

(Reprint No. 2)

SOUTH AUSTRALIA

GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT, 1985

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 8 April 1993.

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

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

Section

1. Short title
2. Commencement
3. Repeal of Public Service Act, 1967
4. Interpretation

PART II

ADMINISTRATION OF THE PUBLIC SECTOR

DIVISION I—GENERAL PRINCIPLES

5. General principles of public administration
6. General principles of personnel management
7. General principles of conduct

DIVISION II—REPORTING OBLIGATIONS

8. Annual report

DIVISION III—THE GOVERNMENT MANAGEMENT BOARD

9. Establishment of the Board
10. Constitution of the Board
11. Conditions of office
12. Procedure at meetings of the Board
13. Proceedings may be conducted in public or private
14. Validity of acts of the Board
15. Conflict of interest
16. Extent to which Board is subject to Ministerial direction
17. The functions of the Board
18. General policy directions
19. Delegation by Board
20. Annual report

PART III

THE PUBLIC SERVICE

DIVISION I—THE STRUCTURE OF THE PUBLIC SERVICE

21. The structure of the Public Service
22. Administrative unit comprised of unattached positions

DIVISION II—THE COMMISSIONER FOR PUBLIC EMPLOYMENT

23. Establishment of office of Commissioner for Public Employment
24. Conditions of appointment of the Commissioner
25. Appointment of deputy of Commissioner
26. Commissioner to disclose pecuniary interests
27. Conflict of interest
28. Extent to which Commissioner is subject to Ministerial direction
29. Functions of the Commissioner
30. Commissioner may issue instructions
31. Reviews of personnel management
32. Investigative powers of Commissioner
33. Delegation by the Commissioner
34. Right of recognized organizations to make representations to Commissioner on certain matters
35. Annual report

DIVISION III—CHIEF EXECUTIVE OFFICERS

36. Each administrative unit to have a Chief Executive Officer
37. Special provisions with regard to appointment of Chief Executive Officer
38. Provision for statutory office holder to have powers, etc., of Chief Executive Officer
39. Extent to which Chief Executive Officer is subject to Ministerial direction
40. Chief Executive Officer responsible to Minister
41. Functions of Chief Executive Officer
42. Right of recognized organizations to make representations to Chief Executive Officers on certain matters
43. Delegation
44. Governor may withdraw powers of a Chief Executive Officer

DIVISION IV—CREATION AND CLASSIFICATION OF POSITIONS IN THE PUBLIC SERVICE

- 45. Creation and abolition of positions in the Public Service
- 46. Reclassification of positions
- 47. Classifications and reclassifications to be published in *Gazette*
- 48. Review of classifications

DIVISION V—EMPLOYMENT IN THE PUBLIC SERVICE

Appointments and Filling of Positions

- 49. Appointment to the Public Service
- 50. Basis of appointment to the Public Service
- 51. Filling of positions through selection process
- 52. Re-assignment

Promotion Appeals

- 53. Promotion appeals

Remuneration

- 54. Remuneration of employees
- 55. Additional duties allowance
- 56. Special allowances and deductions
- 57. Reduction in salary arising from refusal or failure to carry out duties lawfully assigned

Hours of Duty, etc.

- 58. Hours of duty, etc.

Excess Employees

- 59. Excess employees

Mental or Physical Incapacity

- 60. Procedure to be followed where employee is thought to be incapacitated by mental or physical illness or disability

Resignation

- 61. Resignation of employee
- 62. Re-appointment of employee who resigns to contest an election

Age of Retirement

- 63. Retirement from the Public Service

Grievance Appeals

- 64. Grievance appeals

DIVISION VI—CONDUCT AND DISCIPLINE OF EMPLOYEES

Pecuniary Interests

- 65. Certain employees to disclose pecuniary interests
- 66. All employees to disclose interests in conflict with their duties

Discipline

- 67. General rules of conduct

Disciplinary Action

- 68. Inquiries by disciplinary authority
- 69. Suspension of employee
- 70. Disciplinary action on conviction of offence
- 71. Governor may transfer or dismiss on recommendation under this Division

Disciplinary Appeals

- 72. Disciplinary appeals

DIVISION VII—MISCELLANEOUS

- 73. Preservation of powers of Governor to appoint, transfer, and dismiss
- 74. Discharge of State functions by Commonwealth employees and *vice versa*
- 75. Extension of operation of certain provisions of Act
- 76. Recognized organizations
- 77. Operation of Industrial Conciliation and Arbitration Act in relation to this Act
- 78. Immunity from liability
- 79. Temporary exercise of statutory functions by persons other than those to whom they are assigned

- 80. Obsolete references
- 81. Evidentiary provision
- 82. War Service (Preference in Employment) Act, 1943
- 83. Service of notices
- 84. Summary proceedings
- 85. Regulations

SCHEDULES

GOVERNMENT MANAGEMENT AND EMPLOYMENT ACT, 1985

being

Government Management and Employment Act, 1985, No. 117 of 1985 [Assented to 10 November 1985]¹

as amended by

Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]²
Government Management and Employment (Miscellaneous) Amendment Act 1993 No. 20 of 1993 [Assented to 8 April 1993]³

An Act to provide for the efficient and effective management of the public sector and the provision of public services of the highest practicable standard; to provide for the proper supervision and review of management structures and practices in the public sector; to provide for and regulate employment in the Public Service; to repeal the Public Service Act, 1967; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Government Management and Employment Act, 1985*.

Commencement

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

Repeal of Public Service Act, 1967

3. The *Public Service Act, 1967*, is repealed.

Interpretation

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

¹Came into operation 1 July 1986: *Gaz.* 26 June 1986, p. 1636.

²Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

³S. 21 came into operation 1 July 1986: s. 2(2); remainder of Act had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“administrative act” means an act or decision, or failure or refusal to act or make a decision, in the exercise or purported exercise of administrative authority, but does not include any act, decision, failure or refusal on the part of the Governor or a Minister, tribunal or review panel:

“administrative unit” means an administrative structure—

(a) in which persons are or are to be employed;

and

(b) that is established, or continued in existence, under this Act as a department or other administrative unit:

“appointed member” in relation to the Board means a member of the Board appointed by the Governor under this Act:

“appointing authority” means—

(a) in relation to a senior position—the Commissioner;

(b) in relation to any other position—the Chief Executive Officer of the administrative unit in which the position is comprised:

“the Board” means the Government Management Board constituted under this Act:

“Chief Executive Officer” means a person appointed to, or assigned to act in, the position of Chief Executive Officer of an administrative unit:

“classification” of a position in the Public Service means the assignment of the position to a level in a classification structure determined by the Commissioner, and “classify”, “reclassification” and “reclassify” have corresponding meanings:

“the Commissioner” means the person holding, or acting in, the position of Commissioner for Public Employment:

“department” means an administrative unit established, or continued in existence, under this Act as a department:

“the Disciplinary Appeals Tribunal” means the Tribunal of that name constituted under schedule 3:

“disciplinary authority” means—

(a) in relation to an employee (not being a Chief Executive Officer)—the Chief Executive Officer of the administrative unit in which the employee is employed;

(b) in relation to the Chief Executive Officer of an administrative unit—the responsible Minister for that administrative unit or a nominee of that Minister, being another Minister, the Commissioner, or another Chief Executive Officer (or person having the powers and functions of a Chief Executive Officer) remunerated at a level at least equivalent to that of the Chief Executive Officer in question:

“effective service” of an employee means the period of the employee’s continuous service in the Public Service (whether pursuant to appointment on a permanent or other basis or appointment on more than one basis) together with any period required by or under this Act or the regulations to be counted as part of the employee’s effective service, but does not include any period required by the regulations to be excluded from the employee’s effective service:

“employee” means—

- (a) in relation to Part II—a public employee;
- (b) in relation to the remainder of this Act—a person appointed to the Public Service (including a Chief Executive Officer):

“government agency” means an administrative unit or a State instrumentality:

“member of the judiciary” means—

- (a) a Judge or Master of the Supreme Court;
- (b) a Judge of the Industrial Court of South Australia;
- (c) a District Court Judge;
- (d) a Magistrate or Industrial Magistrate holding salaried office as such:

“merit” in relation to selection processes for the filling of positions means—

- (a) the extent to which each of the applicants has abilities, aptitude, skills, qualifications, knowledge, experience (including community experience), characteristics and personal qualities relevant to the carrying out of the duties in question;

and

- (b) where relevant—

- (i) the manner in which each of the applicants carried out the duties or functions of any position, employment or occupation previously held or engaged in by the applicant;

and

- (ii) the extent to which each of the applicants has potential for development:

“position” includes an office created by or under an Act:

“the Promotion and Grievance Appeals Tribunal” means the Tribunal of that name constituted under schedule 3:

“public employee” means a person appointed to the Public Service or employed by the Crown or a State instrumentality:

“the public sector” means all government agencies and public employees and the operations and activities carried on by government agencies and public employees:

“public sector operations” means all the operations and activities carried on by government agencies and public employees:

“the Public Service” means the Public Service as defined in section 21:

“recognized organization” means an association that—

- (a) is registered under the *Industrial Conciliation and Arbitration Act, 1972*, or under the *Conciliation and Arbitration Act 1904* of the Commonwealth;

and

- (b) is declared to be a recognized organization by the Commissioner under this Act:

“remuneration” means salary and allowances:

* * * * *

“the repealed Act” means the *Public Service Act, 1967*, repealed by this Act:

“the responsible Minister” in relation to an administrative unit means the Minister responsible for the administration of the administrative unit:

“selection processes” means the processes by which applications are sought and applicants selected for the purpose of filling positions in the public sector:

“senior position” means—

(a) a position classified in accordance with the classification structure for Executive Officers;

or

(b) a position classified in accordance with any other classification structure at a level the rate of remuneration for which equals or exceeds that for positions classified at the lowest level in the classification structure for Executive Officers,

but does not include a position of Chief Executive Officer:

“serious offence” means an indictable offence, or an offence punishable by imprisonment for 2 years or more:

“State instrumentality” means an agency or instrumentality of the Crown and includes any body corporate that is established by or under an Act and—

(a) is comprised of persons, or has 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;

(b) is subject to control or direction by a Minister;

or

(c) is declared under subsection (2) to be a State instrumentality,

but does not include—

(d) an administrative unit;

(e) the State Bank of South Australia constituted under the *State Bank Act, 1983*;

(f) the State Government Insurance Commission established under the *State Government Insurance Commission Act, 1970*;

(g) the Electricity Trust of South Australia established under the *Electricity Trust of South Australia Act, 1946*;

or

(h) a body declared under subsection (2) not to be a State instrumentality:

“working day” in relation to an employee means a day on which the employee would, if not on leave, be required to work.

(2) The Governor may, by proclamation—

(a) declare that a specified body is or is not a State instrumentality for the purposes of this Act;

(b) vary or revoke a proclamation under this subsection.

(3) All appointments to the Public Service shall be regarded as having been made on behalf of the Crown and all persons appointed to the Public Service shall be regarded for all purposes as employees of the Crown.

PART II

ADMINISTRATION OF THE PUBLIC SECTOR

DIVISION I—GENERAL PRINCIPLES

General principles of public administration

5. The following principles of public administration shall be observed in the public sector:

- (a) the public sector shall be administered in a manner which emphasises the importance of service to the community;
- (b) the public sector shall be structured and organized so as to achieve and maintain operational responsiveness and flexibility, thus enabling it to adapt quickly and effectively to changes in government policies and priorities;
- (c) government agencies shall be structured and administered so as to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay;
- (d) administrative responsibilities shall be clearly defined and authority shall be sufficiently delegated to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities;
- (e) government agencies should have as their goal a continued improvement in the efficiency and effectiveness of their performance and shall be administered with that goal always in view;
- (f) resources shall be deployed so as to ensure their most efficient and effective use;
- (g) proper standards of financial management and accounting shall be exercised at all times.

