

Public Sector Management Act 1992

No. 68 of 1992

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Victoria

No. 68 of 1992

Public Sector Management Act 1992

[Assented to 19 November 1992]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to reform the management of the Victorian public sector.

2. Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

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3. *Objects of the Act*

The objects of this Act are—

- (a) to enable Victorian public sector employees to be brought under the general industrial framework established by the **Employee Relations Act 1992**, on a similar footing to employees in the private sector;
- (b) to promote among public sector employees a spirit of service to the community;
- (c) to emphasise the principles of merit, responsible management, management competence and efficiency within the Victorian public sector;
- (d) to maintain appropriate standards of integrity and conduct for employees in the Victorian public sector;
- (e) to repeal the **Public Service Act 1974** and make consequential amendments to the **Employee Relations Act 1992**, the **Administrative Arrangements Act 1983** and the **Bank Holidays Act 1958** and certain other Acts.

4. *Definitions*

(1) In this Act—

“**Administrative Office**” means a body or group specified in column 3 of Schedule 1;

“**appropriate Department Head**” means—

- (a) where the expression is used in connection with a Department—the Head of the Department; or
- (b) where the expression is used in connection with an officer or temporary employee—the Head of the Department to which the officer or employee belongs;

“**appropriate Minister**” means—

- (a) where the expression is used in connection with a Department—the Minister responsible for the relevant part of the Department; or

(b) where the expression is used in connection with an officer or temporary employee—the Minister responsible for the relevant part of the Department to which the officer or employee belongs;

“chief executive officer” means a person holding a chief executive position;

“chief executive position” means a Department Head position or, if the provision in which or in respect of which the expression is used applies to a particular declared authority, a position specified in Column 2 of Schedule 2 in relation to that authority;

“declared authority” means an authority specified in column 1 of Schedule 2;

“Department” means a Department specified in column 1 of Schedule 1, and includes an Administrative Office;

“Department Head” means a person who holds a Department Head position;

“Department Head position” means a public service position specified in Column 2 or 4 of Schedule 1;

“disciplinary inquiry” means an inquiry conducted in accordance with the regulations in connection with a breach of discipline alleged to have been committed by an officer or temporary employee;

“executive officer” means a chief executive officer or a senior executive officer;

“management review” means an examination of any functions and activities of a Department for the purpose of assessing the extent to which those functions and activities are being carried on in an effective, efficient and economical manner;

“Minister” means the responsible Minister of the Crown for the time being administering the provision in which or in respect of which, the expression is used or if, for the time being,

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different Ministers are administering that provision in different respects, each of those Ministers to the extent that he or she is administering that provision in the relevant respect;

“officer” means a person employed in any capacity under Part 2 and includes an officer on probation but does not include a temporary employee;

“position” means a position in the public service;

“prescribed office” means an office specified in section 17 (1);

“prescribed officer” means an office-holder specified in section 17 (1);

“public authority” means an authority that is established by or under an Act and which is (or whose governing body is) constituted by persons at least half of whom are appointed by the Governor in Council or a Minister;

“public sector” means the public service or a public authority;

“public service” means the public service of Victoria as referred to in Part 2;

“Public Service Commissioner” means the Public Service Commissioner under Part 3;

“Public Service Notices” means any document called “Victorian Public Service Notices” published under the authority of the Government;

“right of return to the public sector” means the entitlement of an officer to continue in employment in the public sector in accordance with section 64;

“senior executive officer” means a person holding a senior executive position;

“senior executive position” means a position in the senior executive service referred to in section 54 (1);

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“**special inquiry**” means a special inquiry under Part 7;

“**staff**” or “**members of staff**” means officers or temporary employees or both;

“**statutory office**” means an office that is established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister;

“**temporary employee**” means a person temporarily employed under Division 5 of Part 2.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

5. Act not to apply to certain positions

(1) This Act does not apply to any of the following positions or to any person holding such a position (except to the extent that a provision of this Act otherwise expressly provides)—

(a) any judge of the Supreme Court;

(b) any judge of the County Court;

(c) any master of the Supreme Court within the meaning of Part III of the **Constitution Act 1975**;

(d) any master of the County Court;

(e) any magistrate;

(f) the Solicitor-General or any Prosecutor for the Queen;

(g) persons under the **Police Regulation Act 1958**;

(h) officers of the Parliament within the meaning of the **Parliamentary Officers Act 1975**.

(2) Sub-section (1) does not prevent a person holding a position referred to in that sub-section from having or exercising any functions of a Department Head.

PART 2—PUBLIC SERVICE OF VICTORIA

Division 1—Structure

6. *The public service*

The public service of Victoria consists of the persons who are for the time being employed under this Part.

7. *Positions in a Department*

- (1) A Department consists of—
 - (a) the position of Department Head; and
 - (b) any other positions that the appropriate Department Head from time to time determines in accordance with this Act.
- (2) Subject to sub-section (3), a Department Head may create, abolish or otherwise deal with any position in the Department, other than his or her own position.
- (3) A Department Head must classify and grade each position created under sub-section (2), but may only do so in the case of a senior executive position, with the approval of the Minister.

8. *Positions with functions in more than one Department*

- (1) The appropriate Department Heads may allocate functions in more than one Department to a position.
- (2) A member of staff occupying a position to which functions in more than one Department have been allocated—
 - (a) is responsible to the Department Head of each Department in which he or she is required to perform functions in respect of any matter arising out of the performance of those functions; and
 - (b) in respect of matters affecting the position generally, is responsible to the Department Head of the Department to which the appropriate Department Heads agree the position is primarily attached.

Division 2—Department Heads

9. *Creation of Department Head positions*

- (1) Each position specified in column 2 of Schedule 1 is created by virtue of this Act.
- (2) If the title or other description of a position is omitted from column 2 of Schedule 1, the position is abolished by virtue of this Act.

10. *Department Heads*

- (1) The person holding the position specified in column 2 of Schedule 1 opposite the title or other description of a Department is the Department Head in relation to that Department for the purposes of this Act.
- (2) The person holding the position specified in column 4 of Schedule 1 opposite the title or other description of an Administrative Office has—
 - (a) subject to any Order under sub-section (3), the functions of a Department Head under this Act in relation to the staff of that Administrative Office; and
 - (b) any other functions of a Department Head that the Governor in Council may specify by Order published in the Government Gazette.
- (3) The Governor in Council may by Order published in the Government Gazette specify the functions of a Department Head which a person holding a position specified in column 2 of Schedule 1 may exercise in relation to—
 - (a) an Administrative Office created in relation to the Department of which that person is Department Head; or
 - (b) a position specified in column 4 of Schedule 1 in relation to that Administrative Office.

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11. *Appointments to Department Head positions*

- (1) Appointments to vacant Department Head positions are to be made by the Governor in Council.
- (2) It does not matter whether the person appointed is or is not already a member of staff of the public service.
- (3) The employment under this Part of the Department Head is subject to Part 4.

12. *Acting assignments to Department Head positions*

- (1) The appropriate Minister may assign any officer in the service of the Crown to act in a Department Head position which is vacant or the holder of which is suspended, sick or absent.
- (2) An officer, while acting in a Department Head position, has all the functions of the holder of the position (but is not, only because of that assignment, to be taken to be a chief executive officer for the purposes of Part 4).
- (3) The appropriate Minister may, at any time, terminate the assignment of an officer to act in a Department Head position.

13. *General responsibility of Department Heads*

- (1) A Department Head is responsible to the appropriate Minister or Ministers for the general conduct and the effective, efficient and economical management of the functions and activities of the Department and must advise the appropriate Minister or Ministers in all matters relating to the Department and any Administrative Office created in relation to the Department.
- (2) For the purpose of exercising the responsibility imposed by sub-section (1), a Department Head may take such action as the Department Head considers appropriate in the circumstances, but may not take action that is inconsistent with the functions of the Minister, the appropriate Minister or Ministers or the Public Service Commissioner specified in this Act or the regulations.

14. *Duty to act independently*

Despite section 13, but subject to any other express provision to the contrary in this Act, in matters relating to the appointment, promotion, assignment, demotion, discipline, transfer, retrenchment or termination of employment of members of staff of his or her Department, the appropriate Department Head is not subject to direction but must act independently.

15. *Instructions*

Subject to this Act and without restricting the powers of a Department Head, a Department Head may from time to time issue instructions that must be observed by members of staff of the Department.

16. *Delegation by Department Heads*

(1) A Department Head may by instrument delegate to a member of staff of the Department, any officer in the public service or any other officer in the service of the Crown any of the Department Head's functions under this Act.

(2) If—

(a) a function of a Department Head is delegated to a person in accordance with sub-section (1); and

(b) the instrument of delegation authorises the sub-delegation of the function—

then, subject to any conditions to which the delegation is subject, the delegate may sub-delegate the function to another person mentioned in sub-section (1).

(3) In this section a reference to the functions of a Department Head includes a reference to any functions delegated to the Department Head under this Act.

(4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this Act in the same way as they apply to a delegation.

17. Powers of prescribed officers

- (1) Despite anything to the contrary in this Act, the following office holders have all the functions of a Department Head in relation to staff employed in the following offices—
 - (a) the Auditor-General in relation to the Audit Office;
 - (b) the Director of Public Prosecutions in relation to the Office of the Director of Public Prosecutions;
 - (c) the Electoral Commissioner in relation to the State Electoral Office;
 - (d) the Chief Commissioner of Police in relation to the office of the Chief Commissioner of Police;
 - (e) the Ombudsman in relation to the office of the Ombudsman;
 - (f) the Public Service Commissioner in relation to the Office of the Public Service Commissioner.
- (2) This Act applies to an office specified in sub-section (1) as if any reference in this Act to—
 - (a) a Department or the public service were a reference to that office; and
 - (b) a Department Head were a reference to the office holder; and
 - (c) an officer or temporary employee or member of staff were a reference to an officer or temporary employee or member of staff of that office.

Division 3—Senior executive officers

18. Appointments to senior executive positions

- (1) Appointments to vacant senior executive positions in the public service are to be made by the appropriate Department Head.
- (2) It does not matter whether the person appointed is or is not already a member of staff of the public service.

- (3) The employment under this Part of the senior executive officer is subject to Part 4.

19. *Acting assignments to senior executive positions*

- (1) The appropriate Department Head may assign a member of staff of the public service to act in a senior executive position in the public service which is vacant or the holder of which is suspended, sick or absent.
- (2) A member of staff, while acting in a senior executive position, has all the functions of the holder of the position (but is not, only because of that assignment, to be taken to be a senior executive officer for the purposes of Part 4).
- (3) The appropriate Department Head may, at any time, terminate the assignment of a member of staff to act in a senior executive position.

20. *Merit appointment etc.*

Sections 24 and 29 apply in relation to appointments to senior executive positions in the public service.

Division 4—Officers (other than Department Heads and senior executive officers)

21. *Officers to whom Division applies*

This Division applies in relation to appointments to positions in the public service, but does not apply in relation to appointments to—

- (a) chief executive positions; and
- (b) except for sections 24 and 29, senior executive positions.

22. *Filling of vacant positions*

If a vacancy exists in a position in a Department and the appropriate Department Head decides that it is expedient to fill the vacancy, the position may, subject to and in accordance with this Division, be filled—

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- (a) by the appointment, by way of transfer or promotion, of an officer; or
- (b) by the appointment of a person who, immediately before his or her appointment, was not an officer.

23. *Method of appointment*

An appointment (whether by way of transfer or promotion or otherwise) to a position in the public service must be made by the appropriate Department Head.

24. *Appointments on merit*

- (1) A Department Head, in making an appointment under this Act, must give preference to the person who is best suited to the position.
- (2) In determining whether a person is best suited to a position, the Department Head must have regard to any special qualifications and aptitude of the person for carrying out the duties of the position and also the merit, diligence and good conduct of the person.

25. *Legal proceedings not to be brought in respect of appointment etc.*

- (1) Despite anything to the contrary in the **Employee Relations Act 1992**, any question concerning or arising from the appointment of, or failure to appoint, a person to a position or the entitlement or non-entitlement of a person to be appointed to a position or the validity or invalidity of any such appointment is not an industrial matter within the meaning of that Act and any dispute, or any threatened, probable or impending dispute concerning, or arising from, anything to do with any such question is not an industrial dispute within the meaning of that Act.
- (2) Sub-section (1) applies whether or not any person has been appointed to the vacant position.

- (3) Proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of the appointment of, or the failure to appoint, a person to a position in the public service, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (4) Sub-section (3) does not affect the operation of Schedule 6 or the regulations giving a right of appeal or review under this Act.

26. *Appointments on probation*

- (1) Subject to this Division, every person appointed to the public service as an officer shall, in the first instance, be appointed to a position on probation for a period of 6 months or any longer period that the appropriate Department Head directs.
- (2) If the appropriate Department Head so determines, a person may be appointed to a position in the public service without being required to serve a period of probation.

