions to public sector agencies about the implementation of specified whole-of-Government objectives and the sharing of information and collaboration required for that purpose.
- (2) A direction under this section is not binding on a public sector agency to the extent (if any) to which it would impede or affect the performance of a quasi-judicial or statutorily independent function of the agency.

10—Uniform and transparent governance arrangements

- (1) The Premier may give directions to public sector agencies designed—
- 5 (a) to guide agencies, in preparing proposals and making decisions, on the question of whether a Government activity should be assigned to a Public Service body or some other form of public sector agency; and
- (b) to otherwise deal with matters relating to structural arrangements in the public sector and the formation of new entities.
- (2) The Premier must ensure the publication in the Gazette and on a website determined by the Premier of—
- 10 (a) any directions given by the Premier under subsection (1); and
- (b) information relating to structural arrangements in the public sector and the formation of new entities.

11—Agencies to report annually

- 15 (1) Each public sector agency must, once in each year, present a report on the agency's operations to the agency's Minister.
- (2) Subject to this section, the report must be related to a financial year and must be presented within 3 months after the end of the financial year to which it relates.
- (3) If a public sector agency is under some other statutory obligation to make an annual report to the agency's Minister—
- 20 (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
- 25 (c) the report must be presented within 3 months after the end of the reporting period referred to above.
- (4) A chief executive of an administrative unit is not required to report separately from the unit.
- (5) An employing authority or employee of a public sector agency is not required to report under this section.
- 30 (6) The public sector agency must ensure that the report is accurate, comprehensive, deals with all significant issues affecting the agency and is written and presented in a manner that aids ready comprehension.
- (7) The report must contain the information required by the regulations or by any directions issued by the Premier.
- 35 (8) 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.

- 5 (9) The copy of the report to be laid before Parliament must set out in a prominent position the date on which it was presented to the agency's Minister and if a report is presented to the agency's Minister after the end of the period allowed under this section, the report must be accompanied by a written statement of the reasons for the delay and the statement must be laid before each House of Parliament together with the report.

Part 4—Commissioner for Public Sector Employment

12—Office of Commissioner

- 10 (1) There is to be a Commissioner for Public Sector Employment.
- (2) The Commissioner is to be appointed by the Governor for a term not exceeding 5 years and on conditions determined by the Governor.
- (3) The Commissioner is, at the end of a term of appointment, eligible for reappointment.
- (4) The Commissioner's appointment may be terminated by the Governor on the ground that the Commissioner—
- 15 (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 Commissioner without the consent of the Minister; or
- 20 (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 Commissioner satisfactorily; or
- (f) is incompetent or has neglected the duties of the position.
- (5) The Commissioner's appointment is terminated if the Commissioner—
- 25 (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.
- (6) The Commissioner may resign as Commissioner by not less than 3 months notice in writing to the Minister (unless notice of a shorter period is accepted by the Minister).
- 30 (7) The Minister may assign a public sector employee to act as the Commissioner during any period for which—
- (a) no person is for the time being appointed as the Commissioner; or
- (b) the Commissioner is absent from, or unable to discharge, official duties.

13—Functions of Commissioner

- 35 (1) The Commissioner has the function of advancing the objects of this Act, and promoting observance of the public sector principles, in so far as they relate to public sector employment and for that purpose is to—
- (a) issue the public sector code of conduct (see section 14); and

- (b) issue public sector employment determinations (see section 15); and
- (c) monitor and report to the Minister on observance of the public sector principles, code of conduct and employment determinations; and
- (d) issue guidelines relating to public sector employment matters; and
- 5 (e) provide advice on public sector employment matters at the request of public sector agencies; and
- (f) provide advice on and conduct reviews of public sector employment or industrial relations matters as required by the Premier or the Minister; and
- 10 (g) investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline as required by the Premier or at the request of a public sector agency.

- (2) The Commissioner has any other functions assigned to the Commissioner under this Act or by the Minister.

14—Public sector code of conduct

- 15 (1) The public sector code of conduct may contain—
 - (a) provisions directed towards advancement of the objects of this Act and observance of the public sector principles; and
 - (b) provisions governing the conduct of public sector employees (within and outside their employment) that are expressed to be disciplinary provisions.
- 20 (2) The regulations may preserve employee rights relating to the disclosure of information and the making of public comment and impose other limitations on the contents of the code.
- (3) The Commissioner must keep the code under review and may vary the code, or revoke and substitute the code.
- 25 (4) The code, and any variation of the code, must be published in accordance with the regulations.
- (5) The code, or a variation of the code, has effect from a date fixed by the Commissioner.

15—Public sector employment determinations

- 30 (1) The Commissioner may issue determinations relating to—
 - (a) employment in the Public Service; and
 - (b) public sector employment outside the Public Service that is declared by another Act or the regulations under this Act to be employment to which this section applies.
- 35 (2) A determination by the Commissioner may determine—
 - (a) classification structures in accordance with which remuneration levels must be fixed for employees; and
 - (b) conditions of employment other than remuneration; and
 - (c) processes that must be followed in fixing remuneration levels and other employment conditions; and

- (d) allowances payable to employees and the circumstances in which they are payable; and
 - (e) charges payable by employees in respect of accommodation, services, goods or other benefits provided to them in connection with their employment; and
 - 5 (f) any other matter of a class prescribed by the regulations.
- (3) A determination by the Commissioner—
- (a) may be expressed to apply to all employees or particular employees or classes of employees; and
 - 10 (b) may leave a matter or thing to be determined or dispensed with according to the discretion of a public sector agency or the Commissioner, either generally or in a particular case or class of cases; and
 - (c) may be varied or revoked by subsequent determination; and
 - (d) must be published in accordance with the regulations; and
 - 15 (e) has effect from a date fixed by the Commissioner which may be a date earlier than the date of the determination; and
 - (f) is binding on public sector agencies in relation to public sector employment to which the determination applies.

16—Extent to which Commissioner is subject to Ministerial direction

- (1) Subject to this section, the Commissioner is subject to direction by the Minister.
- 20 (2) No Ministerial direction may be given to the Commissioner requiring that material be included in, or excluded from, a report that is to be laid before Parliament.
- (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.

17—Investigative powers

- (1) The powers conferred by this section may be exercised as reasonably required for a review or investigation referred to in section 13.
- (2) The Commissioner may—
 - (a) by notice in writing—
 - 30 (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 or investigation; and
 - 35 (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 or investigation; and
 - (c) enter and inspect premises occupied by the Crown or a public sector agency.

- (3) A public sector employee who fails to comply with a requirement under this section or hinders the exercise of powers under this section is guilty of misconduct (for the purposes of this and any other Act).
- (4) A former public sector employee who fails to comply with a requirement under this section or hinders the exercise of powers under this section is guilty of an offence. Maximum penalty: \$5 000.
- (5) 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.