General principles of personnel management

6. (1) The following principles of personnel management shall be observed in the public sector:

- (a) all selection processes shall be directed towards and based on a proper assessment of merit;
- (b) no power with regard to personnel management shall be exercised on the basis of nepotism or patronage;
- (c) employees shall be treated fairly and consistently and shall not be subjected to arbitrary or capricious administrative acts;
- (d) there shall be no unlawful discrimination against employees or persons seeking employment in the public sector on the ground of sex, sexuality, marital status, pregnancy, race, physical impairment or any other ground nor shall any form of unjustifiable discrimination be exercised against employees or persons seeking employment in the public sector;
- (e) employees shall be afforded equal opportunities to secure promotion and advancement in their employment;
- (f) employees shall be employed in worthwhile and constructive employment and be afforded proper access to training and development;
- (g) employees shall be afforded reasonable avenues of redress against improper or unreasonable administrative acts;

(h) employees shall be provided with safe and healthy working conditions; and

(i) employees shall be remunerated at rates commensurate with their responsibilities.

(2) The Minister responsible for the administration of this Act may publish in the *Gazette* a programme (in this Act referred to as an "equal employment opportunity programme") designed to ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class.

(3) The Minister may in an equal employment opportunity programme make special provision—

(a) for young persons, or persons of a defined class disproportionately represented amongst the unemployed, in securing employment in the public sector;

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

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

(4) The Minister responsible for the administration of this Act may, by notice published in the *Gazette*, vary or revoke an equal employment opportunity programme.

General principles of conduct

7. The following principles of conduct shall be observed by all employees:

(a) employees shall comply with the provisions of this and any other Act governing their conduct;

(b) employees shall be conscientious in the performance of official duties and scrupulous in the use of official information, equipment and facilities;

(c) employees shall, in their dealings with members of the public or fellow employees, exercise proper courtesy, consideration and sensitivity;

(d) employees shall not conduct themselves in their private capacities in a manner that would reflect seriously and adversely on their employers or fellow employees.

DIVISION II—REPORTING OBLIGATIONS

Annual report

8. (1) Each government agency shall, once in each year, present a report to the Minister responsible for the agency on the operations of the agency.

(2) The report must contain information required by regulation.

(3) Subject to subsection (4), 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.

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

(a) the report required by this section may be incorporated with that other report;

(b) the period to which the report relates shall be the same as for that other report;

and

(c) the report must be presented within 3 months after the end of the reporting period referred to in paragraph (b).

(5) A Minister shall, 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.

DIVISION III—THE GOVERNMENT MANAGEMENT BOARD

Establishment of the Board

9. There shall be a Board entitled the "Government Management Board".

Constitution of the Board

10. (1) The Board shall consist of not more than 6 members, of whom—

(a) one shall be the Commissioner;

and

(b) the remainder shall be persons appointed by the Governor.

(2) Of the persons appointed by the Governor—

(a) one shall be a person employed in the public sector who has been nominated by the United Trades and Labor Council;

and

(b) the remainder shall be persons who, in the opinion of the Governor, have appropriate knowledge and experience in the area of management.

(3) One member of the Board shall be appointed by the Governor to preside at meetings of the Board.

Conditions of office

11. (1) An appointed member of the Board shall be appointed for a term of office not exceeding 3 years and is, on the expiration of a term of office, eligible for re-appointment.

(2) The Governor may remove an appointed member of the Board from office for—

(a) misconduct;

(b) neglect of duty;

(c) incompetence;

or

(d) mental or physical incapacity to carry out satisfactorily the duties of the office.

(3) The office of an appointed member of the Board shall become vacant if the member—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns by written notice addressed to the Minister responsible for the administration of this Act;

(d) was appointed as a member of the Board by reason of occupying or holding a particular position or capacity referred to in the instrument of appointment and ceases to occupy or hold that position or capacity;

or

(e) is removed from office by the Governor under subsection (2).

(4) Upon the office of an appointed member of the Board becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

(5) The Governor may appoint a suitable person to be the deputy of a member of the Board.

(6) The deputy of a member may, during the absence of the member, act as a member of the Board.

Procedure at meetings of the Board

12. (1) The person appointed to preside at meetings of the Board shall, if present at a meeting, preside at that meeting, and, in the absence of that person, the members present at the meeting shall choose a person to preside at the meeting from amongst their own number.

(2) The prescribed number of members of the Board constitute a quorum of the Board.

(3) For the purposes of subsection (2), a reference to the prescribed number of members of the Board is a reference to the number ascertained by dividing the total number of members for the time being appointed to the Board by two, ignoring any fraction resulting from the division, and adding one.

(4) A decision in which a majority of the members present at a meeting of the Board concur shall be a decision of the Board.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Proceedings may be conducted in public or private

13. The proceedings of the Board may be conducted in public or in private at the discretion of the Board.

Validity of acts of the Board

14. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or defect in the appointment of a member.

Conflict of interest

15. (1) Where—

(a) an appointed member of the Board has a pecuniary or other personal interest in a matter;

and

(b) that interest conflicts, or may conflict, with the member's official duties,

the member shall disclose the nature of the interest to the Minister responsible for the administration of this Act and shall not take any further action in relation to the matter except as may be authorized by that Minister.

(2) The Minister responsible for the administration of this Act may direct an appointed member of the Board to take specified action with a view to resolving a conflict between a pecuniary or other personal interest and an official duty as a member of the Board.

(3) Failure to comply with subsection (1) or a direction under subsection (2) constitutes misconduct.

Extent to which Board is subject to Ministerial direction

16. (1) Subject to this section, the Board is subject to direction by the Minister responsible for the administration of this Act.

(2) No Ministerial direction shall be given to the Board—

- (a) requiring that material be included in, or excluded from, a report that is to be laid before Parliament;
- (b) requiring the Board to make, or refrain from making, any particular recommendation or comment when providing any advice or making any other report to a Minister or Ministers under this Act;
- (c) requiring the Board to refrain from making any particular review of public sector operations.

(3) A Ministerial direction to the Board—

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

The functions of the Board

17. (1) The functions of the Board are as follows:

- (a) to keep all aspects of management in the public sector under review and—
 - (i) to establish appropriate general policies in relation to personnel management and industrial relations in the Public Service;and
 - (ii) to advise the Minister responsible for the administration of this Act and other Ministers on policies, practices and procedures that should be applied to any other aspect of management in the Public Service or to any aspect of management in other parts of the public sector;
- (b) to advise the Minister responsible for the administration of this Act and other Ministers on structural changes that should, in the opinion of the Board, be made in order to improve the efficiency and effectiveness of public sector operations;
- (c) to carry out, or recommend the carrying out of, necessary planning for the future of the public sector;
- (d) to review, on its own initiative or at the request of the Minister responsible for the administration of this Act or any other Minister, the efficiency and effectiveness of any aspect of public sector operations and to make such reports upon the results of the review as may be required;
- (e) to devise in co-operation with government agencies programmes and initiatives for management improvement in the public sector and to recommend their implementation to the Minister responsible for the administration of this Act and other Ministers;

and

- (f) to carry out any other functions assigned to the Board by the Minister responsible for the administration of this Act.

(2) In carrying out its functions under this Act, the Board may investigate any matter within or affecting any government agency and, for that purpose, may require, and shall be afforded, the co-operation of the agency and persons employed in or by the agency.

General policy directions

18. The Board may give such general directions to the Commissioner as it considers necessary for the proper implementation of any policy that it has established in relation to personnel management or industrial relations in the Public Service.

Delegation by Board

19. (1) The Board may, by instrument in writing, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the power of the Board to act itself in any matter;

and

(c) is revocable at will.

(3) A copy of every instrument of delegation under this section shall be retained by the Board as part of its records.

Annual report

20. (1) The Board shall, within 3 months after the end of each financial year, submit to the Minister responsible for the administration of this Act a report on the work of the Board during that financial year.

(2) The report must refer to—

(a) any significant improvements in the management of public sector operations effected during the period to which the report relates;

(b) any major changes to the structure of the public sector during the period to which the report relates;

(c) any significant reviews undertaken by the Board during the period to which the report relates with respect to the efficiency and effectiveness of public sector operations;

and

(d) any other matters stipulated by the regulations.

(3) The Minister shall, within 12 sitting days after receipt of a report under subsection (1), cause copies of the report to be laid before each House of Parliament.

PART III

THE PUBLIC SERVICE

DIVISION I—THE STRUCTURE OF THE PUBLIC SERVICE

The structure of the Public Service

21. (1) The Public Service consists of—

(a) the administrative units established, or continued in existence, under this Act as departments;

and

(b) such other administrative units as are established under this Act,

and all public employees (other than persons excluded from the Public Service by or under the provisions of schedule 2) shall be employed in positions in administrative units.

(2) The Governor may, by proclamation—

(a) establish an administrative unit (whether as a department or not) and assign a title to it;

(b) alter the title of an administrative unit;

(c) abolish an administrative unit.

(3) The Governor may, by a proclamation under subsection (2), or by a separate proclamation—

(a) transfer positions or a group of positions from an administrative unit to another administrative unit;

(b) incorporate a group of public employees (not forming part of the Public Service) into an administrative unit;

(c) exclude from the Public Service a group of public employees previously incorporated into an administrative unit in pursuance of this Act;

(d) make any appointment or any transitional or ancillary provision that may be necessary or expedient in the circumstances.

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

(5) The Minister responsible for the administration of this Act shall, so far as is practicable, before making a recommendation as to a matter referred to in subsection (3) that will affect a significant number of the members of a recognized organization, notify the organization of the proposed recommendation and hear any representations or argument that the organization may desire to present in relation to the proposed recommendation.

(6) The provisions of a proclamation under this section shall have effect according to their terms and notwithstanding the provisions of any other Act.

Administrative unit comprised of unattached positions

22. (1) There shall be an administrative unit of the Public Service—

(a) that consists of or includes unattached positions;

and

(b) in relation to which the Commissioner has the powers and functions of a Chief Executive Officer.

(2) Where an administrative unit is abolished by proclamation and no provision is made in the proclamation for the transfer of the positions in the administrative unit, the positions shall become unattached positions in the administrative unit referred to in subsection (1).

DIVISION II—THE COMMISSIONER FOR PUBLIC EMPLOYMENT

Establishment of office of Commissioner for Public Employment

23. (1) There shall be a Commissioner for Public Employment.
 (2) The Commissioner shall be appointed by the Governor.

Conditions of appointment of the Commissioner

24. (1) Subject to this section, the conditions of appointment (including salary and allowances) of the Commissioner shall be as determined by the Governor.

* * * * *

(3) The Commissioner shall be appointed for a term of office, not exceeding 5 years and is, on the expiration of a term of office, eligible for re-appointment.

(4) Where a person employed in the Public Service is appointed as the Commissioner, the person's service as Commissioner shall, for the purpose of determining all the person's existing and accruing rights in respect of leave, be counted as service in the Public Service.

(5) Where a person employed in the Public Service is appointed as the Commissioner and is not re-appointed at the expiration of the term of office, then, subject to the conditions of the appointment, the person is entitled to be re-appointed to the Public Service and assigned to a position that carries a salary not less than—

(a) the salary of a position at the same classification level as the position occupied by the person immediately before appointment as Commissioner;

or

(b) 80 per cent of the person's salary as at the end of the term of office as Commissioner,

whichever is the greater.