27. *Confirmation, extension or annulment of appointments on probation*

- (1) If a person is appointed to a position on probation, the appropriate Department Head must—
 - (a) on completion of the period of probation—extend that period or confirm the appointment; or
 - (b) during or on completion of the period of probation—annul the appointment.
- (2) If a person's appointment is annulled under sub-section (1), the person ceases to be an officer, unless appointed to another position as an officer.

28. *Appointment of retired officers*

- (1) An officer who has been retired from the public service or whose employment has been terminated under section 78 may be appointed to a vacant position.

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- (2) An appointment under this section must be made by the appropriate Department Head.
- (3) An appointment under this section may be made without examination or probation.

29. *Obligation to notify vacancies*

If a Department Head intends to fill a position that is vacant or is to become vacant in the Department, the Department Head must notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

30. *Publication of appointments*

The appropriate Department Head must cause to be published in the Public Service Notices particulars of any decision of the Department Head to appoint a person to fill a vacant position.

31. *Temporary assignments*

If—

- (a) a position in a Department is vacant; or
- (b) the holder of a position in a Department is suspended from duty, sick or absent—

the appropriate Department Head may assign a member of staff of the Department to act in the position temporarily.

32. *Restriction on temporary assignment*

The assignment of a member of staff to act in a position temporarily may not continue for a period of more than 6 months unless the Department Head otherwise determines.

33. *Incapable officer may be retired*

If—

- (a) an officer employed in a Department is found to be unfit to discharge or incapable of discharging the duties of the officer's position; and
- (b) the officer's unfitness or incapacity—
 - (i) appears likely to be of a permanent nature; and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control; and
- (c) the appropriate Department Head considers that it is not appropriate to take action under section 79—

the appropriate Department Head may cause the officer to be retired.

34. *Vacation of position*

- (1) An officer's position becomes vacant if—
 - (a) the officer is removed, retires, or is retired from the position or if the officer's employment is terminated; or
 - (b) the officer resigns the position in writing addressed and delivered to the appropriate Department Head.
- (2) This section does not affect any other provision by or under which an officer's position becomes vacant.

Division 5—Temporary employees

35. *Appointment of temporary employees*

- (1) The appropriate Department Head may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work in the Department.

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- (2) The employment of a person under sub-section (1) is subject to the regulations (if any) concerning the employment of temporary employees.
 - (2A) *2 weeks notice.*
 - (3) The appropriate Department Head—
 - (a) may employ a person under this section for a period not exceeding ~~3~~ years; and
 - (b) subject to the regulations, may from time to time employ the person at the end of that period, or at the end of any subsequent period, for a further period not exceeding ~~3~~ years.
1 year
 - (4) A person must not be employed under this section for a continuous period exceeding ~~3~~ 2 years unless the appropriate Department Head considers that special circumstances exist.
1 year

Division 6—Miscellaneous matters

36. Requirements as to citizenship

- (1) A person is not eligible for appointment as an officer of the public service unless he or she is—
 - (a) an Australian citizen; or
 - (b) a permanent resident in Australia under any law of the Commonwealth; or
 - (c) entitled to permanent residency in Australia under any law of the Commonwealth.
- (2) The appropriate Department Head may waive the requirement in sub-section (1) if he or she considers that it is in the interests of Victoria that a person who does not satisfy that requirement should be appointed to the Department.

37. Notification of appointments etc. in Public Service Notices

- (1) Notice of all appointments, promotions or transfers of officers under this Act must be published in the Public Service Notices.

- (2) A notice so published is conclusive evidence of the appointment, promotion or transfer specified in the notice.

38. *Secondment of staff*

- (1) The appropriate Department Head may arrange for the services of a member of staff of the Department to be used by or on behalf of another Department or public authority, the Commonwealth or another State or Territory of the Commonwealth or any authority established by or under a law of the Commonwealth or another State or Territory of the Commonwealth.
- (2) A public authority may make arrangements with the appropriate Department Head on such terms and conditions as are agreed for the services of a person employed by the public authority to be made available to the Department.
- (3) The appropriate Department Head may arrange with the appropriate authority of the Commonwealth or of another State or Territory of the Commonwealth or any authority established by or under a law of the Commonwealth or another State or Territory of the Commonwealth for the performance or execution by an officer or employee of the Australian Public Service or of the public service of that State or Territory or of that authority of—
 - (a) any work or services for the Department; or
 - (b) the duties of a position in the Department.
- (4) An arrangement under sub-section (1) or (3) may include arrangements for determining—
 - (a) the rate of payment to be made; and
 - (b) any incidental matters which may require to be adjusted.
- (5) The fact that a person is an officer or employee of the Australian Public Service or of the public service of any other State or Territory or of any authority established by or under a law of the Commonwealth or another State or Territory of the Commonwealth does not

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disqualify him or her from also holding, occupying or executing the duties of, a position in the public service of Victoria.

- (6) Nothing in this section affects the operation of the **Commonwealth Arrangements Act 1958**.

39. *Members of staff refusing promotion or appointment*

A member of staff who has been offered a promotion or appointment in the public service may decline the promotion or appointment without prejudice to any rights that the member of staff would, if the promotion or appointment had not been declined, have had to any future promotion or appointment.

40. *Restriction on other employment or duties*

- (1) Except with the express permission of the appropriate Minister in the case of a Department Head or of the appropriate Department Head in the case of any other member of staff, a member of staff must not—
- (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any business;
 - (b) engage in or undertake any business whether as principal or agent;
 - (c) engage in or continue in the private practice of any profession or trade;
 - (d) accept or continue to hold any office in or under a corporation;
 - (e) accept or engage in any employment other than in connection with the duties of his or her position in the public service.
- (2) Nothing in sub-section (1) prevents a member of staff from—
- (a) becoming a member only of a corporation or of a company or society of persons registered under an Act of Parliament; or
 - (b) accepting or continuing to hold—

- (i) an office of municipal councillor; or
 - (ii) an office which may only be held by a municipal councillor.
- (3) Permission given to a Department Head under this section may be withdrawn by the appropriate Minister by notice in writing given to the Department Head.
- (4) Permission given to any other member of staff under this section may be withdrawn by the appropriate Department Head by notice in writing given to the member of staff.

41. Retirement

- (1) An officer who has attained the age of 55 years, or any earlier age provided for in—
- (a) a contract of employment under Part 4; or
 - (b) a relevant award or employment agreement under the **Employee Relations Act 1992**—
- may retire from the public service.
- (2) Subject to this Part, an officer must retire from the public service on attaining the age of 65 years.
- (3) The Minister may call on a Department Head who has attained the age of 60 years to retire.
- (4) The appropriate Department Head may call on any other officer who has attained the age of 60 years to retire.
- (5) An officer who is called on to retire under this section must retire from the public service.

42. Extension of service

- (1) An officer may continue in the public service after the age of 65 years if—
- (a) he or she is willing to do so; and
 - (b) the Minister so directs.
- (2) The Minister may so direct if he or she is satisfied that it is in the interests of the public service for the officer to continue in the public service.

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- (3) The officer may continue in the public service for the time (not exceeding 12 months) specified in the direction.
- (4) More than one direction can be given under this section in respect of an officer.

43. *False or misleading information*

The Minister in the case of a Department Head, or the appropriate Department Head in the case of any other officer, may annul the appointment of an officer if the Minister or appropriate Department Head (as the case requires) is satisfied that the officer has, in relation to his or her appointment, given false or misleading information to—

- (a) the Minister or Department Head; or
- (b) a delegate of the Minister or Department Head; or
- (c) a legally qualified medical practitioner conducting a medical examination under the regulations.

PART 3—PUBLIC SERVICE COMMISSIONER

44. *Establishment*

For the purposes of this Act there shall be a Public Service Commissioner.

45. *Functions*

- (1) The functions of the Public Service Commissioner are—
 - (a) to establish guidelines—
 - (i) about how the functions and powers of Department Heads should be exercised; and
 - (ii) for procedures relating to public sector employment; and
 - (iii) to promote consistent personnel policy and practice throughout the public sector; and
 - (iv) specifying principles of merit and equity;

- (b) to ensure that guidelines established under paragraph (a) (iv) are applied throughout the public sector;
- (c) to appoint a Tribunal to hear reviews and appeals under the regulations and to monitor the operation of public sector review and appeal processes and to make recommendations to the Minister on the making, amendment or revocation of regulations concerning reviews and appeals;
- (d) to appoint a grievance mediator to assist in resolving grievances arising out of the working of the review or appeal processes;
- (e) to perform any functions conferred by the regulations concerning appeals against appointment to a position;
- (f) to provide advice to the Government about public sector employment issues;
- (g) to establish selection committees for the appointment of Department Heads and prescribed officers and make recommendations about those appointments to the Minister and any other appropriate Minister;
- (h) to undertake the recruitment of Department Heads and prescribed officers, and at the request of the appropriate Minister or the appropriate Department Head, to undertake the recruitment of senior executive officers;
- (i) to direct Department Heads to accept transfers of redeployed staff;
- (j) to prepare and publish a Code containing minimum standards of conduct to apply throughout the public sector;
- (k) to advise the Government on public sector remuneration issues;
- (l) to develop and advise the Government on personnel policy and practice in the public sector;
- (m) to promote training and development of the senior executive service;

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- (n) to liaise with the Treasurer and the Minister for Finance on public sector superannuation issues;
 - (o) any other functions conferred by this Act or the regulations.
- (2) The Public Service Commissioner must, in respect of each year ending 30 June, prepare an annual report on his or her operations during the year and submit the report to the Minister not later than 31 October next following.
 - (3) The Minister must cause each annual report submitted to him or her under this section to be laid before each House of Parliament within 7 sitting days after receiving the report.

46. *Terms and conditions of office*

- (1) The Public Service Commissioner is to be appointed by the Governor in Council.
- (2) The Public Service Commissioner is to hold office for a term of 5 years but is eligible for re-appointment.
- (3) The Governor in Council may specify other terms and conditions of appointment (including remuneration) in the instrument of appointment.
- (4) The Governor in Council may suspend the Public Service Commissioner from office.
- (5) The Minister must cause to be laid before both Houses of Parliament a full statement of the grounds of suspension of the Public Service Commissioner within 7 days after the suspension if Parliament is then sitting, or, if Parliament is not then sitting, then within 7 days after the next meeting of Parliament.
- (6) The Public Service Commissioner must be removed from office by the Governor in Council if each House of Parliament within 7 sitting days after the day when the statement is laid before it declares by resolution that he or she ought to be removed from office.
- (7) The Governor in Council must remove the suspension and restore the Public Service Commissioner to office unless each House makes a declaration of the kind specified in sub-section (6) within the time specified in that sub-section.

- (8) The Public Service Commissioner can only be removed from office in accordance with this section.

47. *Duty to act independently*

The Public Service Commissioner must act independently in relation to the performance of his or her functions under this Act or the regulations.

48. *Delegation*

The Public Service Commissioner may by instrument delegate to any person any of his or her functions under this Act or the regulations except this power of delegation.

PART 4—PUBLIC SECTOR EXECUTIVES

Division 1—Preliminary

49. *Definitions*

In this Part—

“approved” means approved in writing for the purposes of this Part by the Minister, either generally or in relation to any executive officer or class of executive officers;

“contract of employment” means a contract of employment under this Part between an executive officer and his or her employer;

“employment benefit” means—

- (a) contributions payable to a superannuation scheme by an executive officer’s employer in respect of the officer, including any liability of that employer to make any such contributions or to pay approved costs associated with that scheme; or
- (b) the provision by an executive officer’s employer of a motor vehicle for private use by the officer; or

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- (c) the right to return to the public sector under section 64 by an executive officer who elects to retain that right; or
- (d) the entitlement of an executive officer to approved leave with pay; or
- (e) any other approved benefit of a private nature provided to an executive officer at the cost of the officer's employer;

“executive position” means a chief executive position or a senior executive position;

“monetary remuneration” includes allowances paid in money, but does not include—

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of an executive officer's duties;

“remuneration package” means the remuneration package for an executive officer determined in accordance with Schedule 3;

“superannuation scheme” means a superannuation scheme or fund established by or under an Act or approved for the purposes of this definition.

50. Who are employers for the purposes of this Part?

- (1) In this Part (other than in the definition of **“employment benefit”** in section 49) a reference to the employer of an executive officer is a reference to—
 - (a) in the case of a chief executive officer—the Minister; or
 - (b) in the case of a senior executive officer in the public service, the appropriate Department Head; or
 - (c) in the case of any other senior executive officer—the person or body declared by the Governor in Council in an Order made under section 54 (1) (b) to be the employer in respect of the position which the senior executive officer holds.

- (2) A reference in the definition of “**employment benefit**” in section 49 to an executive officer’s employer is a reference to the person or body in whose service the officer is employed.