18—Power to require statistical information

The Commissioner may, by notice in writing, require public sector agencies to provide statistical reports to the Commissioner relating to public sector employment matters at intervals specified by the Commissioner.

19—Delegation by Commissioner

- (1) The Commissioner may, by instrument in writing, delegate a power or function under this or any other Act—
- (a) to a particular person or committee; or
 - (b) to the person for the time being performing particular duties or holding or acting in a specified 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.

20—Annual report of Commissioner

- (1) The Commissioner must, before 30 September in each year, present a report to the Minister on matters relating to the Commissioner's functions under this Part.
- (2) The report must—
- (a) relate to the financial year preceding the making of the report; and
 - (b) describe the extent of observance of the public sector principles in so far as they relate to public sector employment and measures taken by the Commissioner to promote observance of those principles; and
 - (c) 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.

Part 5—South Australian Executive Service

21—Purpose of SAES

5 SAES is established to provide the public sector with high performing leaders who have a shared sense of purpose and direction and who together will actively engage the public sector in the pursuit of the objects of this Act and the public sector principles.

22—SAES charter

- (1) The Minister must approve a charter for SAES (the *SAES charter*).
- (2) The charter may specify or elaborate on the following:
 - 10 (a) rules governing membership of SAES;
 - (b) functions of SAES;
 - (c) rules and arrangements to facilitate mobility within the public sector of SAES members;
 - (d) employment contracts and performance management and development
15 systems for SAES members;
 - (e) competencies expected of SAES members;
 - (f) any other matter affecting SAES.
- (3) The Minister must ensure that the charter is kept under review and may vary the charter, or revoke and substitute the charter.
- 20 (4) The Minister must cause the charter, or a variation of the charter, to be published within the public sector.

Part 6—Public Service

Division 1—Composition of Public Service

23—Public Service administrative units

- 25 The Public Service consists of administrative units which may take the form of—
- (a) a department; or
 - (b) an attached office.

24—Public Service employees

- 30 (1) Subject to subsection (2), all persons employed by or on behalf of the Crown must be employed in the Public Service under this Act.
- (2) The following persons are excluded from the Public Service:
 - (a) members of the judiciary;
 - (b) police officers;
 - (c) protective security officers appointed under the *Protective Security Act 2007*;

- (d) the Auditor-General;
- (e) the Ombudsman;
- (f) the Police Complaints Authority;
- (g) the Electoral Commissioner and the Deputy Electoral Commissioner;
- 5 (h) 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;
- (i) the Commissioner;
- (j) members of the Public Sector Grievance Review Commission;
- 10 (k) an employee appointed by the employing authority under the *Education Act 1972*;
- (l) an officer or employee appointed by the employing authority under the *Technical and Further Education Act 1975*;
- (m) a person appointed by the Premier or the Minister under Part 8;
- 15 (n) a person who is remunerated solely by fees, allowances or commission;
- (o) an employee who is remunerated at hourly, daily, weekly or piece-work rates of payment (other than a person expressly engaged by writing as a casual employee in the Public Service);
- (p) a person who is excluded under any other Act from the Public Service;
- 20 (q) a person whose terms and conditions of appointment or employment are under another Act to be determined by the Governor, a Minister or any specified person or body;
- (r) a person excluded from the Public Service by proclamation under subsection (3).
- 25 (3) The Governor may, by proclamation—
- (a) exclude a person or class of persons from the Public Service; or
- (b) vary or revoke a proclamation under this subsection.

Division 2—Administrative units

25—Establishment of departments

- 30 The Governor may, by proclamation—
- (a) establish a department and assign a title to it; or
- (b) alter the title of a department; or
- (c) abolish a department.

26—Establishment of attached offices

- 35 The Governor may, by proclamation—
- (a) establish an attached office, assign a title to the office and attach the office to a department or departments; or

- (b) vary the department or departments to which an office is an attached office;
or
- (c) alter the title of an attached office; or
- (d) abolish an attached office.

5 **27—Minister responsible for administrative unit**

- (1) The Governor may, by proclamation, designate the Minister who will be an administrative unit's Minister with responsibility for the unit.
- (2) A proclamation under subsection (1) will have the effect of revoking the previous designation (if any).

10 **Division 3—Chief executives**

28—Administrative units to have chief executives

There is to be a chief executive of each administrative unit.

29—Chief executive to employ persons for administrative unit

- 15 (1) The chief executive of an administrative unit may, on behalf of the Crown, engage persons as employees for the purposes of the unit.
- (2) A person engaged as an employee under subsection (1) becomes an employee in the unit unless excluded from the Public Service under section 24.

30—General duties of chief executive

- 20 (1) The chief executive of a department is responsible to the Premier and the department's Minister for—
 - (a) making an effective contribution to the attainment of the whole-of-Government objectives that are communicated in writing by the Premier or the department's Minister and relate to the functions or operations of the department; and
 - 25 (b) the attainment of the performance objectives set from time to time by the Premier and the department's Minister under the contract relating to the chief executive's employment; and
 - (c) the effective management of the department and the general conduct of its employees.
- 30 (2) The chief executive of an office that is an attached office to a department or departments is responsible—
 - (a) to the Premier and the office's Minister for—
 - 35 (i) making an effective contribution to the attainment of the whole-of-Government objectives that are communicated in writing by the Premier or the office's Minister and relate to the functions or operations of the office; and
 - (ii) the attainment of the performance objectives set from time to time by the Premier and that Minister under the contract relating to the chief executive's employment; and

(b) to the chief executive of the department, or the chief executives of the departments, for—

(i) any specific matters relating to the attainment of whole-of-Government objectives; and

(ii) the effective management of the office and the general conduct of its employees.

31—Duties with respect to objects of Act and public sector principles and code of conduct

The chief executive of an administrative unit is to ensure, as far as practicable, that the objects of this Act are advanced and the public sector principles and code of conduct are observed in the management and day-to-day operations of the unit.

32—Protection of independence in certain matters

The chief executive of an administrative unit is not subject to direction in respect of—

(a) the performance of a quasi-judicial or statutorily independent function of the chief executive; or

(b) the making of an employment decision relating to a particular person.

33—Employment or assignment of persons as chief executives

(1) A chief executive of an administrative unit is to be engaged by the Premier.

(2) The Premier may assign a public sector employee to act as the chief executive of an administrative unit, or an administrative unit's Minister may assign an employee in the unit to act as the chief executive of the unit, during any period for which—

(a) no person is for the time being employed as the chief executive of the unit; or

(b) the chief executive of the unit is absent from, or unable to discharge, official duties.

34—Conditions of chief executive's employment

(1) The employment of a chief executive of an administrative unit is to be subject to a contract made between the chief executive and the Premier in consultation with the unit's Minister.

(2) The contract must specify—

(a) that the chief executive is employed for a term not exceeding 5 years specified in the contract; and

(b) that the chief executive is to meet performance objectives as set from time to time by the Premier and the unit's Minister.