(6) The Governor may remove the Commissioner from office for—

(a) misconduct;

(b) neglect of duty;

(c) incompetence;

or

(d) mental or physical incapacity to carry out satisfactorily the duties of the office.

(7) The office of the Commissioner shall become vacant if the Commissioner—

(a) dies;

(b) completes a term of office and is not re-appointed;

(c) resigns by notice in writing addressed to the Minister responsible for the administration of this Act;

- (d) engages in any remunerative employment, occupation or business outside the duties of the office without the consent of the Minister responsible for the administration of this Act;
- (e) becomes a member of the Parliament of the State or the Commonwealth;
- (f) is convicted of a serious offence or is sentenced to imprisonment for an offence;
- or
- (g) is removed from office by the Governor under subsection (6).

Appointment of deputy of Commissioner

25. (1) The Governor may appoint a suitable person to be the deputy of the Commissioner.

(2) The deputy of the Commissioner may, during the absence or suspension of the Commissioner, or during a vacancy in the office of the Commissioner, act as the Commissioner.

(3) The deputy shall, while acting as the Commissioner, be entitled to such remuneration as may be determined by the Governor, which may, where the deputy is an employee, be an allowance payable in addition to the person's salary as an employee.

Commissioner to disclose pecuniary interests

26. (1) The Commissioner shall disclose pecuniary interests of the Commissioner to the Minister responsible for the administration of this Act in accordance with the regulations.

(2) The Minister shall, at the request of any person, review the information disclosed by the Commissioner under this section and report whether there is, in the Minister's opinion, a conflict between the Commissioner's pecuniary interests and official duties.

(3) Failure to comply with subsection (1) constitutes misconduct.

Conflict of interest

27. (1) Where—

- (a) the Commissioner has a pecuniary or other personal interest in a matter;
- and

(b) that interest conflicts or may conflict with the Commissioner's official duties,

the Commissioner shall disclose the nature of the interest to the Minister responsible for the administration of this Act and shall not take any further action in relation to that matter except as may be authorized by that Minister.

(2) The Minister responsible for the administration of this Act may direct the Commissioner to take specified action with a view to resolving a conflict between a pecuniary or other personal interest and an official duty attaching to the office of the Commissioner.

(3) Failure to comply with subsection (1) or a direction under subsection (2) constitutes misconduct.

Extent to which Commissioner is subject to Ministerial direction

28. (1) Subject to this section, the Commissioner is subject to direction by the Minister responsible for the administration of this Act.

- (2) No Ministerial direction shall be given to the Commissioner—
- (a) relating to the appointment, assignment, re-assignment, transfer, retirement or dismissal of a particular person;
 - (b) relating to the classification of a particular position;
 - (c) requiring that material be included in, or excluded from, a report that is to be laid before Parliament;
 - (d) requiring the Commissioner to refrain from making a particular review under section 31;
 - (e) requiring the Commissioner to declare or refrain from declaring a particular association to be a recognized organization or to revoke or refrain from revoking such a declaration.
- (3) A Ministerial direction to the Commissioner—
- (a) must be communicated to the Commissioner in writing;
- and
- (b) must be included in the annual report of the Commissioner.

Functions of the Commissioner

29. (1) The functions of the Commissioner are as follows:
- (a) to ensure the implementation of the general policies in relation to personnel management and industrial relations established by the Board;
 - (b) to establish and ensure the implementation of appropriate practices and procedures in relation to personnel management and industrial relations in the Public Service;
 - (c) to determine the occupational groups within the Public Service and—
 - (i) to endeavour to maintain appropriate staffing levels within each occupational group having regard to the needs of the various administrative units;
- and
- (ii) to assist Chief Executive Officers in making effective use of available staff within the occupational groups;
- (d) to determine in respect of the various occupational groups classification structures in accordance with which positions in the Public Service are to be classified and, for that purpose—
 - (i) to determine the remuneration, or limits of remuneration, payable in respect of each level within each classification structure;
- and
- (ii) where relevant, to determine increments of remuneration and the conditions on which they are payable;
- (e) to determine conditions of service in respect of positions or classes of positions in the Public Service;
- (f) to determine criteria, standards and procedures for the classification of positions or classes of positions in the Public Service;

- (g) to determine the educational, vocational or professional qualifications required in respect of positions or classes of positions in the Public Service;
 - (h) to classify senior positions in the Public Service;
 - (i) to provide advisory and other services to the various administrative units in relation to personnel management and industrial relations;
 - (j) to assist in establishing and ensure the implementation of equal employment opportunity programmes;
 - (k) to establish and implement programmes of management training and staff development;
 - (l) to assist in the recruitment, deployment and redeployment of public employees;
 - (m) to investigate or assist in the investigation of matters in connection with the conduct or discipline of employees;
 - (n) to carry out any other functions assigned to the Commissioner by or under this Act or by the Minister responsible for the administration of this Act.
- (2) The determinations of the Commissioner contemplated by subsection (1)(c), (d), (e), (f) and (g)—
- (a) may be made from time to time and may be varied or revoked by subsequent determination;
 - (b) shall be binding on Chief Executive Officers and other employees;
 - (c) may be expressed to come into force on specified dates which may, in particular cases, if the Commissioner thinks fit, be dates antecedent to the dates on which the determinations are made.
- (3) In carrying out the functions or exercising the powers of the Commissioner under this Act, the Commissioner shall—
- (a) observe the principles of personnel management prescribed by this Act and endeavour to ensure their observance in the Public Service in general;
 - (b) observe the directions given from time to time by the Minister responsible for the administration of this Act or by the Board;
- and
- (c) observe any binding industrial award, determination or agreement.
- (4) Without limiting the effect of any other provision of this Act, the Commissioner shall, for the purpose of assisting in the recruitment, deployment and redeployment of employees, have power—
- (a) to create unattached positions in the administrative unit referred to in section 22;
 - (b) to appoint persons to the Public Service and assign them to unattached positions;
 - (c) to re-assign employees to or from unattached positions;
 - (d) to abolish unattached positions.

Commissioner may issue instructions

30. (1) For the purpose of carrying out any of the functions of the Commissioner under this Act, the Commissioner may issue instructions to—

- (a) a particular employee;
- (b) a particular class of employees;
- or
- (c) employees in general.

(2) An instruction issued by the Commissioner under this section is binding on the employee or employees to whom the instruction is directed.

(3) In this section—

“employee” has the meaning assigned to the term by section 4 and includes a person for the time being holding or acting in an office created by or under an Act who has the powers and functions of a Chief Executive Officer in pursuance of this Act.

Reviews of personnel management

31. (1) The Commissioner may, on the Commissioner’s own initiative, and shall, at the direction of the Minister responsible for the administration of this Act, conduct a review—

(a) for the purpose of determining the extent to which the principles of personnel management prescribed by this Act are being observed in an administrative unit;

or

(b) for the purpose of investigating any other aspect of personnel management in an administrative unit.

(2) The Commissioner may during the course of a review and shall at the conclusion of a review report to the Chief Executive Officer of the administrative unit to which the review relates—

(a) the Commissioner’s findings on the review;

and

(b) any recommendations affecting personnel management that should, in the Commissioner’s opinion, be adopted by the Chief Executive Officer.

(3) The Chief Executive Officer, if not in agreement with a recommendation in the report, shall report the disagreement, together with the reasons for the disagreement, to the Commissioner within 1 month after receipt of the report.

(4) If the Chief Executive Officer makes a report under subsection (3), or fails to implement recommendations of the Commissioner made under this section, the Commissioner may report the matter to the responsible Minister.

(5) Where a report is made to a Minister under subsection (4)—

(a) the Minister shall respond to the report by indicating agreement or disagreement with the Commissioner’s recommendations and, if in agreement with those recommendations, may take appropriate steps to ensure that they are implemented;

and

(b) if the Minister fails to respond as required by paragraph (a), or indicates disagreement with the Commissioner’s recommendations, the matter may be referred to in the annual report of the Commissioner.

Investigative powers of Commissioner

32. (1) For the purpose of carrying out a review under section 31 or making any investigation for the purposes of this Act, the Commissioner may—

(a) by notice in writing—

(i) require a public employee or former public employee to appear before the Commissioner for examination;

or

(ii) require a public employee or former public employee to produce any document, object or material referred to in the notice that is relevant to the subject-matter of the review or investigation;

(b) require a public employee or former public employee appearing before the Commissioner (whether required to appear or not) to answer truthfully questions relevant to the subject-matter of the review or investigation.

(2) For the purpose of assisting the Commissioner with a review or investigation, a person authorized by the Commissioner to exercise the powers conferred by this subsection may—

(a) enter and inspect premises occupied by the Crown or a government agency;

(b) require a public employee to answer truthfully any relevant question;

and

(c) require a public employee to produce any relevant document, object or material.

(3) A public employee or former public employee who fails to comply with a requirement of the Commissioner or an authorized person issued or made in pursuance of this Act, or hinders the Commissioner or an authorized person in the exercise of powers conferred by this section, shall—

(a) in the case of a public employee—be liable to disciplinary action (whether under this Act or otherwise, as the case may require);

or

(b) in the case of a former public employee—be guilty of an offence and liable to a penalty not exceeding \$1 000.

(4) A person shall not be obliged to answer a question under this section if the answer to that question would tend to incriminate that person of an offence, or to produce any document, object or material (other than any document, object or material of the Government) if it or its contents would tend to incriminate that person of an offence.

Delegation by the Commissioner

33. (1) The Commissioner may, by instrument in writing, delegate any of the powers or functions conferred on, or assigned to, the Commissioner by or under this Act—

(a) to a particular person or committee;

or

(b) to the person for the time being occupying a particular position.

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

- (3) Where a delegation is made to a committee under this section—
- (a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation;
- and
- (b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.
- (4) A delegation or sub-delegation under this section—
- (a) may be absolute or conditional;
 - (b) does not derogate from the power of the delegator to act personally in any matter;
- and
- (c) is revocable at will by the delegator.
- (5) A copy of every instrument of delegation under this section shall be retained by the Commissioner as part of the Commissioner's records.

Right of recognized organizations to make representations to Commissioner on certain matters

34. (1) Before making any decision or determination, or taking any action, that will affect a significant number of the members of a recognized organization, the Commissioner shall, so far as is practicable—

- (a) notify that organization of the proposed decision, determination or action;

and

- (b) hear any representations or argument that that organization may desire to present in relation to the proposed decision, determination or action.

(2) Nothing in subsection (1) shall be construed as limiting or restricting the carrying out of any function, or the exercise of any power, of the Commissioner under this Act.

Annual report

35. (1) The Commissioner shall, within 3 months after the end of each financial year, submit to the Minister responsible for the administration of this Act a report on personnel management and industrial relations in the Public Service during that financial year.

- (2) The report must refer to—

- (a) the extent to which observance of the principles of personnel management prescribed by this Act has been achieved in the Public Service over the period to which the report relates, including reference to—

- (i) measures taken to ensure observance of those principles;

and

- (ii) any significant breaches or evasions of those principles detected by or brought to the attention of the Commissioner;

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

(c) the extent to which disciplinary procedures were invoked in the Public Service;

and

(d) any other matters stipulated by the regulations.

(3) The Commissioner may, at any time, submit to the Minister a special report under this section upon any matter relating to personnel management or industrial relations in the Public Service or any part of the Public Service.

(4) The Minister shall, within 12 sitting days after receipt of a report under subsection (1) or (3), cause copies of the report to be laid before each House of Parliament.