51. Remuneration packages

- (1) Schedule 3 specifies ranges of remuneration packages for executive officers or classes of executive officers.
- (2) In this Part, a reference to the remuneration package for an executive officer is, a reference to—
- (a) the amount within the specified range nominated in the officer’s contract of employment; or
 - (b) in any other case—the minimum amount within that range.

52. Amendment or substitution of Schedule 3

The Governor in Council may, by Order published in the Government Gazette—

- (a) amend Schedule 3; or
- (b) omit Schedule 3 and insert a new Schedule specifying ranges of remuneration packages for executive officers or classes of executive officers.

Division 2—Composition of Executive Services

53. Composition of chief executive service

The chief executive service consists of the persons holding chief executive positions.

54. Composition of senior executive service

- (1) The senior executive service consists of the persons holding—
- (a) senior executive positions in the public service under Part 2; and
 - (b) any position on the staff of a declared authority that is declared by the Governor in Council, by Order published in the Government Gazette, to be a senior executive position.

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- (2) An Order under sub-section (1) (b) must specify the person or body that is to be the employer in respect of that position for the purposes of this Part.
- (3) The Governor in Council may, by Order published in the Government Gazette, revoke or amend any declaration under sub-section (1) (b).

Division 3—Employment of Executive Officers

55. *Employment of executive officers to be governed by contract of employment*

- (1) Subject to this Act, the employment of an executive officer shall be governed by a contract of employment between the officer and his or her employer. The contract must be in writing and be signed by or on behalf of the employer and the officer.
- (2) A contract of employment must specify the date on which it expires which must not be more than 5 years after the date on which it came into force.
- (3) Subject to this Act, an executive officer holds a position while a contract of employment to which he or she is a party remains in force for the position and continues to hold the position if a subsequent contract of employment is entered into for it by him or her and the employer.
- (4) If at the time of entering into a contract of employment for a position, the executive officer had not been appointed to the position, then the contract constitutes his or her instrument of appointment.
- (5) A contract of employment of an executive officer may be terminated by either party to the contract on giving 4 weeks notice of termination to the other party.
- (6) The Minister may, before acting on the recommendation of the appropriate Minister to terminate the contract of employment of a chief executive officer, request the Public Service Commissioner to review, either generally or in respect of any particular matter, the officer's performance.

- (7) A person is not entitled to any compensation for termination of a contract of employment under subsection (5).
- (8) A contract of employment may be varied at any time by a further contract between the parties. However the term of the contract may not be increased beyond 5 years.
- (9) A contract of employment may not vary or exclude a provision of this Act or of any other Act under which the executive officer concerned is appointed or a provision of the regulations made under this Act or any such other Act.
- (10) The employer of an executive officer in the service of the Crown acts for and on behalf of the Crown in any contract of employment between the officer and the employer.

56. *Matters regulated by contract of employment*

- (1) A contract of employment between an executive officer and his or her employer may contain provisions concerning some or all of the terms and conditions of employment including—
 - (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance);
 - (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been specified in Schedule 3 for the remuneration package);
 - (c) any election by the executive officer to retain a right of return to the public sector under section 64.
- (2) A contract of employment may provide for any matter to be determined—
 - (a) by further agreement between the parties; or

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- (b) by further agreement between the executive officer and some other person specified in the contract; or
- (c) by the Minister or some other person or body specified in the contract.

57. *Performance review of Department Heads*

- (1) The Public Service Commissioner shall be responsible to the appropriate Minister or appropriate Ministers for reviewing, either generally or in respect of any particular matter, the performance of each Department Head.
- (2) In carrying out his or her functions under sub-section (1), the Public Service Commissioner must report to the appropriate Minister or appropriate Ministers on the manner and extent to which the Department Head is fulfilling all of the requirements imposed on that Department Head, whether under this Act or otherwise.

58. *Performance review of other executive officers*

- (1) The performance of an executive officer (other than a Department Head) must be reviewed, at least annually, by the officer's employer or by some other person nominated by that employer.
- (2) Any such review is to have regard to any performance criteria contained in the contract of employment and any other relevant matter.

59. *Legal proceedings excluded*

- (1) In this section, a reference to the employment of an executive officer is a reference to—
 - (a) the appointment of, or the failure to appoint, a person to a vacant executive position; or
 - (b) the removal, retirement, termination of employment or other cessation of office of an executive officer; or
 - (c) the remuneration or other terms and conditions of employment of an executive officer.

- (2) An appeal does not lie in relation to the employment of an executive officer to any appeal or review body established by or under this Act.
- (3) Proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief do not lie in respect of the appointment of, or the failure to appoint, a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (4) This section does not prevent a person applying to a court for review of a decision relating to the employment of an executive officer other than in relation to a matter referred to in sub-section (3).

Division 4—Remuneration of Executive Officers

60. *Monetary remuneration and employment benefits for executive officers*

- (1) Executive officers are entitled to monetary remuneration at the rate, and to employment benefits of the kinds, provided in their contract of employment.
- (2) The total amount of—
 - (a) the annual rate of monetary remuneration for an executive officer; and
 - (b) the annual cost to his or her employer of employment benefits provided for an executive officer—

under his or her contract of employment must be equal to the amount of the remuneration package for the executive officer.

- (3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (4) This section does not affect—
 - (a) any approved performance-related incentive payments made to an executive officer; or

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- (b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as fees for attendance at meetings).
- (5) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or long service leave with pay if—
 - (a) the officer forgoes (with the approval of his or her employer) the right to take that part of that leave; and
 - (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.
- (6) Sub-section (5) has effect despite anything to the contrary in this or any other Act.
- (7) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under sub-section (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.
- (8) If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and subsequent adjustment of payments in accordance with the contract as varied.

61. *Travelling and subsistence allowances etc.*

- (1) An executive officer is entitled to be paid—
 - (a) any travelling or subsistence allowances; and
 - (b) any allowances in relation to relocation expenses; and
 - (c) any other allowances in relation to expenses incurred in the discharge of the officer's duties—that the officer's employer may from time to time determine in respect of the officer.

- (2) An executive officer's contract of employment—
- (a) may provide for the payment to the officer of allowances of the kind referred to in sub-section (1); and
 - (b) may determine the payment of allowances of that kind.

Division 5—Vacation of Executive Positions

62. Definition

A reference in this Division to engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

63. Vacation of executive positions

- (1) The position of an executive officer becomes vacant if—
- (a) his or her contract of employment expires without a subsequent one having been entered into; or
 - (b) he or she is removed from office, or retires from office, under this or any other Act; or
 - (c) he or she resigns in writing addressed to his or her employer.
- (2) This section does not affect any other provision by or under which an executive officer vacates his or her position.

64. Right to return to public sector for certain executive officers

- (1) An executive officer may elect to retain a right of return to the public sector if, for a continuous period ending immediately before his or her first appointment as an executive officer—
- (a) the officer was employed in the public sector; or
 - (b) the officer—
 - (i) held a statutory office or a series of statutory offices on a full-time basis; and

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- (ii) before holding that office, or any of those offices, the officer was employed in the public sector.
- (2) An election referred to in sub-section (1)—
 - (a) may be made in the first contract of employment entered into by the executive officer, but (unless made in that first contract) may not be made in any subsequent contract for the same or another executive position; and
 - (b) is revoked if the election is not again made by the executive officer in a subsequent contract of employment; and
 - (c) may be revoked by the executive officer by notice in writing to his or her employer; and
 - (d) if revoked, may not be made again.
- (3) An executive officer who has elected to retain a right of return to the public sector is entitled to employment in the public sector if he or she ceases to be an executive officer and—
 - (a) in the case of a chief executive officer—is not re-appointed to the same or another chief executive position; or
 - (b) in the case of a senior executive officer—is not re-appointed to the same or another executive position.
- (4) A person is not entitled to employment in the public sector under this section if he or she ceased to be an executive officer because he or she resigned or was (after due inquiry) removed from office for misbehaviour.
- (5) The employment to which a person is entitled under this section is employment—
 - (a) in the case of a chief executive officer—as a senior executive officer in any part of the public sector; or

(b) in the case of a senior executive officer—in any part of the public sector at a salary not lower than the current maximum salary for—

- (i) the previous employment of the person in the public sector; or
- (ii) an Administrative Officer (AM8) in the public service or an equivalent position in any other part of the public sector—

whichever is the lesser.

- (6) A person who is entitled to employment in the public sector under this section is not entitled to any compensation for ceasing to hold office as an executive officer.
- (7) Sub-section (6) does not prevent the payment of additional remuneration to a person who is employed in the public sector under this section in order to maintain, in accordance with his or her employer's redeployment policy, the level of the person's previous remuneration package for a period after the person ceases to be an executive officer.

Division 6—General

65. *Contracts of employment for incumbent officers*

- (1) An executive officer who was appointed to a position before it became an executive position under this Part (whether under Schedule 6 or otherwise) may elect to enter into a contract of employment for the position at any time up until the end of 3 months after the date on which it became an executive position under this Part. After that time the officer cannot enter into a contract of employment for that executive position.
- (2) A person who holds an executive position under this Part and who elects, within the period specified in sub-section (1), to enter into a contract of employment for that position, is entitled to be offered a contract for that position without the position being advertised.

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- (3) If under Schedule 6 or otherwise a position has become an executive position under this Part, the person (if any) holding that position is to continue to hold it until the position otherwise becomes vacant even if he or she does not elect to enter into a contract of employment for that position.
- (4) While a person continues to hold an executive position under sub-section (3) without having entered into a contract of employment for it, the terms and conditions of employment of the person are to be the same as those which applied to the person immediately before the position became an executive position. He or she also continues to have the benefit of all rights that have accrued, or are accruing, to him or her under those terms and conditions.
- (5) However, an executive officer who continues to hold a position in the circumstances set out in sub-section (4)—
 - (a) in the case of a chief executive officer, is not entitled to any greater salary than that to which he or she was entitled immediately before the position became an executive position;
 - (b) in the case of a senior executive officer, ceases to be entitled to any performance-related incentive payments provided for under the terms and conditions applicable under that sub-section.
- (6) An executive officer who continues to hold a position in the circumstances set out in sub-section (4) may transfer in accordance with this Act to another executive position under the same terms and conditions of employment as those which applied to him or her immediately before the transfer.
- (7) An executive officer holding a position in the public service who enters into a contract of employment for that position does not, only because of entering into that contract, cease to be an officer.
- (8) This section does not apply to a senior executive position if the Order declaring the position under section 54 (1) (b) specifies that this section is not to apply to it.

66. Incumbent officers—accrued leave

- (1) A person who—
- (a) was engaged in the public sector when he or she first became an executive officer; and
 - (b) had a right to accrued long service leave or annual leave with pay immediately before becoming an executive officer; and
 - (c) has not taken that leave before first entering into a contract of employment for the executive position—

is entitled, on taking up duties under that contract, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.

- (2) An election under sub-section (1) is to be made within the time, and in the manner, determined by the Minister.
- (3) The money value of leave is to be calculated at the rate of pay of the person immediately before taking up duties under contract in the executive position.
- (4) A person who was engaged in the public sector when he or she first became an executive officer retains any right to long service, annual, sick or other leave accrued or accruing to him or her immediately before becoming an executive officer (except any accrued leave which is paid out by a gratuity under sub-section (1)).
- (5) A reference in this section to an engagement in the public sector has the same meaning as in Division 5.

67. Change in status of positions

- (1) If a chief executive position becomes a senior executive position or a senior executive position becomes a chief executive position, the existing contract of employment continues in force until a new contract is made under this Part.

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- (2) If a position other than a Department Head position ceases to be an executive position because of an Order made under section 54 (3)—
 - (a) the position is not thereby abolished; and
 - (b) any person holding the position is to be taken to have been appointed to it in accordance with the provisions applying to it.
- (3) Despite sub-section (2) (b), the Order by which a position (other than a Department Head position) ceases to be an executive position may direct that the person holding it is to cease to hold the position, but only if the person was not employed in the public sector immediately before last becoming an executive officer.
- (4) The person to whom a direction under sub-section (3) relates ceases to hold the position concerned.
- (5) An Order made under section 54 may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.

68. *Change in title of positions*

A position declared under section 54 (1) (b) does not cease to be an executive position merely because of a change in its title or other description.

69. *Operation of Part*

- (1) This Part prevails over any inconsistent provision made by any other Act or law and over any inconsistent terms and conditions applying to a position, whether under a contract of employment or otherwise.
- (2) A provision of this Part applies to a person appointed to an executive position under an Act even though that Act excludes the application of this Act, unless that Act expressly excludes the application of that provision.

**PART 5—ADMINISTRATION AND MANAGEMENT OF THE
PUBLIC SECTOR**

Division 1—Functions of the Minister

70. *Functions of the Minister*

The Minister has—

- (a) the function of securing the overall effectiveness and efficiency of the public sector; and
- (b) the function of reviewing management effectiveness and efficiency in the public sector.