(3) Subject to the regulations, the contract may make any other provision considered appropriate, including provision excluding or modifying a provision of this Act.

(4) The decision whether to engage the chief executive for a further term must be made and notified to the chief executive not less than the prescribed period before the end of the chief executive's current term of employment.

(5) In this section—

prescribed period means—

- (a) if the contract is for a term of 5 years—6 months;
- (b) if the contract is for a term less than 5 years—the period determined by applying to the period of 6 months the proportion that the number of months in the term of the contract bears to 60 months.

35—Transfer of chief executives

- (1) The Premier may transfer a chief executive of an administrative unit to other duties in the public sector, whether or not as chief executive of another administrative unit, on conditions that maintain the remuneration of the chief executive.
- (2) A transfer of a chief executive under this section does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

36—Resignation of chief executive

A chief executive of an administrative unit may resign by not less than 3 months notice in writing to the Premier (unless notice of a shorter period is accepted by the Premier).

37—Termination of chief executive's employment

- (1) The Premier may, by notice in writing, terminate the employment of a chief executive of an administrative unit—
 - (a) on the ground that the chief executive has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (b) on any ground on which the employment of an employee of a public sector agency may be terminated under Part 7 Division 3.
- (2) The Premier may, by notice in writing, terminate the employment of a chief executive of an administrative unit without specifying any grounds.
- (3) Subject to the contract relating to the chief executive's employment, if a chief executive's employment is terminated by the Premier by notice under subsection (2), the chief executive is entitled to a termination payment of an amount equal to 4 months remuneration (at the rate determined for the purposes of this subsection under the chief executive's contract) for each uncompleted year of the chief executive's employment (with a pro rata adjustment in relation to part of a year) up to a maximum of 16 months remuneration.
- (4) The period of notice under subsection (2) must be at least 4 months except where the chief executive is compensated by payment of an amount equal to the remuneration that would have been payable during the balance of the period of 4 months (at the rate determined for the purposes of this subsection under the chief executive's contract).

38—Delegation by chief executive

- (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 performing particular duties or holding or acting in a specified position.

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

5 (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.

10 **39—Provision for statutory office holder to have powers etc of chief executive**

Despite the preceding provisions of this Part, the Minister may, by notice in the Gazette—

15 (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 a chief executive in relation to a specified administrative unit; and

(b) revoke a declaration under this section.

Part 7—Public sector employment

Division 1—Application of Part

40—Public Service and declared public sector employment

20 (1) This Part applies to employment in the Public Service.

(2) This Part also applies to public sector employment outside the Public Service to the extent provided by another Act or the regulations under this Act.

(3) The regulations under this Act may apply or modify the application of this Part or a provision of this Part to public sector employment outside the Public Service.

25 (4) Regulations may be made for the purposes of this section, and will have effect according to their terms, despite the provisions of any other Act.

Division 2—Executives

41—Conditions of executive's employment

30 (1) The employment of a person as an executive employee of a public sector agency is to be subject to a contract made between the employee and the agency.

(2) The contract must specify—

(a) that the employee is employed for a term not exceeding 5 years specified in the contract; and

35 (b) that the employee is to meet performance objectives as set from time to time by the agency.

- (3) Subject to the regulations, the contract may make any other provision considered appropriate, including provision excluding or modifying a provision of this Act.
- (4) The decision whether to engage the employee for a further term must be made and notified to the employee not less than the prescribed period before the end of the employee's current term of employment.
- (5) In this section—

prescribed period means—

- (a) if the contract is for a term of 5 years—6 months;
- (b) if the contract is for a term less than 5 years—the period determined by applying to the period of 6 months the proportion that the number of months in the term of the contract bears to 60 months.

42—Resignation of executives

An executive employee of a public sector agency may resign by not less than 8 weeks notice in writing to the agency (unless notice of a shorter period is accepted by the agency).

43—Termination of executive's employment by notice

- (1) A public sector agency may, by notice in writing, terminate the employment of an executive employee of the agency without specifying any grounds.
- (2) Subject to the contract relating to the employee's employment, if the employee's employment is terminated by the agency by notice under subsection (1), the employee is entitled to a termination payment of an amount equal to 4 months remuneration (at the rate determined for the purposes of this subsection under the employee's contract) for each uncompleted year of the employee's employment (with a pro rata adjustment in relation to part of a year) up to a maximum of 16 months remuneration.
- (3) The period of notice under subsection (1) must be at least 4 months except where the employee is compensated by payment of an amount equal to the remuneration that would have been payable during the balance of the period of 4 months (at the rate determined for the purposes of this subsection under the employee's contract).
- (4) The power conferred by this section is in addition to the power to terminate an executive employee's employment under section 53.

Division 3—General employment processes and conditions

44—Engagement of employees

- (1) This section applies to employees of a public sector agency other than executive employees.
- (2) The basis on which a person is engaged as an employee must be as—
- (a) an ongoing employee; or
- (b) a term employee; or
- (c) a casual employee.

- (3) A person is only to be engaged as a term employee, and the person's engagement is only to be extended, as follows:
- (a) a person may be engaged as a term employee for duties required for the carrying out of a project of a duration not exceeding 5 years and the engagement may be extended (including beyond a total of 5 years) but not so that the term extends beyond the duration of the project;
 - (b) a person may be engaged as a term employee for a specified term for duties required to be performed because of the absence of another employee or while selection processes are conducted in respect of the duties and the engagement may be extended but not so that the term extends beyond the absence of the employee or the completion of the selection processes;
 - (c) a person may be engaged as a term employee for a specified term not exceeding 5 years in cases of a special or exceptional kind prescribed by the regulations and the engagement may be extended but not so that the term extends beyond a total of 5 years;
 - (d) a person may be engaged as a term employee for a specified term not exceeding 2 years for duties that are otherwise of a temporary nature and the engagement may be extended but not so that the term extends beyond a total of 2 years.

(4) The regulations may impose further limits on the exercise of the power to engage or extend the engagement of persons as term or casual employees.

(5) A public sector agency may change the basis on which a person is engaged as an employee at any time with the employee's agreement.

(6) In this section—

absence of an employee from duties means the absence of an employee in circumstances in which the employee may return to the duties;

extend the engagement of a person as a term employee includes re-engage the person as a term employee so as to continue the same or similar duties.

45—Merit-based selection processes

- (1) The following may only occur as a consequence of selection processes conducted on the basis of merit in accordance with the regulations:
- (a) engagement of a person as an employee of a public sector agency;
 - (b) promotion of an employee of a public sector agency to a higher remuneration level;
 - (c) changing the basis on which a person is engaged as an employee of a public sector agency to engagement as an ongoing employee.
- (2) Subsection (1) does not apply—
- (a) to the engagement of a casual employee; or
 - (b) to the promotion of an employee by way of reclassification of the employee's remuneration level in accordance with the regulations; or
 - (c) to the engagement of an employee under an employment opportunity program; or

(d) in circumstances prescribed by the regulations.