DIVISION III—CHIEF EXECUTIVE OFFICERS

Each administrative unit to have a Chief Executive Officer

36. (1) There shall be a Chief Executive Officer of each administrative unit.

(2) The Chief Executive Officer of an administrative unit shall be appointed by the Governor.

(3) The Governor may assign a title to a position of Chief Executive Officer and may subsequently alter the title.

(4) The responsible Minister may assign an employee to act in the position of Chief Executive Officer of an administrative unit—

(a) during a vacancy in the position of Chief Executive Officer;

or

(b) when the Chief Executive Officer is absent from, or unable to discharge, official duties.

(5) An employee shall, while acting in the position of Chief Executive Officer of an administrative unit, be entitled to such allowance (in addition to the person's salary as an employee) as may be determined by the responsible Minister.

Special provisions with regard to appointment of Chief Executive Officer

37. (1) The following provisions apply in respect of the appointment of the Chief Executive Officer of an administrative unit—

(a) the appointment shall be for a term not exceeding 5 years (but the appointee shall, at the expiration of a term of appointment, be eligible for re-appointment);

(b) the remuneration of a Chief Executive Officer shall be as determined by the Governor;

(c) where a person appointed as a Chief Executive Officer—

(i) is not re-appointed as a Chief Executive Officer at the expiration of the term of appointment;

or

(ii) ceases to occupy the position before the expiration of the term of appointment otherwise than through a prescribed process,

then, subject to the conditions of the appointment, the person is entitled to be assigned to some other position in the Public Service that carries a salary not less than—

(iii) the salary of a position at the same classification level as the position, if any, in the Public Service occupied by the person immediately before appointment as a Chief Executive Officer;

or

(iv) 80 per cent of the person's salary immediately before the person ceased to occupy the position of Chief Executive Officer,

whichever is the greater;

(d) where a person ceases to occupy a position of Chief Executive Officer before the expiration of the term of appointment otherwise than through a prescribed process, then—

(i) if the person is assigned to some other position pursuant to paragraph (c)—the person is entitled for the period for which the person continues to be an employee until the expiration of the term of appointment to be remunerated at a rate not less than the rate that would have applied if the person had continued to occupy the position of Chief Executive Officer;

or

(ii) if the person is not assigned to some other position pursuant to paragraph (c) or, having been so assigned, ceases to be an employee before the expiration of the term of appointment otherwise than through a prescribed process—the person is entitled to be paid a sum not less than the total remuneration that would have been payable (without allowance for any subsequent increases) if the person had occupied the position of Chief Executive Officer for the unexpired portion of the term of appointment;

and

(e) the appointment is subject to such conditions (not inconsistent with any other provisions of this Act) as may be determined by the Governor.

(2) In subsection (1)—

“prescribed process” means—

(a) resignation;

(b) voluntary retirement;

(c) retirement or transfer pursuant to section 60;

(d) dismissal or transfer pursuant to section 71.

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

38. (1) Notwithstanding the other provisions of this Division, the Governor may declare that the person for the time being holding or acting in an office created by or under an Act shall have the powers and functions of Chief Executive Officer in relation to an administrative unit.

(2) The provisions of sections 36 and 37 do not apply in relation to an administrative unit to which a declaration under subsection (1) relates.

(3) The Governor may revoke a declaration under subsection (1).

(4) Where—

(a) an administrative unit is established under this Act;

but

(b) no person is—

(i) appointed to, or assigned to act in, the position of Chief Executive Officer of the unit;

or

(ii) declared to have the powers and functions of Chief Executive Officer in relation to the unit,

the Commissioner shall have the powers and functions of Chief Executive Officer in relation to the unit until such an appointment, assignment or declaration is made.

Extent to which Chief Executive Officer is subject to Ministerial direction

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

(2) No Ministerial direction shall be given to a Chief Executive Officer—

(a) relating to the appointment, assignment or re-assignment of a particular person;

(b) relating to the classification of a particular position;

or

(c) requiring the Chief Executive Officer to hold or refrain from holding an inquiry in relation to the discipline of a particular employee, or to take or refrain from taking disciplinary action in relation to a particular employee.

Chief Executive Officer responsible to Minister

40. (1) Subject to a declaration of the Governor under subsection (2), the Chief Executive Officer of an administrative unit is responsible to the responsible Minister for the efficient and effective management of the unit.

(2) Where the functions of an administrative unit are solely or principally those of assisting a State instrumentality, or the holder of an office created by an Act, in the administration of an Act or in the performance of statutory functions, the Governor may, by proclamation, declare that the Chief Executive Officer of the administrative unit shall be responsible to the State instrumentality, or the holder of the statutory office, for the efficient and effective management of the unit and, in that event, the State instrumentality, or the holder of the statutory office, shall in turn be responsible to the responsible Minister for the efficient and effective management of the unit.

(3) The Governor may, by proclamation, vary or revoke a declaration made for the purposes of subsection (2).

Functions of Chief Executive Officer

41. (1) Subject to this Act, the functions of the Chief Executive Officer of an administrative unit extend to the following matters:

(a) the proper organization of the administrative unit, and the establishment of an appropriate staffing level;

- (b) financial and other management planning in relation to the administrative unit;
- (c) the appropriate division of responsibilities between, and assignment of duties to, the employees employed in the administrative unit;
- (d) the appropriate deployment and redeployment of resources within the administrative unit;
- (e) the establishment of effective procedures to ensure that the use of resources of the administrative unit is properly controlled and audited;
- (f) the implementation of any applicable equal employment opportunity programme and the devising and implementation of other initiatives to ensure that employees have equal opportunities in relation to their employment;
- (g) the establishment and implementation of necessary management training and staff development programmes;
- (h) the implementation of any health and safety programmes adopted with respect to employment in the Public Service;
- (i) resolving or redressing the grievances of employees within the administrative unit.

(2) In carrying out the functions or exercising the powers of a Chief Executive Officer, the Chief Executive Officer of an administrative unit shall—

- (a) endeavour to attain performance objectives set by the Minister responsible for the administrative unit;
- (b) observe the principles of public administration and personnel management prescribed by this Act;
- (c) observe the directions and instructions given from time to time by the Minister responsible for the administrative unit, the Commissioner or any authority empowered under any other Act to give directions or instructions to the Chief Executive Officer;

and

- (d) observe any binding industrial award, determination or agreement (including any binding determination of the Commissioner).

Right of recognized organizations to make representations to Chief Executive Officers on certain matters

42. (1) Before making any decision, or taking any action, that will affect a significant number of the members of a recognized organization, a Chief Executive Officer shall, so far as is practicable—

- (a) notify that organization of the proposed decision or action;

and

- (b) hear any representations or argument that that organization may desire to present in relation to the proposed decision or action.

(2) Nothing in subsection (1) shall be construed as limiting or restricting the carrying out of any function, or the exercise of any power, of a Chief Executive Officer under this Act.

Delegation

43. (1) The Chief Executive Officer of an administrative unit may, by instrument in writing, delegate any of the powers or functions conferred on, or assigned to, the Chief Executive Officer by or under this Act—

(a) to a particular person or committee;

or

(b) to the person for the time being occupying a particular position.

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

(3) Where a delegation is made under this section to a committee—

(a) the instrument of delegation may regulate the procedures to be followed by the committee when acting in pursuance of the delegation;

and

(b) the committee may, if the instrument of delegation so provides, act by a majority of the members present at a meeting of the committee.

(4) A delegation or sub-delegation under this section—

(a) may be absolute or conditional;

(b) does not derogate from the power of the delegator to act personally in any matter;

and

(c) is revocable at will by the delegator.

(5) A copy of every instrument of delegation issued by the Chief Executive Officer of an administrative unit under this section shall be retained as part of the records of the administrative unit.

Governor may withdraw powers of a Chief Executive Officer

44. (1) The Governor may, on the recommendation of the Commissioner, withdraw from a Chief Executive Officer any specified power or powers conferred on Chief Executive Officers under this Act.

(2) A power or powers withdrawn from the Chief Executive Officer of an administrative unit under this section shall instead be exercisable by the Commissioner in relation to the unit.

(3) The Governor may, on the recommendation of the Commissioner, restore to a Chief Executive Officer a power or powers previously withdrawn under this section.

**DIVISION IV—CREATION AND CLASSIFICATION OF POSITIONS
IN THE PUBLIC SERVICE****Creation and abolition of positions in the Public Service**

45. (1) Subject to this section, positions in the Public Service may be created—

(a) where the position is to be a senior position—by the Commissioner;

(b) in any other case—by the Chief Executive Officer of the administrative unit in which the position is to be comprised.

- (2) A position is created by—
- (a) assigning a title to it;
 - (b) defining the duties that are to appertain to it;
 - (c) classifying the position;
- and
- (d) where the position is to be a senior position—determining the administrative unit in which the position is to be comprised.
- (3) A position may be abolished or its title altered or duties redefined—
- (a) in the case of a senior position—by the Commissioner;
 - (b) in any other case—by the Chief Executive Officer of the administrative unit in which the position is comprised.
- (4) A position shall not be abolished while occupied by an employee.

Reclassification of positions

46. (1) Positions in the Public Service may be reclassified—
- (a) by the Commissioner where—
 - (i) the position is a senior position;
 - (ii) the position is to be reclassified to the classification level of a senior position;or
 - (iii) the classification structure in accordance with which the position is classified is varied or replaced by a new classification structure;or
 - (b) in any other case—by the Chief Executive Officer of the administrative unit in which the position is comprised.
- (2) A position may be reclassified at the initiative of the Commissioner or Chief Executive Officer, as the case may require, or upon application made in accordance with the regulations by the employee occupying the position.

Classifications and reclassifications to be published in *Gazette*

47. (1) The Commissioner shall cause all classifications made under this Act to be published in the *Gazette* and a classification shall not take effect until so published, but when so published the classification may, if it so provides, operate from a date specified in the classification, being a date antecedent to the date of publication.
- (2) At least 14 days before publication of a classification under subsection (1), the Commissioner shall forward the classification to the Minister responsible for the administration of this Act together with any comments that should, in the Commissioner's opinion, be considered by the Minister.
- (3) If the Minister responsible for the administration of this Act comments on a proposed classification, those comments shall be fully considered before publication of the classification.
- (4) This section does not apply in relation to the classification of a position that is being created for the performance of urgent work and for temporary purposes only.

- (5) In this section (other than subsection (4))—
“classification” includes reclassification.

Review of classifications

48. (1) The Commissioner may establish such classification review panels as the Commissioner thinks fit.

- (2) A classification review panel shall consist of—

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

(3) The Minister responsible for the administration of this Act may from time to time invite the recognized organizations to nominate employees to constitute the panel referred to in subsection (2)(b).

(4) If any recognized organization fails to make a nomination in response to an invitation under subsection (3) within the time allowed in the invitation, the Minister responsible for the administration of this Act may choose employees in lieu of nominees of the recognized organization and any employees so chosen shall be deemed to have been nominated to the relevant panel.

- (5) A person shall cease to be a member of a panel if that person—

- (a) ceases to be an employee;
- (b) resigns by notice in writing addressed to the Minister responsible for the administration of this Act;
- (c) is removed from the panel by the Minister responsible for the administration of this Act on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties;

or

- (d) has completed a period of 2 years as a member of the panel since being nominated, or last renominated, as a member of the panel, and is not renominated to the panel.