71. *Ministerial delegation*

- (1) The Minister may by instrument delegate to any person any of the Minister's functions under this Act, other than this power of delegation.
- (2) The appropriate Minister may by instrument delegate to any person any of the appropriate Minister's functions under this Act other than this power of delegation.

72. *Power to enter Department's premises etc.*

- (1) For the purpose of the exercise of the Minister's functions under this Act, a person authorised by the Minister may—
 - (a) enter the premises of any Department or prescribed office; and
 - (b) require the production of, and examine any documents in the custody of, any member of the staff of any Department or prescribed office; and
 - (c) require any member of the staff of any Department or prescribed office to answer questions.
- (2) The powers conferred by this section are exercisable in relation to a Department or prescribed office only after consultation with the appropriate Department Head or prescribed officer.

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- (3) A person has the same privileges in relation to—
- (a) the production of any document; or
 - (b) the furnishing of any information or particulars; or
 - (c) the answering of questions—
- under this section as a witness has in a court of law.
- (4) Nothing in this section takes away from—
- (a) any enactment that imposes a prohibition or restriction on—
 - (i) the availability of any information; or
 - (ii) the production or examination of any documents or information; or
 - (b) any privilege or immunity existing by custom or convention and relating to the production of documents of previous Governments.

73. *Management assistance and advice*

The Minister may provide a Department with such assistance and advice as will foster improvement in the efficiency or management practices of the Department.

Division 2—Management reviews

74. *Power of Minister to carry out management reviews*

- (1) The Minister may arrange for the conduct of management reviews.
- (2) A management review may be conducted in respect of—
- (a) the functions and activities of one Department only; or
 - (b) a part only of the functions and activities of one Department; or
 - (c) the functions and activities of more than one Department in related matters.
- (3) If the Minister considers it appropriate to do so, the Minister may—
- (a) consult with the appropriate Department Head before commencing a management review; and

- (b) give the Department Head an opportunity to nominate such number of members of staff to participate in the conduct of the review as the Minister determines.

75. Assistance in management reviews

- (1) The appropriate Department Head and any other member of staff of that Department must give any person conducting a management review all assistance that he or she reasonably requires in order to conduct the review.
- (2) It is an act of misconduct for a member of staff of a Department without lawful excuse to fail to comply with sub-section (1).

76. Reports of management reviews

- (1) The Minister may, after completing a management review, cause a report to be prepared on the conduct and findings, and any recommendations, of the review.
- (2) The Minister may provide a copy of the report to any other Minister concerned with the subject-matter of the report.

Division 3—Miscellaneous matters relating to administration of the public service

77. Transfers within Department or between Departments

- (1) If the appropriate Department Head considers it to be in the interests of the Department to do so, the Department Head may direct the transfer of an officer from one position in the Department to another position in the Department at the officer's existing salary, provided the officer has the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.
- (2) If the appropriate Department Head considers it to be in the interests of the public service to do so, that Department Head may, with the approval of the Department Head of the other Department concerned, transfer an officer from a position in the Department to a

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position in another Department at the officer's existing salary, provided the officer has the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.

- (3) If a function is transferred from one Department to another, the Minister may, in writing, direct the Department Head of the first Department to transfer any officer necessary to carry out, or support the carrying out of, that function to a position in the second Department at the officer's existing salary, provided the officer has the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.
- (4) A direction under sub-section (3) is binding on the Departments affected.
- (5) A direction under sub-section (3) may be made in respect of one officer or a group of officers.

78. Redundancy

- (1) If the appropriate Department Head at any time finds that a greater number of persons is employed in the Department than is considered by the Department Head to be necessary for the efficient working of the Department, those persons who are identified by the Department Head as redundant may be transferred by the Public Service Commissioner to any other Department that requires additional assistance.
- (2) If the Public Service Commissioner cannot successfully transfer any person so identified as redundant, the Public Service Commissioner must advise the Department Head who may then terminate that person's employment.
- (3) Before directing a transfer under sub-section (1), the Public Service Commissioner—
 - (a) must consult with the officer or temporary employee about any proposed transfer; and
 - (b) must consult with the Department Head of the Department to which the officer or employee is to be transferred.

- (4) A direction of the Public Service Commissioner is binding on the officer or temporary employee and the Departments affected.
- (5) If the employment of an officer or temporary employee is terminated under this section, the appropriate Department Head must certify in writing to the administrator of any applicable statutory superannuation scheme within the meaning of the **Superannuation (Public Sector) Act 1992** that the officer or temporary employee has been retrenched for the purposes of the Act by which the scheme is established or for the purpose of that scheme (as the case requires).

79. Excessive salaries

- (1) Subject to section 33, if—
 - (a) the Minister, after consideration of the report of a relevant management review or special inquiry; or
 - (b) the appropriate Department Head—

is satisfied that an officer employed in a Department is in receipt of a greater salary than the maximum fairly appropriate to the work performed by the officer then, subject to sub-section (2), the Department Head must take such steps as are practicable to assign the officer work of a class appropriate to the officer's salary.

- (2) If—
 - (a) the officer cannot be assigned sufficient work of the kind referred to in sub-section (1); or
 - (b) the officer is unfit to perform or incapable of performing work appropriate to the officer's salary—

the appropriate Department Head must take such steps as are practicable to secure the officer's transfer to a vacant position in any other Department at the officer's existing salary.

- (3) If a transfer cannot be made in accordance with sub-section (2) or the officer is unfit for or incapable of performing the work attached to a position referred to in that sub-section, the appropriate Department Head, with the approval of the Public Service Commissioner—

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- (a) must reduce the officer's salary to the maximum determined by that Department Head to be appropriate to the work performed by the officer; and
 - (b) may take such steps as are practicable to secure the officer's transfer to a vacant position in the Department to which the officer belongs or in any other Department at that salary.
- (4) If a reduction of salary of an officer under this section is certified by the appropriate Department Head to have been made on the ground only that appropriate work or an appropriate position is not available, the officer is entitled to employment in the class of work to which the officer's previous salary was appropriate, or transfer to a position to which that class of work is attached, as soon as the appropriate work or an appropriate position becomes available, in preference to any other officer whose salary has not been reduced.
- (5) A transfer of an officer under this section may be only made by the appropriate Department Head with the approval of the Public Service Commissioner and, where relevant, the Department Head of the Department to which the officer is being transferred.

80. *Officer refusing transfer*

- (1) If an officer refuses a transfer from one position to another under section 77, 78, 79 or 81 the appropriate Department Head, with the approval of the Public Service Commissioner, may dismiss the officer from the public service, but only if that Department Head has certified that the officer had no valid reason for so refusing.
- (2) If the appropriate Department Head considers that an officer had a valid reason for refusing the transfer, the Department Head may allow the officer to decline the transfer without prejudice to any rights that the officer would, if the transfer had not been declined, have had to any future promotion or appointment.

81. Provisions applying to executive officers in the public service

- (1) Sections 77-80 do not apply to an executive officer under a contract of employment within the meaning of Part 4.
- (2) If the appropriate Department Head considers it to be in the interests of the Department to do so, the Department Head may transfer a senior executive officer from one position in the Department to another position in the Department with the same remuneration package within the meaning of Part 4.
- (3) If the appropriate Department Head considers it to be in the interests of the public service to do so, the Department Head may with the approval of the Minister and the Department Head of the other Department concerned, transfer a senior executive officer from a position in the Department to a position in another Department with the same remuneration package within the meaning of Part 4.
- (4) A transfer under this section may be made only if the senior executive officer has the qualifications required for the other position.

82. No compensation to be paid where employment terminated or salary reduced

Subject to any applicable award or employment agreement under the **Employee Relations Act 1992**, a member of staff is not entitled to any compensation as a result of the termination of that member's employment or that member's salary being reduced.

PART 6—TERMS AND CONDITIONS OF EMPLOYMENT

83. Employee Relations Act 1992 applies

- (1) The **Employee Relations Act 1992** applies to officers and temporary employees of the public service and to any person not covered by a federal award who holds a

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position on the staff of a declared authority. These people are employees within the meaning of that Act.

- (2) This section applies to a declared authority.
- (3) Despite sub-section (1) and anything to the contrary in the **Employee Relations Act 1992**—

- (a) any question concerning or arising from—
- (i) the appointment of, or failure to appoint, an executive officer to a position or the entitlement or non-entitlement of an executive officer to be appointed to a position or the validity or invalidity of any such appointment; or
 - (ii) the dismissal or termination of employment, or the threatened dismissal or termination of employment, of an executive officer; or
 - (iii) in any other way the employment of an executive officer—

is not an industrial matter within the meaning of the **Employee Relations Act 1992** and any dispute, or any threatened, probable or impending dispute concerning, or arising from, anything to do with a question referred to in this paragraph is not an industrial dispute within the meaning of that Act;

- (b) Part 2 of the **Employee Relations Act 1992** does not apply to a contract of employment under Part 4 of this Act;
- (c) the Employee Relations Commission does not have power to make an award that applies to executive officers;
- (d) an executive officer may not apply for an order under Division 1 of Part 5 of the **Employee Relations Act 1992**;
- (e) the provisions of the **Employee Relations Act 1992** that apply in relation to executive officers apply as if any reference in them to an employment agreement were a reference to a contract of employment under Part 4 of this Act.

- (4) Despite sub-section (1), section 48 (a) of the **Employee Relations Act 1992** does not apply in relation to—
- (a) officers and temporary employees of the public service; or
 - (b) any person not covered by a federal award who holds a position on the staff of a declared authority.

84. *Holidays and leave of absence*

- (1) Schedule 4 contains provisions about the rights of a member of staff to leave of absence and public holidays.
- (2) Despite anything to the contrary in this Act, Parts 1 and 2 of Schedule 4 also apply to officers of the Parliament as defined in the **Parliamentary Officers Act 1975** as if references in those Parts to the appropriate Department Head were references to the relevant authority as defined in that Act.

PART 7—SPECIAL INQUIRIES

85. *Minister may direct holding of special inquiry*

- (1) The Minister may, in the case of any matter relating to a Department or prescribed office, direct a person to conduct a special inquiry into the matter.
- (2) Without limiting the generality of sub-section (1), a special inquiry may be conducted under this section into a matter involving an alleged breach of discipline by an executive officer (whether or not the person has ceased to be such an officer).
- (3) If a special inquiry is conducted under this section into a matter involving an alleged breach of discipline by an executive officer, a disciplinary inquiry is not required to be held under the regulations.

86. Powers of persons conducting special inquiries

- (1) A person conducting a special inquiry may enter the premises of any Department or prescribed office in connection with the inquiry.
- (2) Sections 14, 15, 16 and 21A of the **Evidence Act 1958** apply to a person conducting a special inquiry as if he or she were a Board or the Chairman of a Board appointed by the Governor in Council.

87. Procedure and evidence at a special inquiry

- (1) If the person conducting a special inquiry agrees, an agent (including a legal practitioner) may represent a person, Department or other body at the inquiry.
- (2) The person conducting a special inquiry is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in such manner as the person considers appropriate.
- (3) The person conducting a special inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

88. Reports of special inquiries

- (1) The person conducting a special inquiry must—
 - (a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the inquiry; and
 - (b) immediately after preparing the report, provide the Minister and the appropriate Minister each with a copy of the report.
- (2) The appropriate Minister must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject of the report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which that Minister was provided with a copy of the report.

**PART 8—APPLICATION OF PROVISIONS TO DECLARED
AUTHORITIES**

89. Power to amend Schedule relating to declared authorities

(1) In this section—

“authority” means—

- (a) a public authority; or
 - (b) any group of people employed in the service of the Crown; or
 - (c) any TAFE college within the meaning of the **Vocational Education and Training Act 1990** or any council of a TAFE college established under that Act.
- (2) The Governor in Council may, by Order published in the Government Gazette, amend Schedule 2—
- (a) by inserting, omitting or amending the title or other description of any authority; and
 - (b) by inserting, omitting or amending the title or other description of any position the holder of which is to have the functions of a Department Head in relation to that authority.
- (3) The Governor in Council may, by Order published in the Government Gazette, amend Schedule 2 by inserting, omitting or amending references to any of the provisions of this Act or the regulations which are to apply to a declared authority.
- (4) The Governor in Council may, by Order published in the Government Gazette, omit Schedule 2 and insert instead a Schedule containing in column 1 the titles or other descriptions of authorities and in column 2 the titles or other descriptions of positions and in column 3 references to applicable provisions of this Act or the regulations.
- (5) A reference in column 3 of Schedule 2 in relation to a declared authority to a provision of this Act includes any regulations applying for the purposes of that

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provision unless those regulations are expressly referred to in that column in relation to that authority.