46—Assignment of duties

A public sector agency may from time to time determine the duties of a person as an employee of the agency and the place or places at which the duties are to be performed.

47—Probation

- (1) This section does not apply to an executive employee.
- (2) A person who is not already in the employment of a public sector agency is, when engaged as an employee of a public sector agency, at first on probation for 12 months, unless the agency determines that no probation is required or determines a lesser period of probation.
- (3) The employment of an employee who is on probation may be terminated by the public sector agency at any time.
- (4) If an employee has been on probation for at least half of the period of probation, the agency may confirm the employee's employment and, in that event, the employee ceases to be on probation.
- (5) Unless the employee's employment is sooner confirmed or terminated, the employee ceases to be on probation at the end of the period of probation.
- (6) For the purposes of this section, probationary service does not include a period for which the employee has been absent on leave without pay.
- (7) A period of probation that applies to an employee under this section will be taken to be reasonable for the purposes of the *Fair Work Act 1994*.

48—Remuneration

- (1) An employee of a public sector agency is entitled to remuneration in accordance with the employee's remuneration level.
- (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 4 in respect of accommodation, services, goods or any other benefit provided to the employee in connection with his or her employment.

49—Additional duties allowance

- (1) A public sector agency may direct an employee of the agency to perform specified duties in addition to those on which the employee's remuneration level is based.
- (2) The agency may authorise payment to the employee of an allowance appropriate to the duties being performed.

50—Hours of duty and leave

The hours of duty of an employee of a public sector agency and the rights of an employee of a public sector agency to holidays and leave are governed by Schedule 1.

51—Resignation (other than executives)

(1) An employee of a public sector agency, other than an executive employee, may resign from his or her employment by not less than 14 days notice in writing to the agency (unless notice of a shorter period is accepted by the agency).

5 (2) If an employee of a public sector agency—

(a) is absent, without authority, from his or her employment for a period of 10 working days; and

(b) gives no proper written explanation or excuse for the absence to the agency before the end of that period,

10 the employee will, if the agency so determines, be taken to have resigned from his or her employment.

52—Reduction in remuneration level

(1) A public sector agency may reduce the remuneration level of an employee of the agency without the employee's consent on any of the following grounds:

15 (a) the employee is excess to the requirements of the agency at the higher remuneration level;

(b) the employee's physical or mental incapacity to perform duties satisfactorily at the higher remuneration level;

20 (c) the employee's unsatisfactory performance of duties at the higher remuneration level;

(d) the employee's misconduct;

(e) the employee's lack of an essential qualification for performing duties at the higher remuneration level.

25 (2) A public sector agency may not reduce an employee's remuneration level under subsection (1)(a) or (b) unless the agency has made reasonable endeavours to find, but has failed to find, other suitable duties in the agency, or other public sector employment (to which this Part applies), to which the employee might be assigned or transferred on conditions that maintain the employee's substantive remuneration level.

30 (3) If an employee's remuneration level is reduced under subsection (1)(a), the employee is entitled to supplementation of the employee's remuneration in accordance with the relevant provisions of an award or enterprise agreement or, if there is no award or enterprise agreement covering the matter, in accordance with a scheme prescribed by the regulations.

35 (4) The power to reduce an employee's remuneration level under this section includes (without limitation) power—

(a) to reduce an employee's remuneration level to a remuneration level from a classification structure, or different classification structure, fixed by a determination of the Commissioner under Part 4; and

40 (b) to reduce an employee's remuneration level to a remuneration level for a class of employees not subject to a determination of the Commissioner under Part 4; and

- (c) to reduce an employee's remuneration level as a preliminary step to assigning or transferring the employee to other duties in the agency or other public sector employment (whether or not employment to which this Part applies).

53—Termination

- 5 (1) A public sector agency may terminate the employment of an employee of the agency on any of the following grounds:
- (a) the employee is excess to the requirements of the agency;
 - (b) the employee's physical or mental incapacity to perform his or her duties satisfactorily;
 - 10 (c) the employee's unsatisfactory performance of his or her duties;
 - (d) the employee's misconduct;
 - (e) the employee's lack of an essential qualification for performing his or her duties.
- 15 (2) A public sector agency may not terminate the employment of an employee under subsection (1)(a) or (b) unless the agency has made reasonable endeavours to find, but has failed to find, other suitable duties in the agency, or other public sector employment (to which this Part applies), to which the employee might be assigned or transferred on conditions that maintain the employee's substantive remuneration level.

54—Disciplinary action

- 20 (1) A public sector agency may—
- (a) reprimand an employee of the agency; or
 - (b) suspend an employee of the agency from duty without remuneration or accrual of leave rights for a specified period,
- on the ground of the employee's misconduct.

25 **Note—**

Disciplinary action may also take the form of—

- (a) reduction of the remuneration level of an employee under section 52; or
 - (b) termination of an employee's employment under section 53.
- A public sector agency may, in conjunction with taking disciplinary action—
- 30 (a) assign an employee to different duties or to a different place under section 46; or
 - (b) transfer an employee to other employment under section 8.
- (2) Nothing prevents a public sector agency from taking more than 1 form of disciplinary action against an employee for misconduct.

55—Power to require medical examination

- 35 (1) If—
- (a) an employee of a public sector agency is not performing the employee's duties satisfactorily; and

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- (b) it appears to the agency that the employee's unsatisfactory performance may be caused by mental or physical incapacity,

the agency 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 agency.

- (2) If an employee refuses or fails, without reasonable excuse, to submit to a medical examination as required under subsection (1), the public sector agency may suspend the employee from duty (without remuneration and accrual of leave rights) until the employee submits to a medical examination as required by the agency.

- (3) The public sector agency 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 taking any action on the basis of the report, 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 agency with any medical reports obtained by the employee on his or her mental or physical condition.

56—Power to suspend from duty

- (1) A public sector agency may suspend an employee of the agency from duty pending the completion of any investigation, process or proceedings in respect of alleged misconduct by the employee if the agency decides that it is in the public or agency's interest to do so.

- (2) A suspension may be without remuneration if—

- (a) the employee has been charged with an offence punishable by imprisonment; or
- (b) the employee has been given notice setting out details of alleged misconduct on the part of the employee and inviting the employee to show cause why disciplinary action should not be taken against the employee.

- (3) A public sector agency must reimburse remuneration withheld as a result of the suspension of an employee from duty if a court finds the person not guilty of the offence or the agency decides that the person was not guilty of misconduct (or both if the employee has been both charged with the offence and given notice setting out details of alleged misconduct).

- (4) A public sector agency may revoke a suspension at any time.