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

- (a) has made an application under this Act for reclassification of the employee's position;

and

- (b) is dissatisfied with the decision upon the application,

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

(7) The following employees are not entitled to make an application under subsection (6):

- (a) any employee occupying a senior position;
- (b) any employee whose appointment to the Public Service is on a temporary basis and who has had continuous service in the Public Service of less than 12 months;

(c) any employee whose appointment to the Public Service is on the basis of negotiated conditions.

(8) Where an application for review of a classification is made to the Commissioner under subsection (6), the Commissioner shall refer the application to a classification review panel.

(9) A classification review panel to which an application for review of a classification is referred under this section shall afford—

(a) the applicant;

and

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

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

(10) Where an applicant wishes to make oral submissions, the applicant may appear before the panel personally or be represented by an officer of a recognized organization of which the applicant is a member.

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

(a) confirm the existing classification of the applicant's position;

or

(b) determine that the position be reclassified as it thinks just.

(12) A decision in which any two or more members of a classification review panel concur shall be a decision of the panel.

(13) Where a determination is made under subsection (11)(b) in respect of a position, the position shall be reclassified by the Commissioner or Chief Executive Officer, as the case may require, in accordance with the determination with effect from a date determined by the Commissioner or Chief Executive Officer, being a date—

(a) not earlier than the date on which the employee applied for reclassification of the position;

and

(b) not later than 3 months from the date on which the employee made that application.

DIVISION V—EMPLOYMENT IN THE PUBLIC SERVICE

Appointments and Filling of Positions

Appointment to the Public Service

49. (1) Appointments to the Public Service shall be made—

(a) where the appointment is to be made for the purpose of filling a senior position—by the Commissioner;

(b) where the appointment is to be made for the purpose of filling any other position—by the Chief Executive Officer of the administrative unit in which the position is comprised.

(2) The appointing authority may, before making an appointment, require the person that the authority proposes to appoint to produce satisfactory evidence that the person is healthy and physically fit to carry out the duties of the position in respect of which the appointment is to be made.

Basis of appointment to the Public Service

50. (1) An appointment to the Public Service may be made—

(a) on a permanent basis;

(b) on a temporary basis;

or

(c) on the basis of negotiated conditions.

(2) The following provisions apply to appointment on a permanent basis:

(a) a person shall not be appointed on that basis unless selected through selection processes conducted in pursuance of this Act;

(b) subject to paragraph (c), a person appointed shall at first be on probation;

(c) the appointing authority may make an appointment without probation—

(i) where, in the opinion of the appointing authority, the appointee merits appointment without probation or such an appointment would be in the public interest;

(ii) where the appointee was, immediately before the appointment, in prescribed employment and had been in such employment for at least 12 months before the date of appointment;

or

(iii) where appointment without probation is authorized by this or any other Act;

(d) the appointment of an employee who is on probation may be terminated by the appropriate authority at any time;

(e) where an employee has been on probation for 6 months or more, the appropriate authority may confirm the appointment and, in that event, the employee shall cease to be on probation;

(f) unless the appointment is sooner confirmed or terminated, the appointment of an employee shall be deemed to have been confirmed by the appropriate authority when the employee completes a period of 12 months on probation;

and

(g) in determining for the purposes of this subsection the period for which an employee has been on probation, any period for which the employee has been absent on leave without pay shall be disregarded.

(3) The following provisions apply to an appointment on a temporary basis:

(a) an appointment may be made on that basis for the purpose of filling a position without seeking applications in respect of the position and, in that event, the appointee shall, on being appointed to the Public Service, be assigned to the position by the appointing authority;

(b) an appointment shall not be made for the purpose of filling a position with duties of a continuing nature unless, in the opinion of the appointing authority—

(i) additional assistance is necessary for the performance of urgent work;
and

(ii) it is not practicable, in the circumstances, that the work be performed by an employee appointed on a permanent basis;

(c) an appointment shall be made for a term (not exceeding 12 months) determined by the appointing authority;

(d) the term of an appointment may be extended from time to time by the appropriate authority but not so that the aggregate period of appointment exceeds 2 years;

and

(e) an appointment may be terminated by the appropriate authority at any time.

(4) The following provisions apply to an appointment on the basis of negotiated conditions:

(a) a person shall not be appointed on that basis unless selected through selection processes conducted in pursuance of this Act;

(b) an appointment shall not be made except by or with the approval of the Commissioner;

(c) an appointment shall be for a term determined by the appointing authority;

and

(d) the conditions of an appointment shall prevail, to the extent of any inconsistency, over the provisions of this Act.

(5) In this section—

“the appropriate authority” means—

(a) in relation to an employee assigned to a senior position—the Commissioner;

(b) in any other case—the Chief Executive Officer of the administrative unit in which the employee is for the time being employed;

“prescribed employment” means—

(a) employment by the Commonwealth or a State or Territory of the Commonwealth or any agency or instrumentality of the Commonwealth or a State or Territory of the Commonwealth;

or

(b) any other employment declared by regulation to be prescribed employment for the purposes of this section.

Filling of positions through selection process

51. (1) The Commissioner may, for the purpose of filling a senior position, cause applications to be sought and an applicant selected in accordance with the regulations.

(2) The Chief Executive Officer of an administrative unit may, for the purpose of filling a position (other than a senior position) in the administrative unit—

(a) cause applications to be sought and an applicant selected in accordance with the regulations;

or

(b) where a pool of applicants has been established under subsection (3) for the purpose of filling positions of a class to which the position belongs—cause an applicant to be selected in accordance with the regulations from amongst applicants in the pool.

(3) The Commissioner or, with the approval of the Commissioner, the Chief Executive Officer of an administrative unit may, for the purpose of filling positions below a prescribed classification level that are vacant or may be created or become vacant in the future—

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

and

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

(4) Where an applicant selected for the purpose of filling a position is not an employee, the appointing authority shall, upon appointing the person to the Public Service, assign the person to that position.

(5) Where an applicant selected for the purpose of filling a position is an employee, then the employee shall—

(a) in any case where—

(i) the position is below a prescribed classification level;

and

(ii) some other employee made an application in respect of the position,

be nominated in accordance with the regulations and, subject to section 53, re-assigned to the position;

(b) in any other case—be re-assigned to the position.

Re-assignment

52. (1) Subject to this section, a position may be filled by re-assigning an employee to the position from the position for the time being occupied by the employee.

(2) Re-assignments (including re-assignments pursuant to section 51(5)) shall be made—

(a) by the Commissioner where—

(i) the position to which the employee is to be re-assigned is a senior position;

or

(ii) the position to which the employee is to be re-assigned is in an administrative unit other than that in which the employee is for the time being employed;

or

(b) in any other case—by the Chief Executive Officer of the administrative unit in which the employee is for the time being employed.

(3) The following provisions apply to re-assignment other than reassignment pursuant to section 51(5):

(a) except as provided in paragraph (b), no employee shall be re-assigned to a position other than a position at the same classification level as the position for the time being occupied by the employee;

(b) an employee may be re-assigned to a position at a higher classification level for temporary purposes only, but any such re-assignment is subject to the requirement that the employee shall, within a period of 3 years, be re-assigned to the position formerly occupied by the employee or, if that position is no longer available, to a position at the same classification level as the position formerly occupied by the employee;

(c) no employee shall be re-assigned to a position (other than a senior position) with duties of a continuing nature except—

(i) where, in the opinion of the authority making the re-assignment, the re-assignment is necessary for the performance of urgent work—

(A) during the period required to conduct selection processes for the filling of the position;

or

(B) during the temporary absence of another employee;

(ii) where a determination has been made pursuant to section 59 that the employee is an excess employee;

(iii) where a determination has been made pursuant to section 60 that the employee is incapacitated;

or

(iv) subject to conditions determined by the Commissioner, where, in the opinion of the authority making the re-assignment, the re-assignment is necessary for the purpose of—

(A) the training or development of the employee;

(B) providing the employee with wider work experience;

or

(C) effecting a re-organization of an administrative unit or part of an administrative unit;

and

(d) no re-assignment shall be made by the Commissioner except at the request of, or after consultation with, the Chief Executive Officer or Chief Executive Officers of such administrative unit or units as are affected by the re-assignment.

*Promotion Appeals***Promotion appeals**

53. (1) Where an employee has been nominated for re-assignment to a vacant position, any other employee who made an application in respect of the position and who is eligible to be re-assigned to the position may, within 7 days after the publication of the notice of nomination, appeal to the Promotion and Grievance Appeals Tribunal against the nomination.

(2) Where the Tribunal is satisfied that the appellant should have been nominated for re-assignment to the vacant position in preference to the nominee, the Tribunal may make a declaration to that effect and quash the nomination.

(3) Where on an appeal under this section the Tribunal is satisfied that there has been some irregularity in the selection processes leading to the nomination, the Tribunal may—

(a) quash the nomination;

and

(b) order that the selection processes be recommenced from the beginning or some later stage specified by the Tribunal.

(4) For the purposes of this section—

(a) a person is not eligible for re-assignment to a position if the person does not have qualifications determined by the Commissioner to be essential in respect of the position;

and

(b) a determination by the authority seeking to fill a position that specific qualifications, experience or other attributes are essential or desirable in respect of the position shall be binding on the Tribunal.

(5) Where an employee has been nominated for re-assignment to a vacant position and no-one is entitled to appeal, or no-one successfully appeals, against the nomination, the nominee shall be re-assigned to the position.

(6) Where an employee has been nominated for re-assignment to a vacant position but the Tribunal has made a declaration in favour of an appellant under subsection (2), the successful appellant shall be re-assigned to the position.

(7) The following employees are not entitled to appeal against a nomination under this section:

(a) any employee whose appointment to the Public Service is on a temporary basis and who has had continuous service in the Public Service of less than 12 months;

(b) any employee whose appointment to the Public Service is on the basis of negotiated conditions.

*Remuneration***Remuneration of employees**

54. (1) Except as otherwise provided by this Act, an employee shall be remunerated at a rate appropriate to the classification level of the position occupied by the employee in the Public Service.

(2) Where a person is assigned or re-assigned to a position at a particular classification level, the authority making the assignment or re-assignment may determine that the person is entitled to be paid a higher increment of the remuneration payable in respect of the classification level notwithstanding that a condition of payment of the increment has not been satisfied.

Additional duties allowance

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

(2) Where an employee performs duties in pursuance of a direction under this section for a continuous period of more than 1 week, the Chief Executive Officer may authorize the payment to the employee of an allowance appropriate to the duties being performed.

Special allowances and deductions

56. (1) The Commissioner may—

- (a) determine allowances payable to employees and the circumstances in which they are payable;
- (b) determine charges payable by employees in respect of any accommodation, services, goods or other benefit provided to them in connection with their employment.

(2) A determination under this section shall have effect from a day (which may be a day antecedent to the date of the determination) specified in the determination.

(3) Any charges payable by an employee in pursuance of a determination under subsection (1)(b) may be deducted from any salary or allowances payable to the employee.

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

57. (1) Where, in consequence or furtherance of industrial action, an employee refuses or fails to carry out duties that the employee has been lawfully instructed to perform, the employee shall not, if the Commissioner so directs, be paid salary for a day or days on which the employee refuses or fails to carry out those duties or persists in that refusal or failure.

(2) A direction under subsection (1) is effective to prevent payment of salary to an employee notwithstanding that, on a day or days to which the direction relates, the employee performs some (but not all) of the duties that the employee has been lawfully instructed to perform.

(3) In this section—

“day” includes a part of a day:

“salary” includes prescribed allowances.

Hours of Duty, etc.

Hours of duty, etc.