90. Application of Act to declared authorities

- (1) Subject to sub-section (2), a provision of this Act or the regulations applies in relation to a particular declared authority only if the provision is specified in column 3 of Schedule 2 in relation to that authority.
- (2) Sections 50 (1) and 83 apply to declared authorities.
- (3) A reference in a provision specified in column 3 of Schedule 2 in relation to a declared authority to—
 - (a) a Department or the public service, is to be taken to be a reference to the declared authority; and
 - (b) a Department Head is to be taken to be a reference to the position specified in column 2 of Schedule 2 as having the functions of a Department Head in relation to the declared authority; and
 - (c) an officer or temporary employee or member of staff of a Department or the public service is to be taken to be a reference to a person on the staff of the declared authority; and
 - (d) the Treasurer, in the case of a declared authority other than a group of people employed in the service of the Crown, is to be taken to be a reference to the declared authority.
- (4) When a provision of this Act applies to a declared authority that provision prevails over any inconsistent provision of any other Act, regulation, statutory instrument, agreement or other document applying to that declared authority or the staff or a person on the staff of that declared authority.

**PART 9—REMOVAL AND RETIREMENT OF CERTAIN
STATUTORY OFFICE HOLDERS**

91. Definitions

- (1) In this Part—

“office holder” means a person appointed to a statutory office, and includes a term appointee;

“term appointee” means a person appointed to a statutory office where the Act concerned provides that the holder of the office holds it for a term specified in the Act, in the instrument of appointment or in another instrument.

- (2) For the purposes of this Part, a person is not a term appointee merely because an Act provides that the person ceases to hold office on reaching a particular age.
- (3) A reference in this Part to engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

92. *Part not to apply to executive officers*

This Part does not apply to a person in the person’s capacity as an executive officer.

93. *Removal of term appointee from office*

- (1) The Governor in Council may remove a term appointee from office at any time.
- (2) This section does not prevent a term appointee from being removed from office apart from under this Act.
- (3) This section applies whether the term appointee holds office on a full-time or part-time basis.
- (4) This section does not apply to a person in the person’s capacity as the holder of an office under an Act that provides that the holder may or must be removed from office following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament.

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94. Return to public sector

- (1) This section applies to a term appointee who is removed from office under section 93 or whose term of office expires.
- (2) A person to whom this section applies is entitled to employment in the public sector if for a continuous period ending immediately before appointment to the office—
 - (a) the person was employed in the public sector; or
 - (b) the person—
 - (i) held another statutory office or a series of statutory offices on a full-time basis; and
 - (ii) before holding that office or any of those offices the person was employed in the public sector.
- (3) The employment to which the person is entitled under this section is employment—
 - (a) at a salary not lower than the current salary for the previous employment of the person in the public sector; and
 - (b) with duties appropriate to that salary.
- (4) A person who is entitled to employment in the public sector under this section is not entitled to any compensation for ceasing to hold office as a term appointee.

95. Operation of this Part

- (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of, or contract with, a person.
- (2) This Part applies to a person appointed to a statutory office even though the Act concerned excludes the application of this Act, unless it expressly excludes the application of this Part.

- (3) This Part applies to persons holding office at the commencement of this Part, as well as to persons appointed to an office afterwards.
- (4) Without affecting the operation of section 5 (1), this Part does not apply to any position or to any person holding a position specified in that sub-section.

PART 10—SUPPLEMENTARY PROVISIONS

96. Evidence of appointments

A certificate signed by the Department Head that a person named in the certificate was appointed to a position in the Department from and including a day stated in the certificate is evidence that the person so named was duly so appointed to and continues to hold the position unless the contrary is proved.

97. Evidence as to Public Service Notices

A document purporting to be an issue of the Public Service Notices—

- (a) is admissible in evidence in any proceedings; and
- (b) shall, until the contrary is proved, be presumed to be a copy of an issue of the Public Service Notices.

98. Gratuities for special work

- (1) The appropriate Department Head may certify that in his or her opinion a member of staff of the Department is entitled to a gratuity in respect of definite special work performed by that member.
- (2) Remuneration (other than a gratuity under sub-section (1) or remuneration payable in respect of the duties under this Act of a member of staff) is only payable in respect of work or duties performed for or on behalf of the Crown or as a Government representative on any body, if the appropriate Minister consents.

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99. *Fines to be deducted from salary*

The Treasurer, on receiving notice of any fine imposed under the authority of this Act or the regulations, must deduct the amount of the fine from the salary of the member of staff incurring the fine or from any payment made by the Treasurer to that member on account of salary.

100. *Court registrars, etc. may be directed to act anywhere in Victoria*

(1) An appointment as—

- (a) a registrar of the Magistrates' Court; or
- (b) a bailiff of the Magistrates' Court; or
- (c) a registrar of the Children's Court; or
- (d) a deputy registrar of the County Court—

authorises that person to act as such anywhere in Victoria as directed by the appropriate Minister or the appropriate Department Head.

(2) Sub-section (1) applies despite anything in any Act.

101. *Oath of office*

If an oath of office is required to be taken by a person who accepts a position in the public service or who is otherwise required by or under this Act to take an oath of office, the oath must be taken in the form set out in Schedule 5.

102. *Performance of functions in officer's absence*

(1) If by or under any Act or other document any function is imposed or conferred on any officer in the service of the Crown (other than a Minister of the Crown) in his or her capacity as such, the function may be performed by any other such officer whom the appropriate Minister directs to do so while—

- (a) the first-mentioned officer is unable (whether because of illness, absence or otherwise) to perform the function; or
 - (b) there is a vacancy in the office.
- (2) An officer performing a function under sub-section (1)—
- (a) must be taken for all purposes to be the officer for whom he or she is acting; and
 - (b) has all the functions of the officer for whom he or she is acting.

103. Choice of procedure

Despite anything to the contrary in any Act, if the circumstances giving rise to a right of review under this Act or the regulations would also give rise to a right of complaint under the **Equal Opportunity Act 1984**, an officer or temporary employee may exercise one only of those rights.

104. Certified agreements

- (1) This section applies to any registered or certified agreement under the **Industrial Relations Act 1979** to which the State of Victoria, the Government of Victoria, a Minister, a former Minister or an administrative unit or associated administrative unit under the **Public Service Act 1974** is a party.
- (2) Despite anything to the contrary in the **Industrial Relations Act 1979**, the **Employee Relations Act 1992** or any other Act, the Governor in Council may, by Order published in the *Government Gazette*, appoint a day on which an agreement, or part of an agreement, to which this section applies, terminates.
- (3) On the day appointed under sub-section (2), the agreement or the part of the agreement (as the case requires) terminates and ceases to have any legal effect whatsoever.

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- (4) No compensation is payable to any person because of the termination of an agreement or part of an agreement under this section.
- (5) This section does not limit any other power under this or any other Act to terminate an agreement, or part of an agreement, to which this section applies.

105. *Supreme Court—limitation of jurisdiction*

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court from—

- (a) entertaining actions for compensation in relation to matters in respect of which this Act provides that no compensation is payable; or
- (b) entertaining applications for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief where those applications are prohibited by this Act; or
- (c) entertaining any action relating to a complaint under the **Equal Opportunity Act 1984** where a person has chosen another avenue of review in relation to that matter under section 103.

106. *Regulations*

- (1) The Governor in Council may make regulations for or with respect to any matter that relates to the organisation, management or discipline of the public sector or that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, but without limiting the generality of subsection (1), the regulations may make provision for or with respect to all or any of the following—
 - (a) providing for reviews and appeals (including empowering the Public Service Commissioner to appoint a Tribunal) in relation to decisions made

- under this Act or the regulations and prescribing the procedures for reviews and appeals;
- (b) the remuneration of the Tribunal and the terms and conditions of appointment of the Tribunal;
 - (c) regulating the procedures for handling disciplinary matters in relation to officers and temporary employees including hearings, appeals and the imposition of penalties which may include fines (not exceeding 10 penalty units), reduction in salary or classification, suspension or dismissal;
 - (d) providing for disciplinary action (including the imposition of penalties which may include fines (not exceeding 10 penalty units), reduction in salary or classification, suspension or dismissal) which may be taken in respect of an officer or temporary employee who has been found guilty of an offence punishable by imprisonment;
 - (e) the functions of the grievance mediator;
 - (f) the forms of contracts of employment in the chief executive service or senior executive service;
 - (g) providing for the medical examination of, and standards of medical fitness for, persons seeking appointment to positions in the public service;
 - (h) educational qualifications for appointments to positions in the public service;
 - (i) providing for the conduct of examinations in connection with any such appointments and the appointment and remuneration of examiners;
 - (j) the procedures to be adopted for selecting an appointee from among candidates for a vacant position (other than a chief executive position), but not so as to limit the power of the appropriate Department Head to make an appointment to fill a vacancy;
 - (k) determining the eligibility of persons for appointment as temporary employees;
 - (l) providing for the transfer of staff between Departments;

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- (m) providing for the hours of attendance of staff;
 - (n) leave which may be granted to staff;
 - (o) providing for the payment of travelling and subsistence allowances for staff, allowances for the increased cost of living in remote areas, and other allowances for staff;
 - (p) procedures for the determination and deduction of rent for the use of a Government building as a residence;
 - (q) procedures to be adopted consequent on the appointment of a person to a position;
 - (r) redeployment or redundancy;
 - (s) providing for the exercise of the functions of suspended, sick or absent staff by other staff, and the exercise by staff of the functions attaching to vacant positions;
 - (t) providing for entry to positions in the public service in special cases;
 - (u) implementation of guidelines prepared by the Public Service Commissioner;
 - (v) any matter in respect of which regulations can be made under Schedule 6.
- (3) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.

- (4) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (c) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
 - (d) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (5) The regulations are not capable of altering or affecting any duty that is required to be performed by or under any Act.

107. Amendment of Schedule 1 with respect to Departments

- (1) Whenever a Department is established or abolished, or its title or other description is changed, the Governor in Council may, by Order published in the Government Gazette, amend column 1 of Schedule 1 by inserting, omitting or amending the title or other description of the Department accordingly.

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- (2) The Governor in Council may, by Order published in the Government Gazette, amend column 2 of Schedule 1 by inserting opposite the title or other description of a Department the title or other description of a position in the Department, or by omitting or amending that title or other description.
- (3) The Governor in Council may, by Order published in the Government Gazette, omit columns 1 and 2 of Schedule 1 and insert instead new columns containing in column 1 the titles or other descriptions of Departments and containing in column 2 the titles or other descriptions of positions in those Departments.
- (4) The Governor in Council may by Order published in the Government Gazette specify the functions of a Department specified in column 1 of Schedule 2 to the extent that those functions are not inconsistent with any statement of functions in relation to the Department in any other Act.
- (5) In this section, a reference to a Department does not include a reference to an Administrative Office.

108. *Amendment of Schedule 1 with respect to Administrative Offices*

- (1) The Governor in Council may, by Order published in the Government Gazette, amend column 3 of Schedule 1 by—
 - (a) inserting the title or other description of a body or group in relation to a Department in column 1 of the Schedule; or
 - (b) omitting or amending the title or other description of a body or group.
- (2) The Governor in Council may, by Order published in the Government Gazette, amend column 4 of Schedule 1 by inserting opposite the title or other description of a body or group, the title or other description of a position in relation to that body or group, or by omitting or amending that title or other description.

- (3) The Governor in Council may, by Order published in the Government Gazette, omit columns 3 and 4 of Schedule 1 and insert instead new columns containing in column 3 the titles or other descriptions of bodies or groups and containing in column 4 the titles or other descriptions of positions.
- (4) The Governor in Council may, by Order published in the Government Gazette, specify the functions of an Administrative Office specified in column 3 of Schedule 1 to the extent that those functions are not inconsistent with any statement of functions in relation to the Administrative Office in any other Act.

109. Repeal

The **Public Service Act 1974** is repealed.

110. Amendment of Bank Holidays Act 1958

In section 4 of the **Bank Holidays Act 1958**, the proviso to paragraph (d) is repealed.

111. Amendment of Employee Relations Act 1992

In section 7 of the **Employee Relations Act 1992**, after sub-section (3) insert—

- “(4) Subject to section 83 of the **Public Sector Management Act 1992**, this Act also applies to officers and temporary employees within the meaning of that Act and to any person not covered by a federal award who holds a position on the staff of a declared authority within the meaning of that Act.
- (5) A person or body, corporate or unincorporate, nominated by the Governor in Council as the employer of a person referred to in sub-section (4) (not being an executive officer within the meaning of the **Public Sector Management Act 1992**) must be taken to be that person’s employer for the purposes of this Act. The nominated employer may nominate a representative who must be taken to be the employer’s representative for the purposes of this Act.”.