Division 4—Review of employment decisions

Subdivision 1—Review of dismissal

57—Application of unfair dismissal provisions of Fair Work Act

- 5 (1) Chapter 3 Part 6 of the *Fair Work Act 1994* (**Unfair dismissal**) applies in accordance with its terms to dismissal of a public sector employee.

Note—

10 Consequently, subject to Chapter 3 Part 6 of the *Fair Work Act 1994*, if a public sector agency dismisses an employee, the employee may, before the end of a period of 21 days from the date the dismissal takes effect, apply to the Industrial Relations Commission for relief under that Part.

- 15 (2) If the Industrial Relations Commission, on application under Chapter 3 Part 6 of the *Fair Work Act 1994* (**Unfair dismissal**) by an employee of a public sector agency, orders that the applicant be re-employed but is satisfied, on the application of the public sector agency, that some other disciplinary action is appropriate to deal with misconduct of the employee, the Industrial Relations Commission may make an order that the agency take specified disciplinary action.

Subdivision 2—Review of employment decisions (other than dismissal)

58—Right of review

- 20 (1) This Subdivision provides public sector employees with rights to apply for review of employment decisions.
- (2) This Subdivision does not apply—
- (a) to the dismissal of a public sector employee; or
 - (b) to a decision to select a person who is not a public sector employee as a consequence of selection processes conducted on the basis of merit; or
 - 25 (c) in circumstances prescribed by the regulations.

59—Conciliation

A public sector agency is required to endeavour to resolve its employees' grievances by conciliation (regardless of the fact that employees may apply for review of its decisions).

60—Internal review

- 30 (1) An employee aggrieved by an employment decision of a public sector agency directly affecting the employee may apply for an internal review of the decision by the public sector agency.
- (2) The regulations may make provision relating to—
- 35 (a) applications for internal reviews by agencies; and
 - (b) the conduct of internal reviews by agencies.

61—External review

(1) An employee aggrieved by an employment decision of a public sector agency directly affecting the employee may apply to the appropriate review body for a review of the decision.

5 (2) Subject to the regulations, an employee may not apply to the appropriate review body for a review of a decision unless—

(a) the employee has applied for an internal review of the decision by the agency; and

10 (b) the internal review has been completed, or has not commenced, as required by the regulations.

(3) The appropriate review body may decline to review a decision—

(a) if the application for review is frivolous or vexatious; or

(b) if the applicant for review has made a complaint under the *Equal Opportunity Act 1984* in respect of the decision; or

15 (c) in circumstances prescribed by the regulations.

(4) On a review, the appropriate review body—

(a) must examine the decision on the evidence or material before the agency, but may, as it thinks fit, allow further evidence or material to be presented to it; and

20 (b) must determine whether, on the balance of probabilities, the decision is harsh, unjust or unreasonable; and

(c) may—

(i) affirm the decision;

25 (ii) in the case of a prescribed decision—rescind the decision and substitute the decision with a decision that the body considers appropriate (including a decision restoring any entitlements lost up to the time of the decision);

(iii) remit matters to the agency for consideration or further consideration in accordance with any directions or recommendations of the body.

30 (5) The parties to a review are not to be legally represented unless the appropriate review body considers that either party would be at a significant disadvantage in the absence of legal representation.

(6) The regulations may make provision relating to—

(a) applications for reviews under this section; and

35 (b) the conduct of reviews under this section.

(7) This section does not apply in circumstances prescribed by the regulations.

(8) In this section—

appropriate review body means—

(a) in the case of a prescribed decision—the Industrial Relations Commission; or

(b) in any other case—the Public Sector Grievance Review Commission;

prescribed decision means—

- (a) a decision to take disciplinary action; or
- (b) any decision to reduce an employee's remuneration level; or
- (c) a decision to transfer an employee, or to assign an employee to different duties or a different place, made in conjunction with a decision to take disciplinary action or reduce an employee's remuneration level.

62—Special provision for review of selection processes

Despite any other provision of this Subdivision, a review of a decision to select an employee as a consequence of selection processes conducted on the basis of merit must be limited to considering whether the processes should be recommenced from the beginning or some later stage on the ground that—

- (a) the employee was not eligible for appointment; or
- (b) the processes were affected by nepotism or patronage or were otherwise not properly based on assessment of the respective merits of the applicants; or
- (c) there was some other serious irregularity in the processes.

63—Application of *Fair Work Act 1994*

- (1) The regulations may modify the application of the *Fair Work Act 1994* to proceedings of the Industrial Relations Commission under this Subdivision.
- (2) Section 194(2) of the *Fair Work Act 1994* does not apply to a grievance about an employment decision affecting a public sector employee.

Part 8—Miscellaneous

64—Employment opportunity programs

- (1) The Minister may, by notice in the Gazette—
 - (a) declare an employment program designed to—
 - (i) ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class; or
 - (ii) to assist persons of a defined class to gain employment, training or experience in the public sector; or
 - (iii) to assist persons of a defined class employed in the public sector to pursue careers in the public sector as effectively as persons not of that class,to be an employment opportunity program; or
 - (b) vary or revoke a notice under this subsection.
- (2) Any special provision in an employment opportunity program will, despite the provisions of this or any other Act, be lawful.

65—Re-engagement of employee who resigns to contest election

(1) If—

- 5
- (a) an employee of a public sector agency resigns from his or her employment 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 1 month before the issue of the writ for the election; and
 - (c) the former employee is not elected and applies to be re-engaged as an employee of the agency within 2 months after the return of the writ for the election,
- 10

the employee must be re-engaged as an employee of the agency without probation and with the same remuneration level as before his or her resignation.

(2) For the purpose of determining the rights of an employee who is re-engaged as an employee under this section, the period between the person's resignation and re-engagement is to be taken to be leave without pay.

15

66—Multiple appointments etc

(1) The Commissioner may approve arrangements under which—

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- (a) a person may be employed in the Public Service or elsewhere in the public sector for a period during which the person remains in some other employment outside the Public Service or the public sector; or
 - (b) a person who is employed in the Public Service or elsewhere in the public sector may remain in that employment for a period during which the person is engaged in some other employment outside the Public Service or the public sector,
- 25

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

(2) 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 first mentioned office or to have been invalidly appointed to the further office because—

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- (a) the potential exists or has existed for the duties of the offices to be in conflict; or
- (b) the duties of either 1 or more of the offices require, by implication, the person's full time attention.

(3) The Minister may give directions in relation to an actual or potential conflict of 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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(4) In this section—

office means—

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- (a) a public office; or

- (b) any employment in the public sector.

67—Payment of remuneration on death

On the death of an employee of a public sector agency, the agency 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.