58. The hours of duty of an employee and the rights of an employee to holidays and leave are governed by schedule 4.

*Excess Employees***Excess employees**

59. (1) The Chief Executive Officer of an administrative unit may determine that an employee occupying a position in the unit is an excess employee if the Chief Executive Officer is satisfied that—

- (a) the position occupied by the employee has become redundant;
- (b) the services of the employee have become underutilized by reason of changes in technology or work methods or in the organization or nature or extent of government operations;

or

- (c) the employee has lost a qualification that is necessary for the performance or proper performance of the duties of the position,

and, in that event, the Chief Executive Officer shall—

- (d) where the position is not a senior position—make all reasonable endeavours to re-assign the employee in accordance with section 52 to some other position in the unit;

or

- (e) where the position is a senior position—refer the matter to the Commissioner.

(2) Where a Chief Executive Officer, having made all reasonable endeavours, is unable to re-assign an employee in pursuance of subsection (1), the Chief Executive Officer shall refer the matter to the Commissioner.

(3) Where a matter has been referred to the Commissioner under this section and the Commissioner is satisfied—

- (a) that all reasonable endeavours have been made to re-assign the employee in accordance with section 52 to some other position (whether in the same or any other administrative unit);

but

- (b) that re-assignment is not possible or practicable in the circumstances of the case,

the Commissioner may recommend to the Governor—

- (c) that the employee be transferred to some other position in the Public Service;

or

- (d) that the employee be retired from the Public Service.

(4) The Governor may, on the recommendation of the Commissioner under subsection (3)—

- (a) transfer an employee to another position in the Public Service;

or

- (b) retire an employee from the Public Service.

(5) Where an employee is transferred in pursuance of this section to a position that has a lower level of remuneration than that of the position previously occupied by the employee, the employee shall be entitled to supplementation of the employee's

remuneration in accordance with the relevant provisions of an award or industrial agreement or, where there is no award or industrial agreement covering the matter, in accordance with a scheme prescribed by the regulations.

Mental or Physical Incapacity

Procedure to be followed where employee is thought to be incapacitated by mental or physical illness or disability

60. (1) Where it appears to the appropriate authority that an employee is, by reason of mental or physical illness or disability, incapable of performing satisfactorily or at all the duties of the position occupied by the employee, the appropriate authority may require the employee to undergo a medical examination by a medical practitioner nominated by that authority.

(2) Where an employee refuses or fails, without reasonable excuse, to submit to a medical examination when required to do so under subsection (1), the appropriate authority may suspend the employee from the employee's position without remuneration until the employee submits to the examination.

(3) After consideration of reports furnished upon the examination of an employee under this section and any medical reports furnished by the employee within the prescribed period, the appropriate authority shall make, on the basis of those reports, a determination—

- (a) that the employee is not incapacitated by mental or physical illness or disability from performing satisfactorily the duties of the position;
- (b) that the employee is incapacitated by mental or physical illness or disability from performing satisfactorily or at all the duties of the relevant position, but is not totally incapacitated for work in the Public Service;

or

- (c) that the employee is totally incapacitated for work in the Public Service by mental or physical illness or disability.

(4) Where a determination is made under subsection (3), notice in writing of the determination shall be given—

- (a) in the case of a determination made by a Chief Executive Officer—to the Commissioner;

and

- (b) in any case—to the employee to whom the determination relates.

(5) Where a determination is made under subsection (3)(b) by the Chief Executive Officer of an administrative unit, the Chief Executive Officer shall—

- (a) where the position concerned is not a senior position—make all reasonable endeavours to re-assign the employee in accordance with section 52 to some other position in the unit;
- (b) in any other case—refer the matter to the Commissioner.

(6) Where a Chief Executive Officer, having made all reasonable endeavours, is unable to re-assign an employee in pursuance of subsection (5), the Chief Executive Officer shall refer the matter to the Commissioner.

(7) Where a matter has been referred to the Commissioner under subsection (5) or (6) and the Commissioner is satisfied—

(a) that all reasonable endeavours have been made to re-assign the employee in accordance with section 52 to some other position (whether within the same or any other administrative unit);

but

(b) that re-assignment is not possible or practicable in the circumstances of the case,

the Commissioner may recommend to the Governor—

(c) that the employee be transferred to some other position in the Public Service;

or

(d) that the employee be retired from the Public Service.

(8) Where the Commissioner makes a determination under subsection (3)(b) in relation to a Chief Executive Officer, the Commissioner may recommend to the Governor—

(a) that the Chief Executive Officer be transferred to some other position in the Public Service;

or

(b) that the Chief Executive Officer be retired from the Public Service.

(9) Where a determination is made under subsection (3)(c) in relation to an employee, the Commissioner may recommend to the Governor that the employee be retired from the Public Service.

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

(a) transfer an employee to another position in the Public Service;

or

(b) retire an employee from the Public Service.

(11) In this section—

“the appropriate authority”, in relation to an employee, means—

(a) the Chief Executive Officer of the administrative unit in which the employee is employed;

or

(b) where the employee is a Chief Executive Officer—the Commissioner.

Resignation

Resignation of employee

61. (1) An employee may, by giving notice of resignation in accordance with the regulations, resign from the Public Service.

(2) Where an employee—

(a) is absent, without authority, from employment in the Public Service for a period of 10 working days;

and

- (b) gives no proper written explanation or excuse for the absence to the Chief Executive Officer of the administrative unit in which the employee is employed before the expiration of that period,

the employee shall, if the Chief Executive Officer, or, in relation to an employee occupying a senior position, the Commissioner, so determines, be deemed to have resigned from the Public Service.

Re-appointment of employee who resigns to contest an election

62. (1) Where—

- (a) an employee resigns from the Public Service for the purpose of standing as a candidate for election to the Parliament of the State or the Commonwealth;
- (b) the resignation takes effect not more than one month before the issue of the writ for the election;
- (c) the former employee is not elected and applies for re-appointment to the Public Service within 2 months after the return of the writ for the election,

the employee shall be re-appointed to the Public Service (without probation) and assigned to the same position, or a position at the same classification level, as the one occupied by the employee immediately before resigning to contest the election.

(2) For the purposes of determining the rights of an employee who resigns from, and is re-appointed to, the Public Service under this section, the period between the resignation and re-appointment shall be deemed to be leave without pay granted in pursuance of this Act.

Age of Retirement

Retirement from the Public Service

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

(2) An employee shall retire from the Public Service on attaining the age of 65 years.

(3) Notwithstanding subsection (2), a person over the age of 65 years may be appointed to the Public Service on a temporary basis or on the basis of negotiated conditions.

Grievance Appeals

Grievance appeals

64. (1) An employee who is aggrieved by an administrative act that directly affects that employee may apply to the Promotion and Grievance Appeals Tribunal for a review of that administrative act.

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

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

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

or

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

decline to entertain the application.

(4) On a review under this section the Tribunal may—

(a) confirm the administrative act subject to the review;

or

(b) give such directions as are, in the opinion of the Tribunal, necessary or desirable to redress the grievance.

(5) No review shall be conducted under this section in respect of an administrative act—

(a) that is appealable, or capable of review, under some other provision of this Act;

or

(b) that is of a class excluded by regulation from review under this section.

DIVISION VI—CONDUCT AND DISCIPLINE OF EMPLOYEES

Pecuniary Interests

Certain employees to disclose pecuniary interests

65. (1) An employee occupying a prescribed position, or a position of a prescribed class, shall disclose pecuniary interests of the employee to the Commissioner in accordance with the regulations.

(2) The Commissioner shall, at the request of any person, review the information disclosed by an employee under this section and report whether there is, in the Commissioner's opinion, a conflict between the employee's pecuniary interests and official duties.

All employees to disclose interests in conflict with their duties

66. (1) Where—

(a) an employee has a pecuniary or other personal interest in a matter;

and

(b) that interest conflicts or may conflict with the duties of that employee in relation to that matter,

the employee shall disclose the nature of the interest to the appropriate authority.

(2) The appropriate authority may direct an employee to take action specified in the direction with a view to resolving a conflict between a pecuniary or other personal interest and a duty as an employee.

(3) In this section—

“the appropriate authority” means—

(a) in relation to a Chief Executive Officer—the responsible Minister;

(b) in relation to any other employee—the Chief Executive Officer of the administrative unit in which the employee is employed.

Discipline

General rules of conduct

67. An employee who—

(a) contravenes or fails to comply with—

(i) a provision of this Act;

or

- (ii) a direction given to the person as an employee by a person with authority to give that direction (whether being authority derived from this Act or otherwise);
- (b) is negligent or indolent in the discharge of the duties of the employee's position;
- (c) is inefficient or incompetent through causes that are within the employee's control;
- (d) is absent from duty without reasonable excuse (proof of which shall lie on the employee);
- (e) is guilty of disgraceful or improper conduct in an official capacity, or is guilty in a private capacity of disgraceful or improper conduct that reflects seriously and adversely on the Public Service;
- (f) makes improper use of property of the Crown;
- (g) except as authorized under the regulations, engages in any remunerative employment, occupation or business outside the Public Service;
- (h) except as authorized under the regulations, discloses information gained in the employee's official capacity, or comments on any matter affecting the Public Service or the business of the Public Service,

is liable to disciplinary action.

Disciplinary Action

Inquiries by disciplinary authority

68. (1) Where the disciplinary authority suspects on reasonable grounds that an employee may be liable to disciplinary action, the disciplinary authority may hold an inquiry to determine whether the employee is liable to disciplinary action.

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

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

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

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

and

(b) shall be afforded a reasonable opportunity—

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

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

(iii) to bring persons or documents before the disciplinary authority to provide information in support of the employee;

and

(iv) to make statements and representations to the authority.

(5) If, upon an inquiry under this section, the disciplinary authority is satisfied on the balance of probabilities that the employee is liable to disciplinary action, the disciplinary authority may—

- (a) reprimand the employee;
- (b) order that the employee forfeit an entitlement to leave;
- (c) order that the employee be suspended from the employee's position in the Public Service without remuneration for a specified period;
- (d) order that the salary of the employee be reduced by a specified amount for a specified period;

or

(e) recommend to the Governor—

- (i) that the employee be transferred to some other position in the Public Service;

or

- (ii) that the employee be dismissed from the Public Service.

(6) For the purposes of subsection (5), a period of suspension may, if the disciplinary authority thinks fit to so order, be comprised of or include the whole or part of any period for which the employee has been suspended without remuneration pursuant to section 69.

(7) Before taking or recommending any disciplinary action in respect of an employee under subsection (5), the disciplinary authority shall give the employee at least 14 days notice in writing of the findings of the disciplinary authority and of the disciplinary action (if any) that the disciplinary authority proposes to take or recommend in respect of the employee.

(8) If, within the period referred to in subsection (7), the employee appeals against the findings of the disciplinary authority, or against any disciplinary action that the authority proposes to take or recommend, no disciplinary action shall be taken or recommended in respect of the employee until the determination of the appeal.

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

Suspension of employee

69. (1) Where an employee is charged with a serious offence, or is given a notice of inquiry under section 68, the disciplinary authority may suspend the employee from the employee's position in the Public Service with or without remuneration.

(2) A suspension imposed under this section is revocable at any time and shall be revoked by the disciplinary authority—

- (a) where the employee has been both charged with an offence (whether or not a serious offence) and given a notice of inquiry under section 68 relating to a matter to which the charge relates—if the employee is both acquitted of the charge and found not liable to disciplinary action upon the inquiry;

or

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

(3) For the purposes of subsection (2), if a charge against an employee is dismissed, lapses or is withdrawn, the employee shall be deemed to have been acquitted of the charge.

(4) Where a suspension imposed under this section is revoked, the employee shall, subject to subsection (5), be paid any remuneration withheld in consequence of the suspension.