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112. Amendment of Administrative Arrangements Act 1983

In section 2 (1) of the **Administrative Arrangements Act 1983**—

(a) for the definition of **“Department”** substitute—

‘**“Department”** means—

- (a) a Department or part of a Department specified in column 1 of Schedule 1 of the **Public Sector Management Act 1992**; or
- (b) an Administrative Office or part of an Administrative Office specified in column 3 of Schedule 1 of that Act; or
- (c) a declared authority or part of a declared authority within the meaning of that Act.’

(b) for the definition of **“officer”** substitute—

‘**“officer”** means—

- (a) a person holding a position specified in column 2 or 4 of Schedule 1 or column 2 of Schedule 2 of the **Public Sector Management Act 1992**; or
- (b) a officer or temporary employee of the public service; or
- (c) an officer or employee of a declared authority within the meaning of that Act.’

113. Savings, transitional and other provisions

Schedule 6 has effect.

114. Consequential amendments

An Act specified in the heading to an item in Schedule 7 is amended as set out in that item.

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SCHEDULES

SCHEDULE 1

Section 4

DEPARTMENTS AND ADMINISTRATIVE OFFICES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Department</i>	<i>Department Head</i>	<i>Administrative Office</i>	<i>Position Having Functions Of Department Head</i>
Department of Agriculture	Secretary to the Department of Agriculture		
Department of Arts, Sport and Tourism	Secretary to the Department of Arts, Sport and Tourism		
Department of Business and Employment	Secretary to the Department of Business and Employment		
Department of Conservation and Natural Resources	Secretary to the Department of Conservation and Natural Resources	Environment Protection Authority	Chairman, Environment Protection Authority
Department of Education	Secretary to the Department of Education		
Department of Energy and Minerals	Secretary to the Department of Energy and Minerals		
Department of Finance	Secretary to the Department of Finance		
Department of Health and Community Services	Secretary to the Department of Health and Community Services		
Department of Justice	Secretary to the Department of Justice	Office of the Chief Parliamentary Counsel	Chief Parliamentary Counsel
Department of Planning and Development	Secretary to the Department of Planning and Development		
Department of Premier and Cabinet	Secretary to the Department of Premier and Cabinet	Office of the Governor	Official Secretary, Office of the Governor
Department of Transport	Secretary to the Department of Transport		
Department of the Treasury	Secretary to the Department of the Treasury		

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SCHEDULE 2

DECLARED AUTHORITIES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Authority</i>	<i>Position having functions of Department Head</i>	<i>Provisions of Act or Regulations to apply to Authority</i>
1. Teaching Service established under the Teaching Service Act 1981	Secretary to the Department of Education	All provisions of this Act except Part 2 and Schedule 6
2. Technical and Further Education Teaching Service established under the Post-Secondary Education Act 1978	Secretary to the Department of Education	All provisions of this Act except Part 2 and Schedule 6
3. Transport Service established under the Transport Act 1983	Secretary to the Department of Transport	All provisions of this Act except Part 2 and Schedule 6

SCHEDULE 3

Section 51

**RANGES OF REMUNERATION PACKAGES
FOR EXECUTIVE OFFICERS**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Level</i>	<i>Minimum</i>	<i>Maximum</i>
	\$	\$
Level 9	235 300	297 500
Level 8	203 333	225 920
Level 7	171 062	190 076
Level 6	140 213	155 788
Level 5	124 290	133 653
Level 4	114 227	120 242
Level 3	103 607	109 067
Level 2	92 473	97 335
Level 1	84 542	88 992

SCHEDULE 4

Section 84

LEAVE AND PUBLIC HOLIDAYS

PART 1—LEAVE OF ABSENCE

1. *Special leave*

- (1) The appropriate Department Head may for special reasons grant an officer leave of absence for a specified period.
- (2) The leave may be granted subject to any terms and conditions provided for in the regulations.

2. *Leave of absence*

- (1) The appropriate Department Head may grant an officer or temporary employee leave—
 - (a) to pursue a course of studies or training or to undertake research or to engage in employment which, in the opinion of the Department Head, would improve the potential of the officer or temporary employee to serve the State in the public service; or
 - (b) to engage in employment—
 - (i) with the Commonwealth or a State or Territory of the Commonwealth; or
 - (ii) with a public statutory authority constituted under a law of the Commonwealth or a State or Territory of the Commonwealth; or
 - (iii) with a university or educational institution offering courses at a tertiary level; or
 - (iv) in connection with a joint enterprise in which the Commonwealth or a State or Territory of the Commonwealth is concerned.
- (2) The leave may be granted—
 - (a) with or without pay; and
 - (b) on any terms and conditions that are prescribed; and
 - (c) on any other terms and conditions that the appropriate Department Head thinks fit.

3. *Declaration of vacancy*

- (1) The appropriate Department Head may declare a position vacant if—

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- (a) the officer holding the position has been granted leave of more than 12 months; and
 - (b) the Department Head considers that it is necessary to fill the position.
- (2) If a position is declared vacant under sub-clause (1) the officer holding the position becomes an unattached officer.

PART 2—LONG SERVICE LEAVE

4. *Long service leave*

An officer or temporary employee who has 10 years service is entitled to be granted the following long service leave—

- (a) 3 months with pay for that 10 years' service;
- (b) 1½ months with pay for each additional period of 5 years' completed service.

5. *Leave on half pay*

The appropriate Department Head may allow an officer or temporary employee who is entitled to long service leave to take the whole or any part of that leave at half pay for a period equal to twice the period to which the officer or temporary employee would otherwise be entitled.

6. *Time of granting leave*

The appropriate Department Head may determine the time for granting long service leave so that the Department will not be unduly affected by the granting of long service leave to numbers of officers or temporary employees at or about the same time.

7. *Payment in lieu of long service leave*

- (1) An officer or temporary employee may elect to take pay in lieu of the whole or any part of any long service leave to which he or she is entitled if because of age or ill health—
 - (a) the officer retires or is retired; or
 - (b) the employment of the officer or temporary employee is terminated.
- (2) The election must be in writing addressed to the appropriate Department Head.

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SCHEDULE 4—continued

- (3) The appropriate Department Head must grant the officer or temporary employee pay in lieu of long service leave in accordance with the election.

8. Entitlement to payment for part service

- (1) In this clause “eligible period of service”, in relation to an officer or temporary employee, means—
- (a) if the period of service of the officer or temporary employee is not less than 4 years but less than 10 years, that period of service; and
 - (b) if the period of service is more than 10 years, then that part of the period of service which does not give rise to an entitlement under clause 4.
- (2) An officer or temporary employee is entitled or (in the case of death) deemed to have been entitled to be granted an amount of long service leave with pay equalling one-fortieth of the officer’s or temporary employee’s eligible period of service if—
- (a) on account of age or ill health—
 - (i) the officer retires or is retired; or
 - (ii) the employment of the officer or temporary employee is terminated; or
 - (b) for any other reason except a breach of discipline, the employment of the officer is terminated; or
 - (c) the officer or temporary employee dies.
- (3) Any entitlement under sub-clause (2) is additional to an entitlement under clause 4.

9. Payment in case of death

If an officer or temporary employee who is entitled to long service leave or pay in lieu of long service leave dies before or while taking the leave or before the pay in lieu of leave is paid, the appropriate Department Head must grant to the legal personal representative of the deceased officer or temporary employee—

- (a) pay in lieu of the leave not taken; or
- (b) the pay in lieu of long service leave to which the officer or temporary employee was entitled.

10. Pay in lieu in other circumstances

- (1) If—
- (a) an officer with service of not less than 10 years resigns or his or her employment is terminated; or

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SCHEDULE 4—*continued*

- (b) a temporary employee with service of not less than 10 years resigns or for any reason other than age or ill health has his or her employment terminated—

the appropriate Department Head must grant the officer or temporary employee a sum, determined by the Department Head, in lieu of long service leave.

- (2) The sum determined by the Department Head—
- (a) must be granted in accordance with the regulations on the written application of the officer or temporary employee; and
 - (b) must not exceed a sum representing pay for service equal to one-fortieth of the period of service; and
 - (c) must not be paid in respect of any period of service in respect of which long service leave with pay or pay in lieu has been taken by the officer or temporary employee.

11. *Computation of service*

In computing the period of long service leave or pay in lieu of long service leave to which an officer or temporary employee is entitled, the appropriate Department Head must—

- (a) comply with the relevant regulations; and
- (b) take into account any long service leave or pay in lieu already granted to the officer or temporary employee.

12. *Service in other offices*

- (1) For the purposes of this Part, a person holding a public office or an office in the service of any prescribed public body is to be taken to be an officer in the public service if the Governor in Council, on the recommendation of the Public Service Commissioner, by Order certifies that office to be substantially similar to a position in the public service.
- (2) In this clause “**public office**” means—
- (a) an office under the Crown (not being a position in the public service) to which the right to appoint is vested in the Governor in Council; or
 - (b) an office as member, acting member or deputy member of a public authority to which the right to appoint is vested in the Governor in Council.
- (3) A person may be taken to be an officer in the public service under sub-clause (1) even if he or she as the holder of that office is not otherwise subject to this Act.

SCHEDULE 4—continued

13. Termination of employment

For the purposes of this Part, the employment of a temporary employee is to be taken to be terminated—

- (a) because of age—if on or after attaining the age of 60 years he or she ceases to be an employee;
- (b) on account of ill health—if he or she produces to the appropriate Department Head satisfactory evidence that the cessation of employment is due to ill health which is likely to be permanent.

14. Regulations

The regulations may make provision for or with respect to—

- (a) the nature of the service entitling an officer or temporary employee to long service leave (including service with any other organisation);
- (b) the computation of the period of that service;
- (c) the method of computing pay for or in lieu of long service leave.

PART 3—PUBLIC HOLIDAYS

15. Holidays

The following days shall be observed as public holidays in the public service—

- (a) Good Friday, the day after Good Friday, Easter Monday and Easter Tuesday;
- (b) New Year's Day, but when New Year's Day is a Sunday, the day after New Year's Day shall be a holiday;
- (c) Christmas Day and the day after Christmas Day, but—
 - (i) when Christmas Day is a Sunday the following Monday and Tuesday shall be holidays; and
 - (ii) when the day after Christmas Day is a Sunday the following Monday shall be a holiday;
- (d) the 26th day of January;
- (e) the second Monday in March;
- (f) the anniversary of the birthday of Her Majesty, which shall be observed on a day appointed annually by the Governor in Council by proclamation published in the Government Gazette;
- (g) the 25th day of April—ANZAC Day;

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SCHEDULE 4—continued

- (h) the fourth Thursday in September but only for public offices situated in a municipal district specified in Part 4.

16. Additional holidays

The Governor in Council by proclamation published in the Government Gazette may appoint an additional day or days to be kept as public holidays in the whole or any part of the State of Victoria.

17. Change of holidays

- (1) If, in a special case in any year, the Governor in Council considers that a public holiday under clause 15 should not be a public holiday throughout Victoria or any part of Victoria, the Governor in Council may by proclamation in the Government Gazette published not less than 7 days before the day appointed for that holiday—
- (a) declare that that holiday shall not in that year be a public holiday throughout Victoria or that part of Victoria; and
 - (b) appoint another day to be a public holiday throughout Victoria or that part.
- (2) The day appointed under sub-clause (1) (b) in that year replaces the public holiday for which it is substituted.

18. Change of additional holiday

- (1) If the Governor in Council considers that a day appointed under clause 16 as a public holiday should not be a public holiday throughout Victoria or any part of Victoria the Governor in Council may—
- (a) by proclamation published in the Government Gazette, declare that that day shall not be a public holiday throughout Victoria or that part of Victoria; and
 - (b) by that proclamation or another proclamation published in the Government Gazette appoint another day to be a public holiday throughout Victoria or that part.
- (2) The day appointed under sub-clause (1) (b) replaces the public holiday for which it was substituted.

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SCHEDULE 4—continued
PART 4—MUNICIPAL DISTRICTS

19. Municipal Districts

The municipal districts to which clause 15 applies are—

<i>Cities</i>	<i>Shires</i>
Altona	Bacchus Marsh
Berwick	Bulla
Box Hill	Cranbourne
Brighton	Diamond Valley
Broadmeadows	Eltham
Brunswick	Gisborne
Camberwell	Hastings
Caulfield	Lillydale
Chelsea	Melton
Coburg	Mornington
Collingwood	Pakenham
Croydon	Romsey
Dandenong	Sherbrooke
Doncaster and Templestowe	Werribee
Essendon	Whittlesea
Fitzroy	
Footscray	
Frankston	
Hawthorn	
Heidelberg	
Keilor	
Kew	
Knox	
Malvern	
Melbourne	
Moorabbin	
Mordialloc	
Northcote	
Nunawading	
Oakleigh	
Port Melbourne	
Prahran	

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SCHEDULE 5

Section 101

OATH OF OFFICE

I A. B. swear by almighty God that as (*name of office or position*) in the State of Victoria, I will at all times and in all things discharge the duties of (*name of office or position*) according to law and to the best of my knowledge and ability without fear, favour or affection.