68—Reduction in remuneration arising from refusal or failure to carry out duties

- (1) If an employee of a public sector agency is absent from his or her duties without lawful authority, the agency may direct that the employee not be paid remuneration for the period of the absence.
- (2) If, in consequence or furtherance of industrial action, an employee of a public sector agency refuses or fails to carry out duties that the employee has been lawfully instructed to perform, the agency may direct that the employee not be paid remuneration for any day (or part of a day) on which the employee refuses or fails to carry out those duties.
- (3) A direction under subsection (2) is effective to prevent payment of remuneration 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.
- (4) The power conferred by this section is in addition to the power to take action to deal with the employee's misconduct under Part 7 Division 3.

69—Action where overpayment or liability to Crown

- (1) A public sector agency may make deductions from the remuneration of an employee, or from an amount payable in respect of a person's employment, in order to recover an amount overpaid through an administrative error.
- (2) If a public sector employee or former public sector employee has incurred a liability to a public sector agency or the Crown in connection with the person's employment or former employment as a public sector employee, an amount that would otherwise be required to be paid to the person in respect of his or her employment may be applied in or towards satisfaction of the liability.
- (3) Without limiting subsection (1) or (2), a deduction may be made or an amount may be withheld pending the determination of proceedings relating to the person's liability to the agency or the Crown.

70—Employment of Ministerial staff

- (1) The Premier may engage a person as a member of a Minister's personal staff on conditions determined by the Premier.
- (2) A person employed under this section is not an employee in the Public Service.
- (3) The number of persons employed under this section must not at any time exceed 1% of all employees in the Public Service.

- (4) Employment as a member of 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 employment.
- (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 the engagement of persons as members of 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 employment 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 its presentation to the Premier; and
 - (b) be laid before each House of Parliament within 12 sitting days after preparation of the report.

71—Appointment of other special staff

- (1) The Minister may engage—
- (a) a person as a member of the staff of a Member of Parliament; or
 - (b) a person in employment of a class prescribed by the regulations, on conditions determined by the Minister.
- (2) A person employed under this section is not an employee in the Public Service.

72—Operation of *Fair Work Act 1994*

A determination, direction or decision under this Act affecting remuneration or conditions of employment is subject to an award, determination or enterprise agreement in force under the *Fair Work Act 1994*.

73—Immunity relating to official powers or functions

- (1) This section applies to—
- (a) a public official; and
 - (b) a public sector employee; and
 - (c) a person to whom a function or power of a public sector agency, public sector employee or public official is delegated in accordance with an Act; and
 - (d) a person who is, in accordance with an Act, assisting a public sector employee or public official in the enforcement of the Act.
- (2) Subject to this Act, no civil liability attaches to a person to whom this section applies for an act or omission in the exercise or purported exercise of official powers or functions.

(3) An action that would, but for subsection (2), lie against a person lies instead against the Crown, except in the case of a member of a body corporate or the governing body of a body corporate or a person employed or appointed by, or a delegate of, a body corporate, in which case it lies instead against the body corporate.

5 (4) This section does not prejudice rights of action of the Crown or a public sector agency in respect of an act or omission of a person not in good faith.

(5) This section does not apply to a person if section 22 or the Schedule clause 11 of the *Public Corporations Act 1993* applies to the person.

(6) In this section—

10 **public official** means a person appointed by the Governor or a public sector agency to an office (including to be a member of a body, whether incorporated or unincorporated).

74—Delegation by Minister

15 (1) The Minister may, by instrument in writing, delegate a power or function under this Act—

(a) to a particular person; or

(b) to the person for the time being performing particular duties or holding or acting in a specified position.

20 (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

25 (c) is revocable at will.

75—Temporary exercise of statutory powers

(1) If—

(a) a statutory power or function is exercisable by an employee of a public sector agency; and

30 (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 public sector agency or some other employee nominated by the public sector agency by instrument in writing.

35 (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.

76—Designation of positions

40 A public sector agency may, but is not required to, designate specified duties in the employment of the agency as a position with a specified title.

77—Obsolete references

If the title of a public sector agency or position is altered, a reference in an Act or statutory instrument to the agency or position under an earlier title is, unless the contrary intention appears, to be read as a reference to the agency or position under its new title.

78—Evidentiary provision

- (1) A certificate signed by the Minister certifying—
 - (a) as to the existence of a specified public sector agency at a specified time or over a specified period (including a time or period before the commencement of this Act); or
 - (b) that a specified person was performing specified duties or the holder of or acting in a specified office or position in the public sector at a specified time or over a specified period (including a time or period before the commencement of this Act),

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

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

- (3) In this section—

public sector agency and the *public sector* include a department or administrative unit under a repealed Act.

79—Service of notices

A notice or document required or authorised by this Act to be given to or served on a public sector 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.

80—Regulations

- (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 public sector agency, either generally or in a particular case or class of cases; and
 - (c) may exempt (conditionally or unconditionally) a person or class of persons from specified provisions of this Act; and
 - (d) may prescribe fines (not exceeding \$2 500) for offences against the regulations.

Schedule 1—Leave and working arrangements

Part 1—Flexible leave and working arrangements

1—Flexible leave and working arrangements

- 5 (1) The Commissioner may make determinations relating to leave and working arrangements—
- (a) to enable public sector employees to move within the public sector, gain other work experience and undertake professional development; and
 - (b) to assist public sector employees to balance work demands and family and personal pursuits and responsibilities; and
 - 10 (c) for other purposes.
- (2) Without limiting subclause (1), the Commissioner may determine—
- (a) arrangements under which public sector employees may be granted leave (with pay or without pay), or have an entitlement to be granted leave (with pay or without pay), including—
 - 15 (i) study leave and leave for a secondment; and
 - (ii) parental leave; and
 - (iii) family carer's leave; and
 - (iv) leave to fulfill community responsibilities; and
 - (b) voluntary flexible working arrangements for public sector employees, including—
 - 20 (i) part-time employment; and
 - (ii) flexible working hours; and
 - (iii) purchased leave; and
 - (iv) compressed working weeks.
- 25 (3) Regulations may be made relating to the matters referred to in subclauses (1) and (2) and the making of determinations by the Commissioner relating to those matters.
- (4) The regulations and determinations of the Commissioner —
- (a) may modify other provisions of this Schedule relating to hours of attendance, leave entitlements or the calculation of service and effective service; and
 - 30 (b) will have effect according to their terms.

Part 2—Hours of attendance

2—Hours of attendance

- 35 (1) Subject to this Schedule and any direction of the agency, an employee of a public sector agency 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 agency.

(2) A public sector agency may, at the request and with the consent of an employee of the agency, determine that the duties of the employee be performed under flexible working arrangements, 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 agency.

5 (3) This clause does not apply to a casual employee.

Part 3—Holidays and closure of offices

3—Holidays

(1) Subject to subclause (2), the following days are to be observed as holidays in the employment of a public sector agency:

- 10 (a) all public holidays;
- (b) any other days declared by proclamation to be holidays in that employment.

(2) A public sector agency may require employees of the agency to attend for duty on a holiday.