(5) Where a suspension imposed under this section is revoked upon the employee being convicted of a serious offence or being found liable to disciplinary action, the employee shall not, unless the disciplinary authority so determines, be paid any remuneration withheld in consequence of the suspension.

Disciplinary action on conviction of offence

70. (1) If an employee is convicted of a serious offence, or is sentenced to imprisonment for an offence, the disciplinary authority may recommend to the Governor—

(a) that the employee be transferred to some other position in the Public Service;

or

(b) that the employee be dismissed from the Public Service.

(2) The disciplinary authority shall, before recommending any disciplinary action under subsection (1) in respect of an employee who has been sentenced to imprisonment for an offence other than a serious offence, give the employee at least 14 days notice in writing of the disciplinary action that the authority proposes to recommend.

(3) If, within the period referred to in subsection (2), the employee appeals against the disciplinary action that the disciplinary authority proposes to recommend, no disciplinary action shall be recommended until the determination of the appeal.

(4) A recommendation shall not be made under this section on the basis of a conviction or sentence that is under appeal, or against which an appeal still lies.

Governor may transfer or dismiss on recommendation under this Division

71. The Governor may, on a recommendation made under this Division—

(a) transfer an employee to another position in the Public Service;

or

(b) dismiss an employee from the Public Service.

Disciplinary Appeals

Disciplinary appeals

72. (1) An employee aggrieved by a finding of a disciplinary authority, or by disciplinary action that a disciplinary authority proposes to take or recommend, may, within 14 days after receiving notice of the finding or proposed action or recommendation, appeal to the Disciplinary Appeals Tribunal.

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

(a) confirm the finding or decision subject to the appeal;

(b) annul any finding or decision subject to the appeal and substitute any finding or decision that should have been made in the first instance;

(c) make any consequential or ancillary orders or directions.

(3) Where an appellant succeeds in an appeal, the Tribunal may make in favour of the appellant an appropriate award of costs against the Crown.

(4) An employee does not have a right of appeal under this section in relation to disciplinary action recommended as a result of the conviction of the employee of a serious offence.

DIVISION VII—MISCELLANEOUS

Preservation of powers of Governor to appoint, transfer, and dismiss

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

(2) The Governor may transfer an employee from a position in the Public Service to any other position in the Public Service that has the same or a higher salary.

(3) An employee may be transferred to a position for a specified term and, in that case, the employee shall, at the expiration of that term—

(a) be transferred back to the position formerly occupied by the employee;

or

(b) if that position is no longer available—be transferred to some other position with the same salary as, or a higher salary than, the salary of the position formerly occupied by the employee.

(4) The power of transfer under this section may be exercised in such circumstances as the Governor thinks fit and is in addition to any other power of transfer conferred on the Governor by this Act.

Discharge of State functions by Commonwealth employees and *vice versa*

74. (1) The Governor may arrange with the Governor-General or any other authority of the Commonwealth—

(a) for the performance by persons employed by the Commonwealth of services on behalf of the State;

or

(b) for the performance by employees employed under this Act of services on behalf of the Commonwealth.

(2) The Governor may make arrangements with the Governor-General or any other authority of the Commonwealth relating to—

(a) the payments to be made in respect of the performance of the services;

and

(b) any other matters relevant to the performance of those services.

Extension of operation of certain provisions of Act

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

(a) extend the operation of specified provisions of this Act, subject to such modifications (if any) as may be specified in the proclamation, to any specified class of public employees to whom those provisions do not apply of their own force;

or

(b) vary or revoke a proclamation previously made under this section.

(2) Subject to subsection (3), the provisions of schedule 4 relating to long service leave apply to—

(a) all public employees who—

(i) are remunerated at hourly, daily, weekly or fortnightly rates of payment;

(ii) are assigned to duties that form part of the operations of an administrative unit;

and

(iii) are, in the performance of the duties, subject to direction by the Chief Executive Officer of the administrative unit;

and

(b) employees or officers of the Crown of a class to whom the Commissioner directs that the provisions apply.

(3) The Commissioner may—

(a) direct that the provisions of schedule 4 relating to long service leave do not apply to a class of employees or officers referred to in subsection (2);

or

(b) vary or revoke a direction previously issued under this section.

(4) A proclamation or direction under this section may, if it so provides, have effect from a date specified in the proclamation or direction that is earlier than the date of the proclamation or direction but not earlier than the date of commencement of this Act.

Recognized organizations

76. (1) Where the Commissioner is of the opinion that an association registered under the *Industrial Conciliation and Arbitration Act, 1972*, or under the *Conciliation and Arbitration Act 1904* of the Commonwealth, represents the interests of a significant number of employees, the Commissioner may, by notice published in the *Gazette*, declare that association to be a recognized organization for the purposes of this Act.

(2) Where the Commissioner is of the opinion that a recognized organization has ceased to represent the interests of a significant number of employees, the Commissioner may, by notice published in the *Gazette*, revoke a declaration under subsection (1).

Operation of Industrial Conciliation and Arbitration Act in relation to this Act

77. A determination or decision under this Act affecting remuneration or conditions of employment shall be subject to—

(a) any award or determination of the Industrial Commission of South Australia, of a Conciliation Committee constituted under the *Industrial Conciliation and Arbitration Act, 1972*, or of the Public Service Arbitrator;

and

(b) any agreement registered under the *Industrial Conciliation and Arbitration Act, 1972*.

Immunity from liability

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

(2) Any action that would, but for subsection (1), lie against an employee or other person holding an office or position under this Act shall lie against the Crown.

(3) This section does not prejudice any rights of action of the Crown itself.

Temporary exercise of statutory functions by persons other than those to whom they are assigned

79. (1) Where—

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

and

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

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

(2) Every instrument by which the Chief Executive Officer of an administrative unit makes a nomination under this section shall be retained as part of the records of the administrative unit.

(3) An apparently genuine document purporting to be a copy of an instrument of nomination under this section shall 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 authorized to exercise the power or function referred to in the instrument.

Obsolete references

80. (1) Where the title of any administrative unit or position in the Public Service is altered, any reference in any Act, regulation, rule, or by-law to the administrative unit or position under an earlier title shall, unless the contrary intention appears, be read and construed as a reference to the administrative unit or position under its later title.

(2) The Governor may, by proclamation, direct that a reference in any Act, regulation, rule or by-law to an administrative unit or position in the Public Service be read and construed as a reference to any other administrative unit or position in the Public Service, and, where such a direction is given, any such reference shall be read and construed accordingly.

(3) In subsection (2)—

“administrative unit” includes a department under the repealed Act:

“position” includes an office under the repealed Act:

“the repealed Act” includes the Act repealed by the repealed Act.

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

Evidentiary provision

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

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

or

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

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

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

War Service (Preference in Employment) Act, 1943

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

Service of notices

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

Summary proceedings

84. Proceedings for an offence against this Act shall be disposed of summarily.

Regulations

85. (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;

(b) may leave any matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister responsible for the administration of this Act, the Commissioner or a Chief Executive Officer, either generally or in particular case or class of cases;

(c) may impose a penalty not exceeding \$500 for contravention of, or non-compliance with, the regulation.

SCHEDULES

SCHEDULE 1

TRANSITIONAL PROVISIONS

Departments continued in existence

1. (1) The departments of the Public Service in existence under the repealed Act immediately before the commencement of this Act shall, subject to this Act, continue in existence under this Act as departments.

(2) The Department of the Public Service Board shall, subject to this Act, continue in existence under the title the "Department of Personnel and Industrial Relations".

Offices continued as positions

2. The offices in existence under the repealed Act immediately before the commencement of this Act shall, subject to this Act, continue in existence under this Act as positions in the departments in which they were respectively comprised.

Employees

3. (1) Subject to this clause, a person employed as an officer under the repealed Act immediately before the commencement of this Act shall be deemed to have been appointed to the Public Service on a permanent basis under this Act and shall, subject to this Act, continue in employment on that basis.

(2) Where a person was holding office on probation under the repealed Act immediately before the commencement of this Act, the person's appointment to the Public Service shall, unless sooner confirmed or terminated by the Commissioner, be deemed to have been confirmed at the expiration of the period of probation fixed by or under the repealed Act.

(3) A person employed as a temporary officer under the repealed Act immediately before the commencement of this Act shall be deemed to have been appointed to the Public Service on a temporary basis under this Act and shall continue in employment on that basis subject to the power of the Commissioner, or the Chief Executive Officer of the administrative unit in which the person is for the time being employed, to terminate the appointment at any time.

(4) A person who was, immediately before the commencement of this Act, performing the duties of an office to which the person had been appointed under the repealed Act shall (whether or not the person was also performing additional duties) be deemed to have been assigned to the corresponding position under this Act.

(5) A person who was, immediately before the commencement of this Act, performing duties other than the duties of an office to which the person had been appointed under the repealed Act shall—

(a) if those other duties were classified at the same classification level as the person's office—be deemed to have been re-assigned under this Act to a position with those other duties;

(b) if those other duties were classified at a higher classification level than the person's office—be deemed to have been re-assigned under this Act to a position with those other duties subject to the requirement that the person shall, at the expiration of the period for which the person had been directed under the repealed Act to perform those other duties, be re-assigned to the position that corresponds to the person's office under the repealed Act, or, if that position is no longer available, to a position at the same classification level as the person's office under the repealed Act.

(6) Subject to this Act, the classification of positions in the Public Service remains the same as under the repealed Act immediately before the commencement of this Act.

(7) The existing and accruing rights in respect of leave of employees continued in employment under this Act remain in full force and effect.

(8) All special payments, allowances (other than other duties allowances) or charges payable or liable to deduction from salaries under the repealed Act immediately before the commencement of this Act remain so payable or liable to deduction subject to any determination of the Commissioner under this Act.

(9) A person holding office as Permanent Head of a department under the repealed Act immediately before the commencement of this Act shall—

(a) on the commencement of this Act, be deemed to have been appointed as Chief Executive Officer of that department for a term of 5 years commencing on the date of commencement of this Act;

and

(b) be entitled to be assigned to some other position in the Public Service upon ceasing to be a Chief Executive Officer otherwise than through a prescribed process.

(10) Where a person to whom subclause (9) applies ceases to be a Chief Executive Officer otherwise than through a prescribed process but remains an employee, the person is entitled for the period for which the person continues to be an employee to be remunerated at a rate not less than the rate that would have applied if the person had continued to occupy the position of Chief Executive Officer.

(11) In subclauses (9) and (10)—

"prescribed process" means—

(a) resignation;

(b) voluntary retirement;

(c) retirement or transfer pursuant to section 60;

(d) dismissal or transfer pursuant to section 71.

References in other Acts

4. (1) Where an Act or instrument provides for an appointment to a particular position, or for an appointment of particular staff or employees, to be made by the Governor in pursuance of the repealed Act, that provision shall be construed as if it provided for a person or persons to be appointed to the Public Service and assigned to the position or positions by the appropriate appointing authority under this Act.

(2) A reference in any Act or instrument to the Public Service Board shall be construed, where the context admits, as a reference to the Commissioner.

(3) Where, immediately before the commencement of this Act, a provision in an Act or instrument referred or was required to be construed as referring to a particular department, office, officer or permanent head, that provision shall, subject to this Act, be construed as referring to the corresponding department, position, employee or Chief Executive Officer under this Act.