SCHEDULE 6

**SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

Section 113

PART 1—GENERAL

1. Definitions

In this Schedule—

“**former Act**” means the **Public Service Act 1974**;

“**Public Service Board**” means the Public Service Board constituted under the former Act.

2. General transitional provision

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a provision of the former Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—
 - (a) any other provision of the former Act necessary to give effect to that continued provision; and
 - (b) any regulation made under the former Act for the purposes of that continued provision.

3. Savings and transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on—
 - (a) the enactment of this Act; or
 - (b) the making of regulations concerning the discipline of officers or temporary employees under this Act; or

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SCHEDULE 6—continued

- (c) the making of regulations concerning review and appeal processes under this Act; or
 - (d) the making of an Order that an Authority is a declared authority; or
 - (e) the enactment of the **Employee Relations Act 1992** in so far as it applies to officers or temporary employees in the public service.
- (2) If, as a result of the making of regulations, Division 5 of Part III of the former Act ceases to apply, those regulations—
- (a) may abolish the Promotions Appeal Board and provide that its members go out of office; and
 - (b) if they do so, must entitle a full-time member of that Board to appointment to a position in the public service and prescribe the classification of that position.
- (3) The Minister may give to a Department Head any directions necessary to give effect to sub-clause (2).
- (4) No compensation or other amount is payable because a person has gone out of office by force of the regulations mentioned in sub-clause (2).
- (5) Sub-clause (4) does not affect an arrangement made by or on behalf of the Government for the appointment of a person who goes out of office by force of a regulation mentioned in sub-clause (2) to a position in the service of the Government, or for the payment of any compensation.
- (6) A provision mentioned in sub-clause (1) or (2) may be retrospective in operation.
- (7) Regulations under this clause have effect despite anything to the contrary in any Act other than this Act or in any instrument made under an Act.

**PART 2—PROVISIONS CONSEQUENT ON ENACTMENT
OF THIS ACT**

4. Abolition of Public Service Board

- (1) The Public Service Board is abolished and its members go out of office.
- (2) A person who was a member of the Public Service Board immediately before its abolition is entitled to be appointed to a position in the public service with a prescribed classification.

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SCHEDULE 6—*continued*

- (3) The Minister may give to a Department Head any directions necessary to give effect to sub-clause (2).
- (4) No compensation or other amount is payable because a person goes out of office by force of this clause.
- (5) Nothing in this clause affects any arrangement made by or on behalf of the Government for the appointment of any person to whom this clause applies to a position in the service of the Government or for the payment of any compensation.

5. *Transfer of assets, liabilities etc. of Public Service Board*

Any assets, rights, liabilities or obligations of the Public Service Board shall be assets, rights, liabilities or obligations of the Crown.

6. *Superseded references*

On the commencement of this clause, in any Act (other than this Act or a provision of another Act amended by this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the Public Service Board (or the Chairman or a member or the secretary of that Board) must be read as a reference to—
 - (i) subject to sub-paragraph (ii)—the Minister; or
 - (ii) in the case of any particular reference—such person or body as is prescribed by the regulations in respect of that reference; and
- (b) a reference to the **Public Service Act 1958** or the **Public Service Act 1974** must be read as a reference to this Act;
- (c) a reference to an Administrative Unit must be read as a reference to a Department;
- (d) a reference to an Associated Administrative Unit must be read as a reference to an Administrative Office;
- (e) a reference to the Chief Administrator (of an Administrative Unit) must be read as a reference to a Department Head;
- (f) a reference to a Chief Administrator (of an Associated Administrative Unit) must be read as a reference to the person performing the functions of a Department Head in relation to an Administrative Office;
- (g) a reference to an office (in relation to the public service) must be read as a reference to a position under this Act;
- (h) a reference to an employee (in the public service) must be read as a reference to a temporary employee under this Act;

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- (i) a reference to a cadet under the **Public Service Act 1974** must be read as a reference to a temporary employee;
- (j) a reference to an exempt officer employee or person (in relation to the **Public Service Act 1974**) must be read as a reference to a temporary employee;
- (k) a reference to Column One of Schedule Two of the **Public Service Act 1974** must be read as a reference to column 1 of Schedule 1 of this Act;
- (l) a reference to Column Two of Schedule Two of the **Public Service Act 1974** must be read as a reference to column 2 of Schedule 1 of this Act;
- (m) a reference to Column Three of Schedule Two of the **Public Service Act 1974** must be read as a reference to column 3 of Schedule 1 of this Act;
- (n) a reference to Column Four of Schedule Two of the **Public Service Act 1974** must be read a reference to column 4 of Schedule 1 of this Act.

7. Re-appointment to public sector

- (1) Part 9 applies to the holder of a statutory office (including a government office within the meaning of the former Act) immediately before the commencement of this clause who under an Act is eligible or entitled to re-appointment to the public sector as if that Part referred to a person ceasing to hold office instead of a reference to removal under section 93.
- (2) Sub-clause (1) prevails over any inconsistent provision in any other Act relating to return to the public sector.

8. Existing public service offices

- (1) On the commencement of this clause—
 - (a) an office of chief administrator existing under the former Act immediately before that commencement with a title or description corresponding to a title or description specified in column 2 of Schedule 1 must be taken to be that corresponding position;
 - (b) an office of chief administrator of an associated administrative unit existing under the former Act immediately before that commencement with a title or description corresponding to a title or description specified in column 4 of Schedule 1 must be taken to be that corresponding position.
- (2) On the commencement of this clause, an office of chief administrator of an associated administrative unit existing under the former Act

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SCHEDULE 6—continued

immediately before that commencement, with a title or description for which there is no corresponding title or description specified in column 4 of Schedule 1, becomes a senior executive position.

- (3) On the commencement of this clause any other office in the public service existing under the former Act immediately before that commencement must be taken to be a position created under this Act with the same classification as the office had under the former Act.

9. Existing public service staff

- (1) A person holding an office in the public service under the former Act immediately before the commencement of this clause must, on that commencement, be taken to hold the position corresponding to that office on the same terms and conditions, and with the same classification and accrued or accruing entitlements, as applied to that person under the former Act immediately before that commencement.
- (2) Sub-clause (1) applies to the holder of an office that becomes a senior executive position under clause 8 (2).
- (3) Section 65 (4) and (5) apply to the holder of an office that becomes a senior executive position under clause 8 (2) as if that position were a chief executive position.
- (4) A person who is an unattached officer under the former Act immediately before the commencement of this clause must, on that commencement, be taken to be an unattached officer under this Act, on the same terms and conditions and with the same classification and accrued or accruing entitlements, as applied to the person under the former Act immediately before that commencement.
- (5) A person who, immediately before the commencement of this clause, was an employee, casual employee or cadet under the former Act or a person to whom section 41A of the former Act applied must on that commencement, be taken to be a temporary employee under this Act, on the same terms and conditions, and with the same accrued or accruing entitlements as applied to the person under the former Act immediately before that commencement.
- (6) A person on probation under the former Act immediately before the commencement of this clause continues on probation under this Act for the balance of the probation period.
- (7) This clause does not affect or limit the operation of Part 4 or clause 12 or 22.

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SCHEDULE 6—*continued*

10. *Appointments to fill vacancies*

- (1) Until the regulations otherwise provide, Division 5 of Part III of the former Act continues to apply to—
 - (a) officers or employees under the former Act who become officers or temporary employees under this Act (“existing staff”); and
 - (b) other officers or temporary employees under this Act (“new staff”).
- (2) For the purposes of sub-clause (1), that Division continues to apply to the transfer or promotion of existing staff in respect of which any step has been taken under the former Act before the commencement of this clause as if—
 - (a) it referred to this Act or the former Act instead of “this Act”; and
 - (b) it referred to the Minister instead of the Board.
- (3) A decision made under that Division in relation to the transfer or promotion of existing staff to which sub-clause (2) applies must be given effect to under this Act.
- (4) For the purposes of sub-clause (1), Division 5 of Part III of the former Act continues to apply to the transfer or promotion of existing staff and new staff occurring on or after the commencement of this clause as if—
 - (a) it referred to this Act or the former Act instead of “this Act”;
 - (b) it referred to the Minister instead of the Board;
 - (c) section 36B provided that a person who has been a temporary employee for not less than 2 years may appeal against a promotion or transfer of an officer (other than an unattached officer);
 - (d) section 37 were omitted;
 - (e) any reference to “provisional” or “provisionally” were omitted;
 - (f) it referred to a Department Head instead of a chief administrator;
 - (g) it referred to the appropriate Department Head instead of the relevant chief administrator;
 - (h) it referred to a position instead of an office;
 - (i) section 39 provided that in determining a transfer, promotion or appeal regard must only be had to section 24 of the **Public Sector Management Act 1992**.
- (5) In this clause a step taken in relation to a transfer or promotion to fill a vacancy includes the cancellation of the selection.
- (6) This clause does not apply to an executive officer.

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SCHEDULE 6—continued

11. Public service structure

- (1) Administrative Units under the former Act with titles corresponding to the titles of Departments under this Act must be taken to be those Departments on the commencement of this clause.
- (2) Associated Administrative Units under the former Act with titles corresponding to the titles of Administrative Offices under this Act must be taken to be those Administrative Offices on the commencement of this clause.
- (3) The senior executive service existing under the former Act immediately before the commencement of this clause becomes the senior executive service under this Act.

12. Agreements

- (1) This Act does not affect the continuity of operation of any agreement in force under section 43B of the former Act or any declaration in force under section 43C of that Act.
- (2) The Governor in Council may, by Order published in the Government Gazette, appoint a day on which an agreement continued by sub-clause (1) terminates.
- (3) Without limiting any other power to terminate an agreement continued by this clause at an earlier time, that agreement terminates and ceases to have any legal effect whatsoever on the day appointed under sub-clause (2), despite anything to the contrary in any Act or that agreement.
- (4) Until the termination of an agreement continued by this clause, any function under this Act relating to a matter covered by the agreement must be performed subject to the agreement.
- (5) No compensation is payable to any person because of the termination of an agreement under this clause.
- (6) This clause applies to part of an agreement in the same way as it does to an agreement.

13. Discipline

- (1) In this clause “disciplinary code” means—
 - (a) Part V of the former Act in relation to an officer; and
 - (b) the Public Service Regulations 1985, to the extent that they relate to the discipline of an employee under the former Act.

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SCHEDULE 6—continued

- (2) Until the regulations otherwise provide, the disciplinary code continues to apply to officers and temporary employees in the public service as if in that code—
- (a) a reference to “this Act” included the former Act and this Act; and
 - (b) a reference to “the Board” were a reference to the Minister; and
 - (c) a reference to an administrative unit were a reference to a Department; and
 - (d) a reference to a chief administrator were a reference to a Department Head; and
 - (e) a reference to a relevant chief administrator were a reference to the appropriate Department Head.

14. Review Process

Until the regulations otherwise provide, the provisions of the Public Service Regulations 1985 concerning requests for review of decisions and the review process continue to apply to officers and temporary employees as if in those regulations—

- (a) a reference to “this Act” were a reference to this Act or the former Act; and
- (b) a reference to the Board were a reference to the Minister; and
- (c) a reference to an Administrative Unit were a reference to a Department or Administrative Office (as the case requires); and
- (d) a reference to a Chief Administrator were a reference to a Department Head or Head of an Administrative Office (as the case requires).

15. Public Service Board Inquiry or Review

- (1) An inquiry or a review begun by the Public Service Board under the former Act but not completed at the commencement of this clause may be continued and completed by the Minister in accordance with this Act.
- (2) This clause does not affect or limit the operation of clause 23.

16. Gratuities

- (1) Section 49 of the former Act continues to apply to any temporary employee who was an employee under the former Act and who dies or has his or her services terminated or dispensed with whether

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SCHEDULE 6—*continued*

under this Act or the former Act and whether before or after the commencement of this clause.

- (2) That section continues to apply as if a reference to the Board were a reference to the Minister.
- (3) On the commencement of this clause—
 - (a) a certification under section 52 of the former Act must be taken to be a certification of the appropriate Department Head under section 98 of this Act; and
 - (b) an approval given under section 52 of the former Act must be taken to be the approval of the appropriate Minister under section 98 of this Act.

17. *Determination and deduction of rent*

Until otherwise provided by the regulations, section 53 of the former Act continues to apply to the determination and deduction of rent for the use of government buildings for residence as if—

- (a) it referred to a temporary employee instead of an employee; and
- (b) it referred to the Minister instead of the Board.

18. *Outside employment*

On the commencement of this clause a permission of the Board in force under section 54 of the former Act must be taken to be permission under section 40 of this Act and to have been given by—

- (a) the appropriate Minister in the case of a Department Head; and
- (b) the appropriate Department Head in the case of any other officer.