4—Closure of workplaces etc

15 (1) The Minister may direct—

(a) that all or any of the workplaces of employees of a public sector agency be closed; and

(b) that specified classes of employees be not required to work, on a specified day or days.

20 (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.

25 (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.

30 (4) An employee who is not required to work on a day by reason of a direction under subclause (1) may, if the employee would, but for subclause (2), have been entitled to be absent from the employee's place of employment under flexible working arrangements adopted by the agency, be absent on that basis, and, in that event, the employee is to be taken not to have been granted recreation leave on that day.

Part 4—Recreation leave

5—Recreation leave

35 (1) Subject to this Schedule, the regulations and any determinations of the Commissioner, an employee of a public sector agency is entitled to $1\frac{2}{3}$ days recreation leave for each completed month of the employee's service.

(2) A public sector agency may, subject to any determinations of the Commissioner, increase the entitlement to recreation leave of a particular employee or employees of a particular class.

- (3) Recreation leave must be granted by a public sector agency in accordance with the regulations and any determinations of the Commissioner.
- (4) Recreation leave may, subject to the regulations and any determinations of the Commissioner, be taken in anticipation of the leave accruing to the employee.
- 5 (5) 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 agency otherwise determines, be paid a sum calculated in accordance with the determinations of the Commissioner as being the monetary value of the leave.
- 10 (6) If an employee of a public sector agency has taken recreation leave before the entitlement to the leave accrues to the employee and the employee ceases for any reason to be an employee then, unless the agency otherwise determines, a sum equal to the sum paid to the employee in respect of that leave is payable to the public sector agency as a debt by the employee.
- 15 (7) If an employee of a public sector agency has been given a direction to take accrued recreation leave within a specified period but has not done so, the public sector agency may give the employee written notice cancelling the entitlement of the employee to specified accrued recreation leave.
- (8) This clause does not apply to a casual employee.

20 **Part 5—Sick leave**

6—Sick leave etc

- (1) An employee of a public sector agency is, subject to this clause and the regulations, entitled to take sick leave not exceeding the amount of sick leave standing to the credit of the employee.
- 25 (2) Subject to this Schedule, the regulations and any determinations of the Commissioner, an employee must be credited with 1 days sick leave for each completed month of the employee's service.
- (3) The agency may, subject to any determinations of the Commissioner, in appropriate cases, increase the entitlement to sick leave of a particular employee or employees of a particular class.
- 30 (4) Sick leave may, subject to the regulations and any determinations of the Commissioner, be taken in anticipation of the leave accruing to the employee.
- (5) The agency may, subject to any determinations of the Commissioner, 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.
- 35 (6) If an employee of a public sector agency has taken sick leave before the entitlement to the leave accrues to the employee and the employee ceases for any reason to be an employee then, unless the agency otherwise determines, a sum equal to the sum paid to the employee in respect of that leave is payable to the public sector agency as a debt by the employee.
- 40 (7) This clause does not apply to a casual employee.

Part 6—Long service leave

7—Long service leave

(1) Subject to this Schedule, the regulations and any determinations of the Commissioner, an employee will accrue an entitlement to long service leave at the rate of—

5 (a) 9 calendar days for each completed year of effective service for the first 15 years of service; and

(b) 15 calendar days for each subsequent completed year of effective service.

(2) Despite subclause (1)—

10 (a) an employee does not become entitled to take long service leave, or receive a payment in lieu of long service leave, before completing 7 years of effective service; and

15 (b) the Commissioner may make a determination under which accrual of the entitlement referred to in subclause (1) will be calculated instead as a number of working hours long service leave for each completed month of effective service and an employee will be granted long service leave as a number of working hours.

(3) A public sector agency may, subject to any determinations of the Commissioner, increase the entitlement to long service leave of a particular employee or employees of a particular class.

20 (4) Long service leave must be granted by a public sector agency in accordance with the regulations and any determinations of the Commissioner.

(5) In this clause—

effective service of an employee of a public sector agency means the period of the employee's continuous service in the employment of the public sector agency.

25 8—Salary or wages and allowances while on long service leave

(1) Subject to this clause, the regulations and any determinations of the Commissioner, the salary or wages to which an employee is entitled during long service leave is the salary or wages appropriate to the employee's remuneration level during that leave.

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

9—Payment in lieu of long service leave

35 (1) The Minister may, on application by a chief executive, and a public sector agency may, on application by an employee of the agency, authorise that the chief executive or employee 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 or wages and allowances (if any) that the person would have been entitled to receive during such a period of leave.

(2) If an employee of a public sector agency who is entitled to long service leave dies or ceases for any reason to be an employee of the agency, then—

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

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

must be paid the salary or wages that would have been payable if the long service leave had commenced on the day of cessation of service.

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

Part 7—Adjustment to leave rights based on prior service

10—Adjustment to leave rights based on prior service

If a person becomes an employee of a public sector agency within 3 months after ceasing to be—

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

Part 8—Payments on death

11—Payment in respect of leave on death

Despite any other provisions of this Schedule, a public sector agency 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 of the agency be paid to dependants of the employee and not to the personal representative.

Schedule 2—Public Sector Grievance Review Commission

1—Establishment and membership of Commission

- (1) There is to be a Public Sector Grievance Review Commission.
- (2) The Commission is to consist of a presiding commissioner appointed by the Governor and assistant commissioners appointed by the Governor.
- (3) A commissioner is to be appointed for a term not exceeding 5 years and is, at the end of a term of appointment, eligible for reappointment.
- (4) A commissioner is to be appointed on conditions determined by the Governor.
- (5) A 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 become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or

(d) has, because of mental or physical incapacity, failed to carry out duties of the commissioner satisfactorily; or

(e) is incompetent or has neglected the duties of the position.

(6) A commissioner may resign by notice in writing to the Minister.

5 **2—Constitution of Commission for proceedings**

(1) The Commission will, for the purposes of hearing and determining proceedings, be constituted of the presiding commissioner or, at the direction of the presiding commissioner, an assistant commissioner.

(2) Commissioners may sit contemporaneously to hear separate proceedings.

10 (3) A person who ceases to hold office as a commissioner may nevertheless continue to act in the office for the purpose of completing the hearing and determination of proceedings part-heard by the person when he or she ceased to hold office.

3—Powers of Commission

(1) A commissioner may—

15 (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

20 (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; 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.

25 (2) A public sector employee who fails to comply with a requirement under this section or hinders the exercise of powers under this section is guilty of misconduct (for the purposes of this and any other Act).

(3) A former public sector employee who fails to comply with a requirement under this section or hinders the exercise of powers under this section is guilty of an offence.

Maximum penalty: \$5 000.

30 (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.