Acts Interpretation Act applies

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

SCHEDULE 2

PERSONS EXCLUDED FROM THE PUBLIC SERVICE

- (1) The following persons are excluded from the Public Service:
- (a) members of the judiciary;
 - (b) members of the police force;
 - (c) the Auditor-General;
 - (d) the Ombudsman;
 - (e) the Police Complaints Authority;
 - (f) the Electoral Commissioner and the Deputy Electoral Commissioner;
- * * * * *
- (h) any officer of either House of Parliament or any person under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or under their joint control;
 - (i) any officer of the teaching service within the meaning of the *Education Act, 1972*;
 - (j) any officer of the teaching service within the meaning of the *Technical and Further Education Act, 1976*;
 - (k) any officer or employee who is remunerated solely by fees, allowances or commission;
 - (l) any employee who is remunerated at hourly, daily, weekly or piece-work rates of payment;
 - (m) subject to a proclamation under Division I of Part III, any officer or employee who is excluded by or under any other Act from the Public Service or who is appointed under any other Act on terms and conditions of appointment that are to be determined by the Governor, a Minister or any person or body other than the Commissioner;
 - (n) any officer or employee excluded from the Public Service by proclamation under subclause (2).
- (2) The Governor may, by proclamation—
- (a) exclude an officer or employee or class of officers or employees from the Public Service;
 - (b) vary or revoke a proclamation under this subclause.

SCHEDULE 3

THE PROMOTION AND GRIEVANCE APPEALS TRIBUNAL AND
THE DISCIPLINARY APPEALS TRIBUNAL**Promotion and Grievance Appeals Tribunal and Disciplinary Appeals Tribunal**

1. (1) There shall be tribunals entitled respectively—

(a) the “Promotion and Grievance Appeals Tribunal”;

and

(b) the “Disciplinary Appeals Tribunal”.

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

Appointment of Presiding Officer and Deputy Presiding Officer

2. (1) The Governor may appoint—

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

and

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

(2) Before the Governor makes an appointment under subclause (1) the Minister responsible for the administration of this Act shall invite representations from recognized organizations on the proposed appointment.

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

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

(a) if the person is an employee;

or

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

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

(6) A person appointed as Presiding Officer or Deputy Presiding Officer of the Tribunal shall be appointed for such term of office (not exceeding 5 years) as the Governor may determine and specifies in the instrument of appointment and, on the expiration of a term of office, is eligible for re-appointment.

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

(a) completes a term of office and is not re-appointed;

(b) resigns by written notice addressed to the Minister responsible for the administration of this Act;

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

(i) misconduct;

(ii) neglect of duties;

(iii) incompetence;

(iv) mental or physical incapacity to carry out official duties;

(d) is convicted of a serious offence or sentenced to imprisonment for an offence;

or

(e) becomes a member of the Parliament of the State or the Commonwealth.

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

(a) completes a term of office and is not re-appointed;

(b) resigns by written notice addressed to the Minister responsible for the administration of this Act;

or

(c) ceases to be a member of the judiciary.

Panels of nominees

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

(a) a panel of employees nominated by the Commissioner;

and

(b) a panel of employees nominated by recognized organizations.

(2) The Minister responsible for the administration of this Act may from time to time invite the recognized organizations to nominate employees to constitute the panel referred to in subclause (1)(b).

(3) If any recognized organization fails to make a nomination in response to an invitation under subclause (2) within the time allowed in the invitation, the Minister responsible for the administration of this Act may choose employees in lieu of nominees of the recognized organization and any employees so chosen shall be deemed to have been nominated to the relevant panel.

(4) A person shall cease to be a member of a panel if that person—

- (a) ceases to be an employee;
- (b) resigns by notice in writing addressed to the Minister responsible for the administration of this Act;
- (c) is removed from the panel by the Minister responsible for the administration of this Act on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out official duties;

or

(d) has completed a period of 2 years as a member of the panel since being nominated, or last renominated, as a member of the panel, and is not renominated to the panel.

Constitution of the Tribunal and divisions of the Tribunal

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

- (a) the Presiding Officer or Deputy Presiding Officer of the Tribunal;
- (b) a member of the panel of nominees of the Commissioner selected by the Presiding Officer for the purpose of those proceedings;

and

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

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

(3) A Division of the Tribunal shall be constituted in accordance with subclause (1).

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

Procedure at meetings of the Tribunal

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

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

(3) A decision in which any 2 or more members of the Promotion and Grievance Appeals Tribunal concur shall be a decision of that Tribunal.

Employee not subject to direction

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

Secretary to the Tribunal

7. There shall be a Secretary to the Tribunal.

Principles upon which the Promotion and Grievance Appeals Tribunal is to act

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

- (a) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;

and

- (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Notice of proceedings, etc.

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

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

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

Representation

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

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

Power of the Tribunal

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

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

and

- (d) require any person appearing before the Tribunal to answer any relevant questions put by any member of the Tribunal or by any other person appearing before the Tribunal.

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

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons;
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question when required to do so by the Tribunal,

that person shall be guilty of an offence and liable to a penalty not exceeding \$2 000.

(3) A person shall not be obliged to answer a question under this clause if the answer to that question would tend to incriminate that person of an offence, or to produce any document, object or material if it or its contents would tend to incriminate that person of an offence.

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

- (a) receive in evidence any transcript of evidence in proceedings before a court or tribunal and draw any conclusions of fact from the evidence that it considers proper;

or

- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

Witness fees

12. Any person who appears as a witness in proceedings before the Tribunal shall be entitled to re-imbusement of expenses in accordance with the regulations.

Reasons for decision

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

Report on proceedings of the Tribunal

14. (1) The Presiding Officer of the Tribunal shall, within 3 months after the end of each financial year, report to the Minister responsible for the administration of this Act on the work of the Tribunal during that financial year.

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

SCHEDULE 4
HOURS OF ATTENDANCE, HOLIDAYS AND LEAVE OF ABSENCE

Hours of Duty

Hours of attendance

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

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

(3) Where an employee performs the duties of a position on a part-time basis pursuant to subclause (2), then, notwithstanding the other provisions of this Act, the employee's effective service and the period of the employee's service for the purposes of clause 4 shall be determined in accordance with the regulations and any directions of the Commissioner.

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

Holidays and Closure of Offices

Holidays in the Public Service

2. (1) Subject to subclause (2), the following days shall be observed as holidays in the Public Service—

(a) all public holidays;

and

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

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

Closure of offices, etc.

3. (1) The Minister responsible for the administration of this Act may direct—

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

and

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

on a specified day or days.

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

(3) An employee who is not required to work on a day by reason of a direction under subclause (1) shall 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 shall be deemed not to have been granted recreation leave on that day.

Recreation Leave

Recreation leave

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

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

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

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

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

(6) Where—

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

and

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

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

*Sick Leave***Leave on account of sickness, etc.**

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

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

- (a) on the commencement of the employee's employment, 6 days sick leave shall be credited to the employee;
- (b) where an employee's employment commenced after the 30th day of June in any year but before the 1st day of January in the next succeeding year, then on that 1st day of January a further 6 days sick leave shall be credited to the employee;
- (c) on the 1st day of July next succeeding the commencement of an employee's employment and on each succeeding 1st day of July, a further 12 days sick leave shall be credited to the employee.

(3) Notwithstanding the other provisions of this clause—

- (a) an employee is not entitled to take—
 - (i) more than 6 days sick leave during the first 6 months of the employee's employment;
 - or
 - (ii) more than 12 days sick leave during the first 12 months of the employee's employment;
- (b) the sick leave to be credited to an employee shall—
 - (i) if an employee is employed on a part-time basis for any period;
 - or
 - (ii) if an employee is absent for any period on leave without pay,be reduced in accordance with the regulations and any directions of the Commissioner.

*Special Leave***Special leave**

6. (1) Special leave with pay may be granted for purposes prescribed by regulation.

(2) The Chief Executive Officer of the administrative unit in which an employee is employed may, subject to the directions of the Commissioner, grant to the employee special leave with pay—

(a) for a period determined in accordance with regulations and the directions of the Commissioner in relation to the purpose for which special leave is to be taken;

or

(b) for such other period as may be authorized, in the particular circumstances, by the Minister responsible for the administration of this Act.

(3) The Chief Executive Officer of the administrative unit in which an employee is employed—

(a) shall, subject to the directions of the Commissioner, grant to the employee special leave without pay for a period determined in accordance with the regulations and the directions of the Commissioner where the employee applies for such leave on the ground—

(i) that the employee is pregnant;

or

(ii) that the employee requires the leave to undertake the care of a young child not of school age of whom the employee is a parent;

(b) may, subject to the directions of the Commissioner, grant to the employee special leave without pay for such other reason and such period as appears to the Chief Executive Officer to be reasonable in the particular circumstances.

(4) The granting of any special leave under this clause shall be on such conditions as the Chief Executive Officer may, subject to the directions of the Commissioner, determine.

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

*Long Service Leave***Long service leave**

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

(a) ninety days in respect of the first 10 years of effective service;

(b) nine days in respect of each subsequent year of effective service up to and including the 15th year of effective service;

and

(c) fifteen days in respect of the 16th and each subsequent year of effective service.

(2) Subclause (1) does not affect an entitlement to long service leave that accrued before the commencement of this Act.

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

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

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

8. (1) Subject to the regulations, long service leave shall be taken at times and for periods agreed upon by the employee entitled to the leave and the Chief Executive Officer of the administrative unit in which the employee is employed.

(2) Subject to the regulations, the Chief Executive Officer may permit an employee who has not less than 7 years effective service to take *pro rata* long service leave in respect of that effective service.

Long service leave to be on full pay

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

(a) the salary appropriate to the classification level of the employee's position during that leave;

and

(b) subject to the regulations, where the employee was employed at a higher classification level (either before or after the commencement of this Act) during part of the employee's effective service, such additional salary as is determined by the Commissioner.

(2) Where the effective service of an employee consists in whole or in part of part-time service, the salary to which the employee is entitled during long service leave shall be such salary as is determined by the Commissioner.

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

(a) the period of leave shall be twice the period to which the employee would otherwise have been entitled;

(b) the first half of the leave shall be on full pay;

and

(c) the second half of the leave shall be deemed to be leave without pay.

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

Payment in lieu of long service leave

10. (1) Where an employee—

(a) who is entitled to long service leave;

or

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

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

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

or

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

shall be paid a sum determined in accordance with this clause.

(2) The sum referred to in subclause (1) shall be—

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

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

and

(c) in either case—

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

and

(ii) such allowances (if any) as may be determined by the Commissioner.

(3) In determining a sum payable under this clause no allowance shall be made for any increase in salary that may or would have been made if the employee's service had not ceased.

Adjustment to Leave Rights based on Prior Service

Adjustment to leave rights based on prior service

11. Where a person becomes an employee 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 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 shall, to the extent determined by the Commissioner and subject to such conditions as may be imposed by the Commissioner, be counted as service or effective service for the purposes of this Act.

Payments on Death

Payment in respect of leave on death

12. Notwithstanding any other provisions of this schedule, the Commissioner may, if of the opinion that it is appropriate to do so, direct that any sum payable in respect of leave on the death of an employee be paid to such dependant or dependants of the employee as the Commissioner directs and not to the personal representative.

APPENDIX**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4(1):	definition of "the Remuneration Tribunal" repealed by 18, 1990, s. 8
Section 24(1):	amended by 18, 1990, s. 9(a)
Section 24(2):	repealed by 18, 1990, s. 9(b)
Section 37(1):	amended by 18, 1990, s. 10
Section 75(2):	substituted by 20, 1993, s. 21
Section 75(3) and (4):	inserted by 20, 1993, s. 21
Schedule 2	
Subclause (1)(g):	repealed by 18, 1990, s. 11(a)