19. *Retirement of incapacitated officer*

Any action begun under section 57 of the former Act in relation to an officer but not completed before the commencement of this clause has effect as if taken under section 33 of this Act, and may be continued and completed accordingly by the appropriate Department Head.

20. *Compulsory retirement*

Any action begun under section 58 of the former Act in relation to an officer but not completed before the commencement of this

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SCHEDULE 6—continued

clause has effect as if taken by the Minister or Department Head (as the case requires) under Division 6 of Part 2 of this Act, and on and after that commencement may be continued and completed accordingly.

21. *Secondments*

- (1) On the commencement of this clause a person who immediately before that commencement was acting in an office under the former Act must be taken to be assigned under this Act to the position corresponding to that office, on the same terms and conditions as applied to the acting appointment immediately before that commencement.
- (2) An arrangement made by the Public Service Board and in force under the former Act immediately before the commencement of this clause continues under section 38 of this Act as if made by the appropriate Department Head and not the Board.

22. *Regulations and determinations*

- (1) Any provisions of regulations or determinations made under the **Public Service Act 1974** that are of a kind that could, after the commencement of this clause, be included in an award or employment agreement under the **Employee Relations Act 1992** continue in operation and have the same force and effect in relation to an officer (other than a chief executive officer or a senior executive officer) or temporary employee after that commencement until 1 March 1993 as if this Act had not been enacted.
- (2) Between the commencement of this clause and 1 March 1993 any provision referred to in sub-clause (1) ceases to apply to an officer or temporary employee to the extent that it is inconsistent with a relevant award or employment agreement under the **Employee Relations Act 1992**.
- (3) On 1 March 1993 the provisions referred to in sub-clause (1) expire.
- (4) On the expiry of the provisions referred to in sub-clause (1), each officer or temporary employee to whom the expired provisions applied immediately before then and his or her employer for the purposes of the **Employee Relations Act 1992** are, until the making of a relevant award or employment agreement under that Act, bound by an individual employment agreement with the same terms and conditions as those that applied to the officer or temporary employee under the expired provisions and with the benefit of all rights accrued or accruing under those provisions.

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SCHEDULE 6—*continued*

23. Public Service Board proceedings

- (1) In this clause “relevant proceeding” means a proceeding—
 - (a) begun before the Public Service Board on a day before the commencement of this clause and which had not been completed at that commencement; and
 - (b) that could have been brought before the Employee Relations Commission if this Act had been in force on that day.
- (2) If before the commencement of this clause the Public Service Board had begun to hear any relevant proceeding and at the date of that commencement evidence on any question of fact material to that proceeding had been given to the Public Service Board but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Employee Relations Commission for a determination under sub-clause (3).
- (3) On an application under sub-clause (2), the Employee Relations Commission may determine—
 - (a) to accept the proceeding as part-heard and to continue the hearing; or
 - (b) to re-hear the proceeding—in accordance with the **Employee Relations Act 1992**.
- (4) If a relevant proceeding is re-heard by the Employee Relations Commission in accordance with a determination under sub-clause (3), anything done in relation to that proceeding before the commencement of this clause shall, so far as consistent with the **Employee Relations Act 1992**, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Commission and the Commission may, for the purposes of the re-hearing, have regard to any record of the earlier proceeding before the Public Service Board.
- (5) If before the commencement of this clause a relevant proceeding was pending before the Public Service Board but the Public Service Board had not begun to hear the proceeding or had begun to hear the proceeding but on the commencement of this clause had not been given evidence on any question of fact material to the proceeding, the proceeding is to be heard and determined by the Employee Relations Commission in accordance with the **Employee Relations Act 1992** and anything done in relation to that proceeding must, so far as consistent with that Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Commission under that Act.

SCHEDULE 6—*continued*

- (6) The Public Service Board must not commence or continue or determine a relevant proceeding on or after the commencement of this clause.

24. *Medical Practitioners under Intellectually Disabled Persons' Services Act 1986*

- (1) On the commencement of this clause—
- (a) a person who, immediately before that commencement, was a medical practitioner appointed as an officer under section 66 of the **Intellectually Disabled Persons' Service Act 1986** must be taken to be appointed to a position under this Act with a classification corresponding to the officer's classification immediately before that commencement; and
 - (b) a person who, immediately before that commencement, was a medical practitioner employed under that section must be taken to be a temporary employee under this Act.
- (2) A medical practitioner who, by sub-clause (1) is taken to be an officer or temporary employee holds that office or employment on the same terms and conditions, and with the same accrued or accruing entitlements, as applied to that person immediately before the commencement of this clause.
- (3) For the purposes of Schedule 4 and the regulations, in computing the period of service that entitles a medical practitioner to whom sub-clause (1) applies to long service leave, service as a medical practitioner under section 66 of the **Intellectually Disabled Persons' Services Act 1986** must be taken into account.
- (4) Until the regulations otherwise provide section 60 (4) (5) (6) (7) and (8) and section 64 of the former Act continue to apply to a medical practitioner to whom sub-clause (1) applies as if—
- (a) a reference to the Public Service Board or the Board were a reference to the Minister;
 - (b) a reference to the public service included a reference to service as a medical practitioner under section 66 of the **Intellectually Disabled Persons' Services Act 1986**;
 - (c) a reference to "this Act" included the former Act, this Act and clause 2 (2) to (10) of Schedule 4 of the **Intellectually Disabled Persons' Services Act 1986**;
 - (d) a reference to a charge or a charge under section 62, included a reference to a charge under clause 2 (2) to (10) of Schedule 4 of the **Intellectually Disabled Persons' Services Act 1986**;
 - (e) a reference to an appeal under section 63 included a reference to an appeal under clause 2 (2) to (10) of

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Schedule 4 of the **Intellectually Disabled Persons' Services Act 1986**;

- (f) a reference to a relevant chief administrator were a reference to the appropriate Department Head;
 - (g) a reference to "an officer" included a reference to a temporary employee and a reference to a person appointed or employed under section 66 of the **Intellectually Disabled Persons' Services Act 1986**.
- (5) Until the regulations otherwise provide, clause 2 (2) to (10) of Schedule 4 of the **Intellectually Disabled Persons' Services Act 1986** continues to apply to a medical practitioner to whom sub-clause (1) of this clause applies as if—
- (a) a reference under clause 2 (2) of that Schedule to a medical practitioner to which this clause applies were a reference to a medical practitioner to whom sub-clause (1) of this clause applies;
 - (b) a reference to the **Public Service Act 1974** included a reference to this Act;
 - (c) a reference to the Public Service Board were a reference to the Minister.
- (6) Clause 13 does not apply to a medical practitioner to whom sub-clause (1) of this clause applies.
- (7) Clause 22 applies to a determination of the Public Service Board under section 66 (2) of the **Intellectually Disabled Persons' Services Act 1986** in the same way as it does to a determination of that Board under the **Public Service Act 1974**.

25. Medical Practitioners under Mental Health Act 1986

- (1) On the commencement of this clause—
- (a) a person who, immediately before that commencement, was a medical practitioner appointed as an officer under section 95 of the **Mental Health Act 1986** must be taken to be appointed to a position under this Act with a classification corresponding to the officer's classification immediately before that commencement; and
 - (b) a person who, immediately before that commencement, was a medical practitioner employed under that section must be taken to be a temporary employee under this Act.
- (2) A medical practitioner who, by sub-clause (1) is taken to be an officer or temporary employee holds that office or employment on the same terms and conditions, and with the same accrued or

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accruing entitlements, as applied to that person immediately before the commencement of this clause.

- (3) For the purposes of Schedule 4 and the regulations, in computing the period of service that entitles a medical practitioner to whom sub-clause (1) applies to long service leave, service as a medical practitioner under section 95 of the **Mental Health Act 1986** must be taken into account.
- (4) Until the regulations otherwise provide section 60 (5) (6) (7) and (8) and section 64 of the former Act continue to apply to a medical practitioner to whom sub-clause (1) applies as if—
 - (a) a reference to the Public Service Board or the Board were a reference to the Minister;
 - (b) a reference to the public service included a reference to service as a medical practitioner under section 95 of the **Mental Health Act**;
 - (c) a reference to “this Act” included the former Act, this Act and clauses 2 (2) to (10) of Schedule 4 of the **Mental Health Act 1986**;
 - (d) a reference to a charge, or a charge under section 62 included a reference to a charge under clause 2 (2) to (10) of Schedule 4 of the **Mental Health Act 1986**;
 - (e) a reference to an appeal under section 63 included a reference to an appeal under clause 2 (2) to (10) of Schedule 4 of the **Mental Health Act 1986**;
 - (f) a reference to a relevant chief administrator were a reference to the appropriate Department Head;
 - (g) a reference to “an officer” included a reference to a temporary employee and a reference to a person appointed or employed under section 95 of the **Mental Health Act 1986**.
- (5) Until the regulations otherwise provide, clause 2 (2) to (10) of Schedule 4 of the **Mental Health Act 1986** continues to apply to a medical practitioner to whom sub-clause (1) of this clause applies as if—
 - (a) a reference under clause 2 (2) of that Schedule to a medical practitioner to which this clause applies were a reference to a medical practitioner to whom sub-clause (1) of this clause applies;
 - (b) a reference to the **Public Service Act 1974** included a reference to this Act;
 - (c) a reference to the Public Service Board were a reference to the Minister.

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- (6) Clause 13 does not apply to a medical practitioner to whom sub-clause (1) of this clause applies.
- (7) Clause 22 applies to a determination of the Public Service Board under section 95 (2) of the **Mental Health Act 1986** in the same way as it does to a determination of that Board under the **Public Service Act 1974**.

SCHEDULE 7

CONSEQUENTIAL AMENDMENTS Section 114

1. *Intellectually Disabled Persons' Services Act 1986*

- 1.1 In section 13 (4) (d), for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.2 In section 29 (1), for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.3 In section 30 (6), for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.4 In section 66, sub-sections (2), (3), (4) and (5) are repealed.
- 1.5 In section 67 (1)—
 - (a) for “With the approval of the Public Service Board, the” substitute “The”;
 - (b) for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.6 In section 67 (2)—
 - (a) for “**Public Service Act 1974**” (where first occurring) substitute “**Public Sector Management Act 1992**”;
 - (b) omit “Public Service Board and the”;
 - (c) for “**Public Service Act 1974**” (where secondly occurring) substitute “**Public Sector Management Act 1992** or the **Employee Relations Act 1992**”.
- 1.7 In clause 1 (e) of Schedule 1, for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.8 In clause 2 (1) (e) of Schedule 1, for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.
- 1.9 In clause 1 (3) (b) and (c) of Schedule 2, for “**Public Service Act 1974**” substitute “**Public Sector Management Act 1992**”.

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SCHEDULE 7—*continued*

1.10 In clause 1 (1) (d) of Schedule 3, for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

1.11 Schedule 4 is repealed.

2. *Mental Health Act 1986*

2.1 In section 23 (1), for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.2 In section 95, sub-sections (2), (3), (4) and (5) are repealed.

2.3 In section 97 (1)—

(a) for “With the approval of the Public Service Board, the” substitute “The”;

(b) for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.4 In section 97 (2)—

(a) for “Public Service Act 1974” (where first occurring) substitute “Public Sector Management Act 1992”;

(b) omit “the Public Service Board and”;

(c) for “Public Service Act 1974” (where secondly occurring) substitute “Public Sector Management Act 1992 or the Employee Relations Act 1992”.

2.5 In clause 1 (e) of Schedule 1, for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.6 In clause 2 (1) (e) of Schedule 1, for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.7 In clause 4 (1) (d) of Schedule 3, for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.8 In clause 4 (3) (c) of Schedule 3, for “Public Service Act 1974” substitute “Public Sector Management Act 1992”.

2.9 Schedule 4 is repealed.

3. *Teaching Service Act 1981*

In section 52 (1), the proviso to paragraph (d) is repealed.

4. *Transport Act 1983*

In section 83 (2), for “the public service determinations for the time being in force under the Public Service Act 1974” substitute “any award or employment agreement made under the Employee Relations Act 1992”.

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Notes

NOTES

1. *Minister's second reading speech—*
Legislative Assembly: 4 November 1992
Legislative Council: 12 November 1992
2. The long title for the Bill for this Act was "A Bill to reform the management of the Victorian public sector, to repeal the **Public Service Act 1974**, to amend the **Employee Relations Act 1992**, the **Administrative Arrangements Act 1983**, the **Bank Holidays Act 1958** and certain other Acts and for other purposes."
3. **Constitution Act 1975:**
Section 85 (5) statement: *Legislative Assembly: 4 November 1992*
Legislative Council: 12 November 1992
Absolute majorities: *Legislative Assembly: 12 November 1992*
Legislative Council: 13 November 1992
4. Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)