Schedule 3—Repeal and transitional provisions

Part 1—Repeal of *Public Sector Management Act 1995*

1—Repeal of Act

35 The *Public Sector Management Act 1995* is repealed.

Part 2—Transitional provisions

2—Administrative units continued as departments or attached offices

- (1) At the commencement of this Act, the Public Service will consist of the administrative units continued as departments or attached offices by proclamation.
- 5 (2) The Governor may make a proclamation for the purposes of subclause (1).
- (3) A proclamation under this clause may assign the same or a new title to a department or attached office and, in the case of an attached office, attach the office to a department or departments.

3—Public Service employees continue in same employment

- 10 (1) A person (including a chief executive) employed in an administrative unit of the Public Service under the *Public Sector Management Act 1995* immediately before the commencement of this Act continues to be employed in the same administrative unit with the same duties, subject to this Act.
- 15 (2) A person (including a chief executive but excluding an executive within the meaning of the *Public Sector Management Act 1995*) employed under a contract under the *Public Sector Management Act 1995* immediately before the commencement of this Act continues to be employed on the same contractual terms, subject to this Act.
- 20 (3) The following provisions apply to an employee who was an executive within the meaning of the *Public Sector Management Act 1995* immediately before the commencement of this clause while the person remains employed in the public sector on a basis that is determined by the Commissioner to result in the employee being an executive employee:
 - 25 (a) despite Part 7 Division 2, the conditions of the person's employment as an executive employee need not be made subject to a contract under that Division;
 - (b) if the employee's conditions of employment were not, immediately before the commencement of this clause, subject to a contract under Part 7 Division 1 of the *Public Sector Management Act 1995*—
 - 30 (i) Part 7 Division 2 of this Act does not apply to the employee unless the employee becomes party to a contract of the kind required under Part 7 Division 2 of this Act; and
 - (ii) until the employee becomes party to such a contract, the employee may resign by not less than 3 months notice in writing to the agency (unless notice of a shorter period is accepted by the agency);
 - 35 (c) if, immediately before the commencement of this clause, the employee's conditions of employment were subject to a contract under Part 7 Division 1 of the *Public Sector Management Act 1995* and the employee was, if not reappointed, entitled to some other appointment in the Public Service on an ongoing basis—
 - 40 (i) the employee continues to be employed on the same contractual terms and to have that same entitlement, subject to this Act; and

(ii) Part 7 Division 2 of this Act does not apply to the employee unless the employee becomes party to a contract of the kind required under Part 7 Division 2 of this Act; and

(iii) until the employee becomes party to such a contract, the employee may resign by not less than 3 months notice in writing to the agency (unless notice of a shorter period is accepted by the agency);

(d) if, immediately before the commencement of this clause, the employee's conditions of employment were subject to a contract under Part 7 Division 1 of the *Public Sector Management Act 1995* (the **former Act contract**) and the employee was, if not reappointed, entitled to some other appointment in the Public Service on a contractual basis—

(i) the employee continues to be employed on the same contractual terms and to have that same entitlement, subject to this Act; and

(ii) Part 7 Division 2 of this Act does not apply to the employee for the balance of the term of the former Act contract and for the term of the contract relating to any such other appointment (in the event of such other appointment having been made) unless the employee becomes party to a contract of the kind required under Part 7 Division 2 of this Act;

(e) if, immediately before the commencement of this clause, the employee's conditions of employment were subject to a contract under Part 7 Division 1 of the *Public Sector Management Act 1995* (the **former Act contract**) and the employee was not, if not reappointed, entitled to some other appointment in the Public Service—

(i) the employee continues to be employed on the same contractual terms, subject to this Act; and

(ii) Part 7 Division 2 of this Act does not apply to the employee for the balance of the term of the former Act contract unless the employee becomes party to a contract of the kind required under Part 7 Division 2 of this Act;

(f) in the circumstances described in paragraphs (d) and (e), until the employee becomes party to a contract of the kind required under Part 7 Division 2 of this Act, the following provisions apply:

A—Conditions of executive's employment

(1) The employment of a person as an executive employee of a public sector agency is to be subject to a contract made between the employee and the agency.

(2) The contract must specify—

(a) that the employee is employed for a term not exceeding 5 years specified in the contract; and

(b) that the employee is to meet performance objectives as set from time to time by the agency.

- 5
- (3) Subject to the regulations, the contract may make any other provision considered appropriate, including provision excluding or modifying a provision of this Act.
 - (4) The decision whether to engage the employee for a further term must be made and notified to the employee not less than 3 months before the end of the employee's current term of employment.

B—Resignation of executives

10 An executive employee of a public sector agency may resign by not less than 3 months notice in writing to the agency (unless notice of a shorter period is accepted by the agency).

C—Termination of executive's employment by notice

- 15
- (1) A public sector agency may, by notice in writing, terminate the employment of an executive employee of the agency without specifying any grounds.
 - (2) Subject to the contract relating to the employee's employment, if the employee's employment is terminated by the agency by notice under subclause (1), the employee is entitled to a termination payment of an amount equal to 3 months remuneration (at the rate determined for the purpose under the employee's contract) for each uncompleted year of the employee's employment (with a pro rata adjustment in relation to part of a year) up to a maximum of 12 months remuneration.
 - (3) The period of notice under subclause (1) must be at least 3 months except where the employee is compensated by payment of an amount equal to the remuneration that would have been payable during the balance of the period of 3 months (at the rate determined for the purpose under the employee's contract).
 - (4) If the employee's employment is terminated by notice under subclause (1) and the employee was, immediately before the commencement of this clause, entitled under section 36(3)(a) of the *Public Sector Management Act 1995* to some other appointment in the Public Service in the event of termination of the employee's employment by notice under section 36(2) of the *Public Sector Management Act 1995*—
 - (a) subclauses (2) and (3) do not apply; and
 - (b) section 36(3) and (5) of the *Public Sector Management Act 1995* apply as if those provisions continued in force.
 - (5) The power conferred by this clause is in addition to the power to terminate an executive employee's employment under section 53 of this Act.
- 45

4—Probation continued

A person employed on probation under the *Public Sector Management Act 1995* immediately before the commencement of this Act continues to be employed on probation subject to this Act.

5—Remuneration levels

The remuneration levels of positions occupied by employees in the Public Service under the *Public Sector Management Act 1995* immediately before the commencement of this Act continue as the remuneration levels of the employees subject to this Act.

6—Leave rights

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.

7—Commissioner

The person appointed as Commissioner for Public Employment under the *Public Sector Management Act 1995* immediately before the commencement of this Act continues as the Commissioner, on the same conditions of appointment, subject to this Act.

8—Equal employment opportunity programs

An equal employment opportunity program under section 67 of the *Public Sector Management Act 1995* immediately before the commencement of this Act continues as an employment opportunity program subject to this Act.

9—Determinations and decisions continued

A determination or decision made under a provision of the *Public Sector Management Act 1995* and in force under the *Public Sector Management Act 1995* immediately before the commencement of this Act continues in force subject to this Act as if made under the corresponding provision of this Act.